INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

| | | |
|---|---|---|
| AMAZON EU S.À R.L., | ) | ICDR CASE NO. 01-16-0000-7056 |
| | ) | |
| Claimant, | ) | |
| | ) | |
| and | ) | |
| | ) | |
| INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, | ) | |
| | ) | |
| Respondent. | ) | |
| | ) | |

**EXHIBITS IN SUPPORT OF ICANN'S PREHEARING BRIEF**

INDEX TO DOCUMENTS SUBMITTED IN SUPPORT OF ICANN'S PREHEARING BRIEF

| Exhibit No. | Date | Description |
|---|---|---|
| R- 56 | 11 April 2013 | Cooperative Engagement Process – Request for Independent Review. |
| R- 57 | 28 Nov. 2005 | GNSO Council Vancouver Meeting Minutes, Generic Names Supporting Organization. |
| R- 58 | 8 Aug. 2007 | Final Report - Introduction of New Generic Top-Level Domains, Generic Names Supporting Organization. |
| R- 59 | 6 Sept. 2007 | GNSO Council Teleconference Minutes, Generic Names Supporting Organization. |
| R- 60 | 12 Nov. 2010 | gTLD Application Guidebook Proposed Final Version. |
| R- 61 | 5 April 2013 | Montevideo Declaration, Fourth Ministerial Conference on the Information Society in Latin America and the Caribbean. |
| R- 62 | 4 Oct. 2013 | Federal Senate of Brazil Resolution (Request) No. 73 of 2013. |
| R- 63 | 24 May 2013 | Amazon Opposition to Community Objections (English). |
| R- 64 | 24 May 2013 | Amazon Opposition to Community Objections (Japanese). |
| R- 65 | 24 May 2013 | Amazon Opposition to Community Objections (Chinese). |
| R- 66 | 8 April 2013 | E-Mail from Stacey King, Senior Corporate Counsel (IP) at Amazon to Mark Carvell, Head, UK Global Internet Governance Policy. |
| R- 67 | 8 April 2013 | E-mail from Brian Huseman, Director, Public Policy, at Amazon to Hubert Schoettner, German Federal Ministry of Economics and Technology. |

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|---|---|---|
| R- 68 | 8 April 2013 | E-Mail from Stacey King, Senior Corporate Counsel (IP) at Amazon to Claudine Kariger, Senior Policy Adviser, Luxembourg Media and Communications Department. |
| R- 69 | 8 April 2013 | E-Mail from Stacey King, Senior Corporate Counsel (IP) at Amazon to Peter Nettlefold, Senior Adviser, Australian Digital Government Strategy Department. |
| R- 70 | 19 June 2013 | E-mail from David Gross, Amazon retained counsel, to Stephen Conroy, Australian Minister for Broadband, Communications and the Digital Economy. |
| R- 71 | 14 April 2014 | Letter from Benedicto Fonseca Filho and Vergilio Fernandes Almeida to Stephen D. Crocker. |
| R- 72 | 14 May 2014 | NGPC Adopted Board Resolution 2014.05.14.NG03. |
| R- 73 | 8 Sept. 2014 | Approved Resolutions – Meeting of the New gTLD Program Committee. |
| R- 74 | 26 June 2008 | Transcript of 26 June 2008 ICANN Board of Directors Meeting. |
| R- 75 | 22 Oct. 2008 | New gTLD Program Explanatory Memorandum: Proposed Process for Geographic Name Applications. |
| R- 76 | 20 June 2011 | ICANN Board Rationales for the Approval of the Launch of the New gTLFD Program. |
| R- 77 | 20 June 2011 | Rationale: Remaining areas of difference between ICANN's Board and Governmental Advisory Committee regarding implementation of the New gTLD Program. |
| R- 78 | 2007 | Intergovernmental Negotiations and Decision Making at the United Nations: A Guide, Second Updated Edition. |
| R- 79 | 4 March 2011 | ICANN Board Notes on the GAC New gTLDs Scorecard. |
| R- 80 | 18 March 2011 | ICANN Bylaws as amended 18 March 2011. |
| R- 81 | 1 Oct. 2016 | ICANN Bylaws as amended 1 October 2016. |

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| R- 82 | 19 Sept. 2011 | Summary of Changes to Applicant Guidebook – Showing Changes from 30 May 2011 Version to Version 2011-09-19. |
| R- 83 | 14 May 2014 | Minutes – Regular Meeting of the New gTLD Program Committee. |
| R- 84 | March 1994 | Domain Name System Structure and Delegation, Network Working Group. |
| R- 85 | 15 April 2011 | Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response. |
| R- 86 | 1982 | *Edwards v. C.I.R.,* 680 F.2d 1268 (9th Cir. 1982). |
| R- 87 | 2006 | *Kamakana v. City and County of Honolulu,* 447 F.3d 1172 (9th Cir. 2006). |
| R- 88 | 1979 | *Natural Resources Defense Council, Inc. v. Securities and Exchange Commission*, 606 F.2d 1031 (D.D.C. 1979). |
| R- 89 | 1998 | *United States v. Berger*, 990 F. Supp. 1054 (C.D. Ill. 1998). |

| PREVIOUSLY SUBMITTED EXHIBITS | | |
|---|---|---|
| **Exhibit No.** | **Date** | **Documents** |
| **C-020** | 4 June 2012 | gTLD Applicant Guidebook (Version 2012-06-04) |
| **C-022** | 20 Nov. 2012 | GAC Early Warning – Submittal Amazon-BR-PE-58086 (20 Nov. 2012) |
| **C-023** | 12 Mar. 2013 | New Generic Top-Level Domain Names Dispute Resolution Procedure – Objection Form by Prof. Alain Pellet, Independent Objector (12 Mar. 2013) |
| **C-024** | 22 Mar. 2013 | ICANN – New gTLD Program – Initial Evaluation Report – Application ID: 1-1318-83995 (22 Mar. 2013) |
| **C-025** | 5 April 2013 | ICANN – New gTLD Program – Initial Evaluation Report – Application ID: 1318-5591 (5 April 2013) |
| **C-030** | 10 May 2013 | GAC Advice Response Form for Applicants – Applicant Name: Amazon EU S.à.r.l. (10 May 2013) |
| **C-034** | July 2013 | U.S. Statement on Geographic Names in Advance of ICANN Durban Meeting (July 2013) |
| **C-037** | 12 July 2013 | ICANN – New gTLD Program – Initial Evaluation Report – Application ID: 1-1315-58086 (12 July 2013) |
| **C-038** | 13 July 2013 | Durban – GAC Plenary 2 (13 July 2013) |
| **C-039** | 13 July 2013 | Statement on ".amazon" and other strings containing geographic names – 47th ICANN GAC Durban Meeting (13 July 2013) |
| **C-040** | 16 July 2013 | DURBAN – GAC Open Plenary 4 (16 July 2013) |
| **C-041** | 18 July 2013 | GAC Communiqué – Durban, South Africa (18 July 2013) |
| **C-042** | 18 July 2013 | ICANN Durban Public Forum Transcript, Comments of Keith Drazek, Chair of the Registries Stakeholder Group (18 July 2013) |
| **C-043** | 23 Aug. 2013 | GAC Advice Response Form for Applicants – Amazon's Response to the ICANN Board of Directors on the GAC Durban Communiqué (23 Aug. 2013) |
| **C-044** | 3 Dec. 2013 | Letter from S. King to S.Crocker, F. Chehadé and C. Chalaby (3 Dec. 2013) |
| **C-045** | 24 Dec. 2013 | Letter from F. Rojas Samanez to S. Crocker (24 Dec. 2013) |

| PREVIOUSLY SUBMITTED EXHIBITS | | |
|---|---|---|
| **Exhibit No.** | **Date** | **Documents** |
| **C-046** | 10 Jan. 2014 | Letter from S. King to S.Crocker, F. Chehadé and C. Chalaby (10 Jan. 2014) |
| **C-047** | 27 Jan. 2014 | Expert Determination of Prof. Luca G. Radicati di Brozolo (27 Jan. 2014) |
| **C-048** | 31 Mar. 2014 | Independent Report of Jerome Passa (31 Mar. 2014) |
| **C-050** | 11 April 2014 | Letter from F. Rojas Samanez to S. Crocker (11 April 2014) |
| **C-051** | 14 April 2014 | Letter from S. Hayden to S. Crocker, F. Chedadé and C. Chalaby (14 April 2014) |
| **C-053** | 29 April 2014 | NGPC Meeting – Committee Papers (29 April 2014) |
| **C-054** | 14 May 2014 | Approved Resolutions – Meeting of the New gTLD Program Committee (14 May 2014) |
| **C-056** | 14 May 2014 | NGPC Meeting – Reference Materials (14 May 2014) |
| **C-057** | 14 May 2014 | NGPC Meeting – Committee Papers (14 May 2014) |
| **C-059** | 29 May 2014 | Reconsideration Request for Decision of August 21, 2013 Materially Affecting Amazon EU S.à.r.l. (29 May 2014) |
| **C-064** | 30 July 2014 | ICANN Bylaws (amended 30 July 2014) |
| **C-065** | 22 Aug. 2014 | Recommendation of the Board Governance Committee (BGC) Reconsideration Request 14-27 (22 Aug. 2014) |
| **C-068** | 8 Sept. 2014 | Approved Resolutions – Meeting of the New gTLD Program Committee [Request 14-27] (8 Sept. 2014) |
| **C-077** | 30 April 2013 | Correspondence from V. Semynozhenko, Ukraine, to ICANN Governmental Advisory Committee |
| **C-078** | 5 April 2013 | Email from W. Ahkuputra, Thailand GAC Alternative Representative, to GAC Secretariat |
| **C-079** | 9 April 2013 | Correspondence from P. Papaspiliopoulos, Greece GAC Representative, to ICANN Governmental Advisory Committee |
| **C-091** | 03 March 2014 | Correspondence from Vice Minister F. Samenez, Peru, to ICANN |

| PREVIOUSLY SUBMITTED EXHIBITS | | |
|---|---|---|
| **Exhibit No.** | **Date** | **Documents** |
| **CLA001** | 3 Mar. 2015 | *Booking.com B.V. v. ICANN*, ICDR Case No. 50-20-1400-0247, Final Declaration (3 Mar. 2015) |
| **CLA002** | 9 July 2015 | *DotConnectAfrica Trust v. ICANN*, ICDR Case No. 50-2013-001083, Final Declaration, (9 July 2015) |
| **CLA003** | 19 Feb. 2010 | *ICM Registry, LLC v. ICANN*, ICDR Case No. 20 117 T 00224 08, Declaration of the Independent Review Panel (19 Feb. 2010) |
| **CLA004** | 9 July 2015 | *Vistaprint Limited v. ICANN*, ICDR Case No. 01-14-0000-6505, Final Declaration of the Independent Review Panel (9 July 2015) |
| **CLA008** | 10 Dec. 2015 | *Merck KGaA v. ICANN*, ICDR Case No. 01-14-0000-9604, Final Declaration of the Independent Review Process Panel (10 Dec. 2015) |
| **CLA030** | 17 Oct. 2016 | *Corn Lake v. ICANN*, Final Declaration, ICDR Case No. 01-15-0002-9938 (17 Oct. 2016) |
| **CLA031** | 19 Oct. 2016 | *Gulf Cooperation Council (CGC) v. ICANN*, Partial Final Declaration of the Independent Review Process Panel, ICDR Case No. 01-14-0002-1065 (19 Oct. 2016) |
| **CLA032** | 31 Jan. 2017 | *Dot Sport Limited v. ICANN*, Final Declaration, ICDR Case No. 01-15-0002-9483 (31 Jan. 2017) |
| **R-1** | 11 Feb. 2016 | ICANN Bylaws (as amended 11 February 2016). |
| **R-2** | Oct. 2011 | GAC Operating Principles (as amended at GAC Dakar meeting in October, 2011). |
| **R-4** | 24 Oct. 2008 | New gTLD Application Guidebook (24 October 2008 version). |
| **R-7** | 15 April 2011 | New gTLD Program Explanatory Memorandum: GAC and Government Objections; Handling of Sensitive Strings; Early Warnings, dated 15 April 2011 |
| **R-9** | 15 April 2011 | New gTLD Applicant Guidebook (15 April 2011 version). |
| **R-10** | 15 April 2011 | GAC comments on the Guidebook (15 April 2011 version). |
| **R-13** | 19 June 2011 | Transcript of ICANN New gTLDs and Applicant Guidebook Meeting with Board/GAC, dated 19 June 2011 |

| PREVIOUSLY SUBMITTED EXHIBITS | | |
|---|---|---|
| **Exhibit No.** | **Date** | **Documents** |
| **R-14** | 20 June 2011 | Singapore Approved Board Resolutions, dated 20 June 2011. |
| **R-15** | 27 Oct. 2011 | GAC Dakar Communiqué, dated 27 October 2011. |
| **R-19** | 11 April 2013 | GAC Beijing Communiqué, dated 11 April 2013. |
| **R-22** | 18 July 2013 | GAC Communiqué – Durban, South Africa, dated 18 July 2013. |
| **R-23** | 23 Aug. 2013 | Amazon's GAC Advice Response Form for Applicants, dated 23 August 2013. |
| **R-31** | 29 April 2014 | Minutes of the New gTLD Program Committee Meeting of 29 April 2014 |
| **R-33** | 8 Aug. 2007 | GNSO Final Report on Introduction of New Generic Top-Level Domains, 8 August 2007. |
| **R-34** | 28 Mar. 2007 | GAC Principles Regarding New gTLDs, 28 March 2007. |
| **R-39** | 2013 | ICANN - 2013 Supplementary Procedures. |
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# R-56

RESPONDENT'S EXHIBIT

**Cooperative Engagement Process – Requests for Independent Review**
11 April 2013

As specified in Article IV, Section 3 of the ICANN Bylaws, prior to initiating an independent review process, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. It is contemplated that this cooperative engagement process will be initiated prior to the requesting party incurring any costs in the preparation of a request for independent review. Cooperative engagement is expected to be among ICANN and the requesting party, without reference to outside counsel.

The Cooperative Engagement Process is as follows:

1. In the event the requesting party elects to proceed to cooperative engagement prior to filing a request for independent review, the requesting party may invoke the cooperative engagement process by providing written notice to ICANN at [independentreview@icann.org], noting the invocation of the process, identifying the Board action(s) at issue, identifying the provisions of the ICANN Bylaws or Articles of Incorporation that are alleged to be violated, and designating a single point of contact for the resolution of the issue.
2. The requesting party must initiate cooperative engagement within fifteen (15) days of the posting of the minutes of the Board (and the accompanying Board Briefing Materials, if available) that the requesting party's contends demonstrates that the ICANN Board violated its Bylaws or Articles of Incorporation.
3. Within three (3) business days, ICANN shall designate a single executive to serve as the point of contact for the resolution of the issue, and provide notice of the designation to the requestor.
4. Within two (2) business days of ICANN providing notice of its designated representatives, the requestor and ICANN's representatives shall confer by telephone or in person to attempt to resolve the issue and determine if any issues remain for the independent review process, or whether the matter should be brought to the ICANN Board's attention.
5. If the representatives are not able to resolve the issue or agree on a narrowing of issues, or a reference to the ICANN Board, during the first conference, they shall further meet in person at a location mutually agreed to within 7 (seven) calendar days after such initial conference, at which the parties shall attempt to reach a definitive agreement on the resolution of the issue or on the narrowing of issues remaining for the independent review process, or whether the matter should be brought to the ICANN Board's attention.
6. The time schedule and process may be modified as agreed to by both ICANN and the requester, in writing.

If ICANN and the requestor have not agreed to a resolution of issues upon the conclusion of the cooperative engagement process, or if issues remain for a request

for independent review, the requestor's time to file a request for independent review designated in the Bylaws shall be extended for each day of the cooperative engagement process, but in no event, absent mutual written agreement by the parties, shall the extension be for more than fourteen (14) days.

Pursuant to the Bylaws, if the party requesting the independent review does not participate in good faith in the cooperative engagement process and ICANN is the prevailing party in the independent review proceedings, the IRP panel must award to ICANN all reasonable fees and costs incurred by ICANN in the proceeding, including legal fees. ICANN is expected to participate in the cooperative engagement process in good faith.

# R-57

RESPONDENT'S EXHIBIT

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

# GNSO Council Vancouver Meeting Minutes

Last Updated: 31 August 2009

**Date:** 28 November 2005

28 November 2005

Proposed agenda and related documents

**List of attendees:**
Philip Sheppard - Commercial & Business Users C.
Marilyn Cade - Commercial & Business Users C.
Grant Forsy h - Commercial & Business Users C - remote participation
Greg Ruth - ISCPC - absent - apologies - proxy to Tony Holmes
Antonio Harris - ISCPC - proxy to Tony Holmes (joined mee ing after roll call)
Tony Holmes - ISCPC
Thomas Keller- Registrars
Ross Rader - Registrars (joined meeting after roll call)
Bruce Tonkin - Registrars
Ken Stubbs - gTLD registries
Philip Colebrook - gTLD registries - remote participa ion
Cary Karp - gTLD registries
Lucy Nichols - Intellectual Property Interests C - absent - apologies - proxy to Niklas Lagergren
Niklas Lagergren - Intellectual Property Interests C
Kiyoshi Tsuru - Intellectual Property Interests C. - absent - apologies - proxy to Niklas Lagergren
Robin Gross - Non Commercial Users C.- remote participation
Norbert Klein - Non Commercial Users C.
Alick Wilson - Nominating Committee appointee - remote par icipation
Maureen Cubberley - Nomina ing Committee appointee
Avri Doria - Nominating Committee appointee

17 Council Members

**ICANN Staff**
Olof Nordling - Manager, Policy Development Coordination
Maria Farrell - ICANN GNSO Policy Support Officer
Liz Williams - Senior Policy Counselor
Tina Dam - Chief gTLD Registry Liaison
Diane Schroeder - General Manager, Conferences, Administration & Finance
Glen de Saint G◆ry - GNSO Secretariat

**GNSO Council Liaisons**
Suzanne Sene - GAC Liaison - absent - apologies
Bret Fausett - acting ALAC Liaison - absent - apologies

Michael Palage - ICANN Board member - absent - apologies
Quorum present at 9: 12 PST.

Two MP3 recordings of the second part of the meeting (not very clear)
http://gnso-audio.icann.org/GNSO-Council20051122.mp3
http://gnso-audio.icann.org/GNSO2-20051122;MP3.mp3

**Bruce Tonkin** and **Philip Sheppard** chaired his teleconference.

**Approval of Agenda**

**Diane Schroeder** addressed the meeting informing the Council of an important time modification to the schedule for the GNSO Public Forum and GNSO Council meeting on Friday 2 December 2005 in Vancouver.

**Marilyn Cade** proposed ending the meeting early to prepare for the joint meeting wi h the ICANN Board in the afternoon.

**Ken Stubbs**, seconded by **Marilyn Cade** proposed **Philip Sheppard** as chair for he election process.

Motion carried unanimously
**Decision 1: Philip Sheppard chaired the GNSO Council meeting for the election process.**

**Item 3: Election of GNSO Council chair**
**- Bruce Tonkin has been nominated and seconded**
**- term from 18 Nov 2005 until one month after 2005 AGM (4 Jan 2006)**

**Philip Sheppard** proposed:
Whereas Bruce Tonkin had been nominated by Ken Stubbs and seconded by Ross Rader as GNSO Council chair for the period from 18 November 2005 until one month after 2005 AGM (4 January 2006)
Recommended that Bruce Tonkin be elected as GNSO Council chair for the period 18 November 2005 until one mon h after the 2005 ICANN Annual General Meeting (4 January 2006).

**Philip Sheppard** called for a formal roll call vote.

The motion carried unanimously.
No vote was recorded for Tony Harris who joined he meeting late.

**Decision 2: Bruce Tonkin was elected as GNSO Council chair for the period 18 November 2005 until one month after the 2005 ICANN Annual General Meeting (4 January 2006).**

**Philip Sheppard** formally handed the chair to **Bruce Tonkin**.

**Item 4: Approval of minutes**
**- GNSO Council teleconference - 13 October 2005**
**- GNSO Council teleconference - 20 October 2005**

**Maureen Cubberley** moved the adoption of he minutes.
The motion carried. Niklas Lagergren abstained

**Decision 3: The GNSO Council minutes of 13 October 2005 and 20 October 2005 were adopted**.

**Item 5: Evaluation of new gtlds (.biz, .info etc as well as .travel, .jobs. .mobi etc)**
**- update on questions to structure the evaluation**

**Olof Nordling** commented that he document elaborated the need for further evaluation of recently introduced gTLDs and proposed an approach for this, focused to inform ongoing work on policy aspects regarding the introduction of new gTLDs. Discussions on an evaluation of the ongoing sTLD round were under way with the consultant that performed the main evaluation of the "proof-of-concept" round for ICANN. It was recommended that the GNSO Council stated that questions relating to selection criteria, allocation methods and contractual conditions were of particular relevance in this context. The document proposed a draft list of questions to this end.
The report was designed to give the GNSO Council the informa ion necessary to discuss and decide on ways to proceed with additional evaluation aspects of assigned new TLDs.

**Maureen Cubberley** referred to page 8 of the report, 'consideration for additional review', and commented that there was a need for emphasis on the process of decision making that informed the evaluation. It was essential to look at he content of the recent Request for Proposals (RFP) for he sponsored round of gTLDs .

**Bruce Tonkin** pointed out that the new gTLD process was under discussion, and that the evaluation was driven by a process several years ago. There were two issues, one, how to improve the process and the second, should new gTLDs be introduced.

**Marilyn Cade** noted from the Business Constituency's perspective, that clear guidance was given for the recent round of gTLDs to be sponsored. Sponsored was discussed in depth yet here appeared to be a limited match in the case of some of the applicants. Further guidance and criteria on 'sponsored'was required.

**Maureen Cubberley** commented that ambiguities in the RFP led to he issue.

**Bruce Tonkin** proposed that the project manager (Miriam Sapiro) produce a 'lessons learnt' paper, a quick follow up of the report in terms of the outcome, which should not be wider but intended as input to a subsequent wider process and that an "independent external review" be carried out by someone different from the project manager.

**ACTION**
Council was encouraged to examine the list of questions and provide further questions to Miriam Sapiro.
Further it was suggested that Miriam Sapiro do a presentation at he GNSO Public Forum on Friday 2 December 2005.

**Item 6: Policy Development Process for new gtlds**
**- discuss issues report**
**- decide whether to commence a PDP**

**Bruce Tonkin** referred to the ICANN Bylaws.
Sec ion 2. Crea ion of the Issue Report
Within fifteen (15) calendar days after receiving either (i) an instruction from the Board; (ii) a properly supported motion from a Council member; or (iii) a properly supported motion from an Advisory Committee, the Staff Manager will create a report (an "Issue Report"). Each Issue Report shall contain at least the following:
Sec ion 2. Crea ion of the Issue Report had been completed

Sec ion 2 e. A recommendation from he Staff Manager as to whether the Council should initiate the PDP for this issue (the "Staff Recommendation"). Each Staff Recommendation shall include the opinion of the ICANN General Counsel regarding whether the issue proposed to initiate the PDP is properly within the scope of the ICANN policy process and wi hin the scope of the GNSO. In determining whe her the issue is properly wi hin the scope of the ICANN policy process, the General Counsel shall examine whether such issue:

The staff manager, Olof Nordling had recommended that a PDP be initiated.

**Bruce Tonkin** proposed that at the current meeting the Council vote to commence a PDP.

**Marilyn Cade**, seconded by **Tom Keller** proposed:
Whereas, the GNSO Council recognises that the review of the GNSO Council held in 2004 recommended that the PDP timelines be reviewed.
The GNSO votes to ini iate the PDP on new gTLDs. The GNSO will develop a work program in consultation with the ICANN staff and ICANN board that sets out a timeframe for work

The vote was by show of hands.
The motion carried unanimously. No abstentions

**Decision 4:**
**Whereas, the GNSO Council recognises that the review of the GNSO Council held in 2004 recommended that the PDP timelines be reviewed.**
**The GNSO votes to initiate the PDP on new gTLDs. The GNSO will develop a work program in consultation with the ICANN staff and ICANN board that sets out a timeframe for work**

Item 7: **WHOIS: Final task force report on a policy recommendation and advice on a procedure for handling conflicts between a registrar/registry's legal obligations under privacy laws and their contractual obligations to ICANN**

**- vote on final recommendation as completed by the WHOIS task force on 19 Oct**
**Bruce Tonkin** noted that the "advice" as set forth was not consensus policy.
**Niklas Lagergren** stated that the task force Final Report was supported unanimously by the WHOIS task force.
**Ross Rader**, a member of the task force raised a procedural question that after he task force had already voted on the final report, it should be made precise hat reference was to the gTLD WHOIS service and did not refer to the protocol, the RIR WHOIS service or the country code WHOIS service.

**Tom Keller** seconded by **Niklas Lagergren** proposed that:

The GNSO votes in favour of the following consensus policy recommendation from the WHOIS task force
**CONSENSUS POLICY RECOMMENDATION**

In order to facilitate reconciliation of any conflicts between local/national mandatory privacy laws or regula ions and applicable provisions of the ICANN contract regarding the collection, display and distribution of personal data via the gTLD Whois service, ICANN should:

1. Develop and publicly document a procedure for dealing with the situation in which a registrar or registry can credibly demonstrate that it is legally prevented by local/national privacy laws or regulations from fully complying with applicable provisions of its ICANN contract regarding the collection, display and distribution of personal data via the gTLD WHOIS service.

2. Create goals for the procedure which include:

    a. Ensuring that ICANN staff is informed of a conflict at the earliest appropriate juncture;
    b. Resolving the conflict, if possible, in a manner conducive to ICANN's Mission, applicable Core Values and the stability and uniformity of the Whois system;
    c. Providing a mechanism for the recognition, if appropriate, in circumstances where the conflict cannot be otherwise resolved, of an exception to contractual obligations to those registries/registrars to which the specific conflict applies with regard to collection, display and distribution of personally identifiable data via the gTLD WHOIS service; and
    d. Preserving sufficient flexibility for ICANN staff to respond to par icular factual situa ions as they arise.

The GNSO recommends the ICANN staff consider he advice given in he task force report as to a recommended procedure.

**Bruce Tonkin** called for formal roll call vote.

The motion carried.

26 Votes in support

Abstention from Avri Doria:
Reason: Does not believe goes far enough in protec ing privacy

**Decision 5**
**The GNSO votes in favour of the following consensus policy recommendation from the WHOIS task force**
**CONSENSUS POLICY RECOMMENDATION**

**In order to facilitate reconciliation of any conflicts between local/national mandatory privacy laws or regulations and applicable provisions of the ICANN contract regarding the collection, display and distribution of personal data via the gTLD WHOIS service, ICANN should:**

1. **Develop and publicly document a procedure for dealing with the situation in which a registrar or registry can credibly demonstrate that it is legally prevented by local/national privacy laws or regulations from fully complying with applicable provisions of its ICANN contract regarding the collection, display and distribution of personal data via the gTLD WHOIS service.**

2. **Create goals for the procedure which include:**

   a. **Ensuring that ICANN staff is informed of a conflict at the earliest appropriate juncture;**
   b. **Resolving the conflict, if possible, in a manner conducive to ICANN's Mission, applicable Core Values and the stability and uniformity of the Whois system;**
   c. **Providing a mechanism for the recognition, if appropriate, in circumstances where the conflict cannot be otherwise resolved, of an exception to contractual obligations to those registries/registrars to which the specific conflict applies with regard to collection, display and distribution of personally identifiable data via the gTLD WHOIS service; and**
   d. **Preserving sufficient flexibility for ICANN staff to respond to particular factual situations as they arise.**

**The GNSO recommends the ICANN staff consider the advice given in the task force report as to a recommended procedure.**

**Item 8: Policy development for IDNs**
**- discuss background document**
**- decide whether to formally request an issues report**
**section 1 - Raising an Issue**
**section 2 - Creation of the Issue Report**

**Bruce Tonkin** referred to the background document which listed the existing resolutions, workshops, and information on the President's Advisory Committee, of which Cary Karp was a member, and suggested that the GNSO request the staff to produce an issues report on the policy issues using the document as a basis.
Bruce added that there should be clarity for the community what the policy aspects for the GNSO were.

**Cary Karp** commented that attention should not only be to constrain 2nd level of the DNS, the top level and the 3rd and 4th level of the DNS should also be considered. If control was invoked as a term of delega ion the domain space could not be policed, which means that anything not permitted should be folded into the underlying possible standards. The first generation would be a normative framework that expected anything to be done but allowed policy constraint to guide.
**Cary** further clarified that internationalization meant changing he system to make it useable in the polyglot world we live in while making it work with Cambodia, for example, is localization. An Arabic version of.com is a localization. The concern is the translated versions of the gtld labels.

Discussion followed on the motion to be drafted. Due to the complexity of the topic and in order for constituency discussion, **Bruce Tonkin** proposed tabling the following motion to be voted on at he GNSO Council meeting on Friday 2 December 2005:

Tabled motion:

WHEREAS, the GNSO Council recognises hat one of the goals of ICANN to increase the internationalisation of the domain name space.
WHEREAS, the GNSO Council wishes to liaise closely with the ccNSO with respect to the issue of localised IDN equivalents of existing gTLDs and ccTLDs, and for he purpose of jointly reques ing an issues report.

The GNSO Council requests that the staff produce an issues report on the policy issues associated with creating internationalised equivalents of existing gTLDs, and second level domains within existing gTLDs.

The GNSO also requests that the staff liaise with the ccNSO to ensure that the policy issues associated with internationalised versions of the exis ing ccTLDs can also be considered.

**Bruce Tonkin** proposed revisiting the process of the PDP on new gTLDs. and outlined the proposed work:
January to June
- PDP on New gTLDs
- PDP on IDNs
- WHOIS task force - considered to drain a lot of resources

**Bruce Tonkin** noted that with respect to issues such as WHOIS that will likely need to evolve over several years, it may be more efficient to spend a limited time on the issue each year, rather than tie up GNSO community and staff resources for

he whole year, e.g. each year concentrate 3 months on an issue and spend 2 days face to face, then leave it alone and pick it up again.

There was general agreement on:
- scheduling new gTLDs work program with significant face to face interaction time.
- using new technologies, such as wikis and blogs to encourage community participation
- setting up a group outside Council with expertise to support running a wiki on the new gTLD issues for the community beyond the council.
- creating a structured mechanism to gather data

**Bruce Tonkin** recommended that the Council as a whole deal with the new gTLD PDP using mailing lists, wiki, and a 2 day face to face meeting. Each new effort should take into account the GNSO Council review recommendations looking at what has gone before and what can be improved.
The proposed IDN PDP would be managed by a task force of experts and the constituencies should work on identifying new people with particular skills.

**Agenda Item deferred:**
**Item 8: WHOIS task force**
**- progress on purpose and definitions of contacts**

**Bruce Tonkin declared the GNSO meeting closed and thanked everybody for participating.**

**The meeting ended: 11: 45 PST.**

- **Next GNSO Council meeting in Vancouver, Friday 2 December 2005 at 10:30 PST**
  see: Calendar

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# R-58

RESPONDENT'S EXHIBIT

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## Final Report - Introduction of New Generic Top-Level Domains

Last Updated: 4 September 2009

Date: 8 August 2007

**ICANN Generic Names Supporting Organisation**

**Final Report**

**Introduction of New Generic Top-Level Domains**

**8 August 2007**

**Part A: Final Report**

**Introduction of New Generic Top-Level Domains**

ABSTRACT

BACKGROUND

SUMMARY -- PRINCIPLES, RECOMMENDATIONS & IMPLEMENTATION GUIDELINES

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

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NEXT STEPS

Annex A – NCUC Minority Statement: Recommendation 6

Annex B – Nominating Committee Appointee Avri Doria: Individual Comments

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

REFERENCE MATERIAL -- GLOSSARY

**FINAL REPORT: PART B**

**ABSTRACT**

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

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

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

**BACKGROUND**

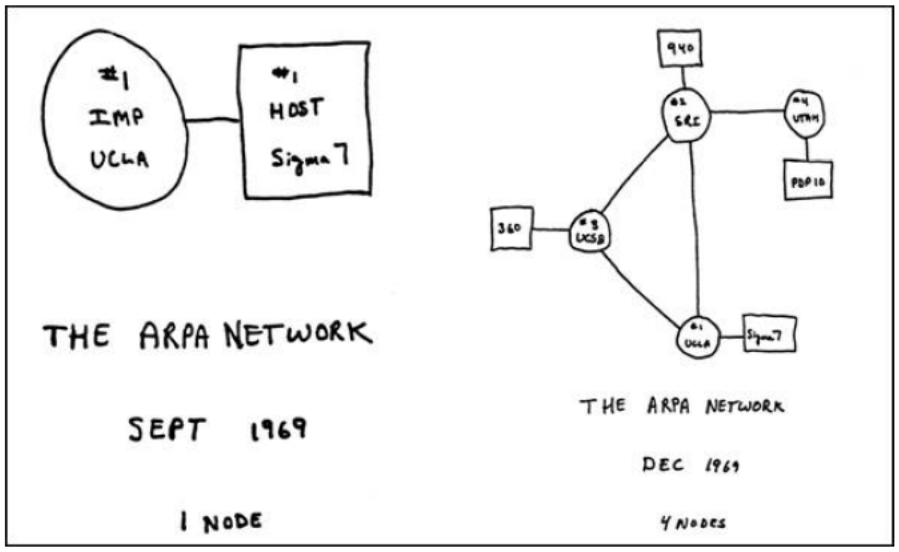
1. The Internet Corporation for Assigned Names and Numbers (ICANN) is responsible for the overall coordination of "the global Internet's system of unique identifiers" and ensuring the "stable and secure operation of the Internet's unique identifier systems. In particular, ICANN coordinates the "allocation and assignment of the hree sets of unique identifiers for he 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 organiza ion. 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 he Generic Names Suppor ing Organisation's (GNSO) Policy Development Process

(PDP) hat has been conducted using ICANN's Bylaws and policy development guidelines that relate to the work of the GNSO. This *Report* reflects a comprehensive examina ion 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 Organisa ion's (GNSO) mandate within the ICANN structure. However, close consultation with other ICANN Supporting Organisa ions and Advisory Committees has been an integral part of the process. The consulta ions and negotia ions have also included a wide range of interested stakeholders from wi hin and outside the ICANN community[2].

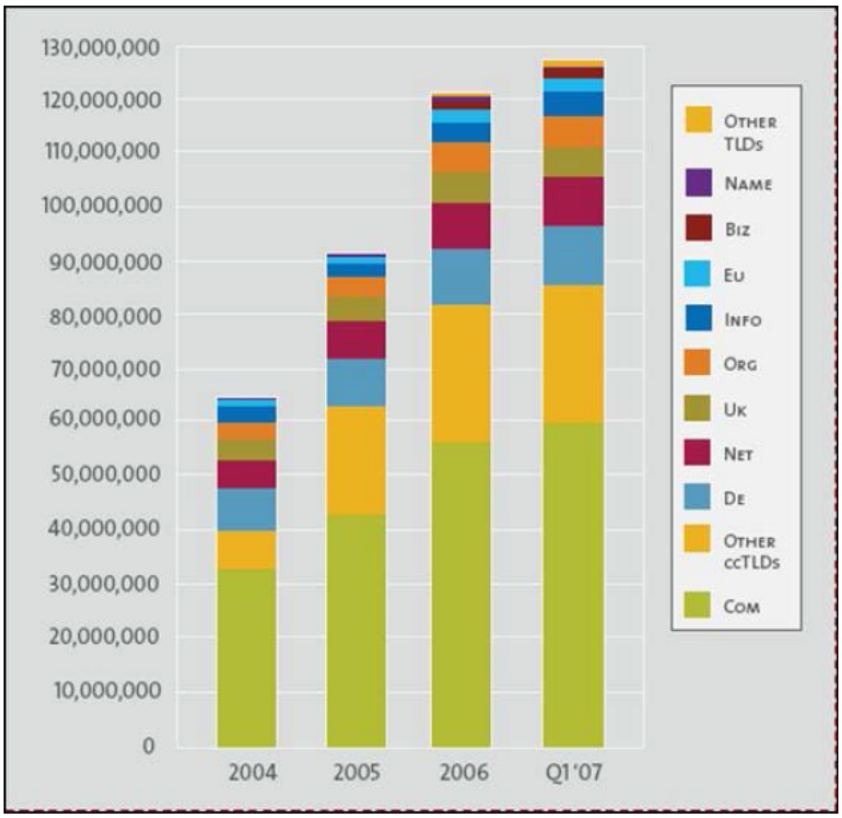
3. The *Final Report* is in two parts. This document is Part A and contains the full explanation of each of the Principles, Recommendations and Implementation Guidelines that the Committee has developed since December 2005[3]. Part B of the *Report* contains a wide range of supplementary materials which 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, opera ional 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 he process and he substan ive results of the Committee's work.




5. The majority of the early work on the introduction of new top-level domains is found in he 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 he "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 organiza ion 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 addi ion, 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 hey 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 jurisdic ions. The following illustration[9] shows how rapidly he 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 he introduction of compe ition 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 registra ion.

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 he 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 hat there are sligh ly more han 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, he Committee considered he 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 recommenda ions 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 evalua ion 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 hat 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 iden ified five key drivers for he 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 competi ion 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 he actual structure of the application and evaluation process.

15. In each of the sections below the Committee's recommenda ions are discussed in more detail with an explanation of the rationale for he 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 he broader Internet-using public that is interested in ICANN's work[20]. In particular, detailed work has been conducted hrough 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 he 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 hat an applicant has the capability to meets its obligations under the terms of ICANN's registry agreement. | M1-3 & CV 1 |
| **F** | **A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.** | **M1-3 & CV 1** |
| **G** | **The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.** | |

| | RECOMMENDATIONS[26] | MISSION & CORE VALUES |
|---|---|---|
| **1** | **ICANN must implement a process that allows the introduction of new** | **M1-3 & CV1-11** |

| | | |
|---|---|---|
| | **top-level domains.**<br><br>**The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.**<br><br>**All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.** | |
| **2** | 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.<br><br>Examples of these legal rights that are interna ionally recognized include, but are not limited to, rights defined in the Paris Conven ion 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.**<br><br>**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 organisa ional 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 ini ially be assessed in rounds until the scale of demand is clear. | **CV7-9** |
| **14** | The initial registry agreement term must be of a commercially reasonable length. | **CV5-9** |
| **15** | **There must be renewal expectancy.** | **CV5-9** |
| **16** | **Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.** | **CV5-9** |
| **17** | **A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.** | **M1 & CV1** |
| **18** | If an applicant offers an IDN service, then ICANN's IDN guidelines[28] must be followed. | M1 & CV1 |
| **19** | Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars. | M1 & CV1 |

| | | |
|---|---|---|
| **20*** | An application will be rejected if an expert panel determines that there is substan ial 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 | Applica ion fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process.<br><br>Applica ion fees may differ for applicants. | CV 5, 6, 8 & 9 |
| IG C | ICANN will provide frequent communications wi h applicants and the public including comment forums. | CV 9 & 10 |
| IG D | A first come first served processing schedule within the applica ion round will be implemented and will continue for an ongoing process, if necessary.<br><br>Applica ions 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]:**<br><br>**i) resolve contention between them within a pre-established timeframe**<br><br>**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;**<br><br>**iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.** | CV 7-10 |
| IG H* | Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions:<br><br>(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<br><br>(ii) a formal objection process is initiated.<br><br>Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate he claim.<br><br>Under exception (ii), an expert panel will apply the process, guidelines, and defini ions set for h in IG P. | CV 7 - 10 |
| IG H | External dispute providers will give decisions on objections. | CV 10 |
| IG I | An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process. | CV 10 |
| IG J | The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place. | CV 4-10 |
| IG K | ICANN should take a consistent approach to the establishment of registry fees. | CV 5 |
| IG L | The use of personal data must be limited to the purpose for which it is collected. | CV 8 |
| IG M | ICANN may establish a capacity building and support mechanism aiming at facilita ing effective communication on important and technical Internet governance functions in a way that no longer requires all participants in the conversation to be able to read and write English[30]. | CV 3 - 7 |
| IG N | ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed. | CV 3 - 7 |
| IG O | ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations. | CV 8 -10 |

| | | |
|---|---|---|
| IG P* | The following process, definitions and guidelines refer to Recommendation 20.<br>**Process**<br>Opposition must be objection based.<br>Determina ion will be made by a dispute resolution panel constituted for the purpose.<br>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).<br>**Guidelines**<br>The task of the panel is the determination of substantial opposition.<br>a) **substantial** – in determining substantial the panel will assess he following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment<br>b) **significant portion** – in determining significant portion he 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 targe ing.<br>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.<br>d) **explicitly targeting** – explicitly targeting means there is a description of the intended use of the TLD in the application.<br>e) **implicitly targeting** – implicitly targeting means that the objector makes an assump ion of targeting or that the objector believes there may be confusion by users over its intended use.<br>f) **established institution** – an ins itu ion 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.<br>Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community.<br>The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.<br>g) **formal existence** – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organiza ion, international treaty organization or similar.<br>**h) detriment** – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely. | |
| IG Q | ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure. | |
| IG R | Once formal objec ions 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 he Implementation Guidelines have support from all GNSO Constituencies.

1. This set of implementa ion guidelines is the result of detailed discussion, particularly with respect to the two *ICANN Staff Discussion Points*[31] documents hat 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 Implementa ion 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 hat 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 applica ions, he 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 he explana ion 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 hat work should proceed to develop policies that will enable the introduction of new generic top-level domains, taking into account the recommendations found in he latter sections of the *Report* concerning Selection Criteria (Term of Reference 2), Allocation Methods (Term of Reference 3) and Policies for Contractual Condi ions (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 he 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, here are five threads which have emerged:

(i) It is consistent with the reasons ar iculated 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 he 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 applica ion 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 ar iculated 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 he submission of "constituency impact statements" which reflect the poten ial 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, he ISPCP said that, "...the ISPCP is highly supportive of the principles defined in this section, especially with regards to he 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 ac ivities, since this can cause customer dissatisfaction and overload help-desk complaints. Hence this principle is a vital component of any addition sequence to he 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 he applications evaluation process". The Business Constituency's (BC) CIS said that "...If the outcome is the best possible here 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 hat "...new gTLDs present an opportunity to Registrars in the form of addi ional products and associated services to offer to its customers. However, that opportunity comes with he costs if implementing the new gTLDs as well as the efforts required to do he appropriate business analysis to determine which of the new gTLDs are appropriate for its par icular business model."

10. The Registry Constituency (RyC) said that "...Regarding increased compe ition, 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 he ini iation of the process. Normally, therefore, no subsequent additional selection criteria should be used in he selection process". Given that this recommendation has support from all Constituencies, he 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 introduc ion 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 exis ing 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 exis ing ASCII gTLDs are introduced by registries different han 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 ul imately limit choice to Registrars and heir customers".

   iii) There are two other key concepts within his recommendation. The first is the issue of "confusingly similar" [41] and the second "likelihood of confusion". There is extensive experience within the Committee wi h 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 he rights which are conferred to a trademark owner.[44] In particular, the Committee agreed upon an expectation hat strings must avoid increasing opportunities for entities or individuals, who operate in bad fai h and who wish to defraud consumers. The Committee also considered the Universal Declara ion of Human Rights[45] and the International Covenant on Civil and Political Rights which address the "freedom of expression" element of he 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 he 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 no ion 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 he 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, exis ing trade mark law requires applicants for trademark registration to state under penalty of perjury that "...to he best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce ei her in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connec ion 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 he 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 he purposes of this Act, a trade mark is taken to be deceptively similar to another trade mark if it so nearly resembles hat o her 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 fur her 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 he registration of the Registered Name nor the manner in which it is direc ly or indirectly used infringes the legal rights of any third party."

xiii)The implications of the introduction of Internationalised Domain Names (IDNs) are, in he main, the same as for ASCII top-level domains. On 22 March 2007 the IDN-WG released its *Outcomes Report*[51] hat 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 he 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 he same as for ASCII TLDs.

xv) Detailed work continues on the preparation of an Implementation Plan that reflects bo h the Principles and the Recommendations. The proposed Implementation Plan deals wi h 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 objec ions to applicants or applications.

xvii) There is tension between hose on the Committee who are concerned about the protection of existing TLD strings and those concerned with he protection of trademark and other rights as compared to those who wish,

as far as possible, to preserve freedom of expression and crea ivity. 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 he 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 respec ive 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 recommenda ion], 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 o hers."

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 he stability and security of the Internet.

iii. In its CIS, the ISPCP stated that "...this is especially important in the avoidance of any nega ive impact on network activi ies...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 opera ions 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 hat 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 he 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 hese recommenda ions 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, wi h respect to the recommendations relating to IDNs, with IDN experts. The final recommendations are included in he following table.

| | Reserved Name Category | Domain Name Level(s) | Recommendation |
|---|---|---|---|
| 1 | ICANN & IANA | All ASCII | The names listed as ICANN and IANA names will be reserved at all levels. |
| 2 | ICANN & IANA | Top level, IDN | Any names that appear in the IDN evaluation facility[58] which consist exclusively of translations of 'example' or 'test' that appear in the document at http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209 pdf shall be reserved. |
| 3 | ICANN & IANA | 2nd & 3rd levels, IDN | Any names that appear in the IDN evaluation facility which consist exclusively of translations of 'example' or 'test' hat 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 o her 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 he IDN Guidelines. |
| 6 | Single Letters | Top Level | We recommend reservation of single letters at the top level based on technical questions raised. If sufficient research at a later date demonstrates that the technical issues and concerns are addressed, the topic of releasing reservation status can be reconsidered. |
| 7 | Single Letters and Digits | 2nd Level | In future gTLDS we recommend that single letters and single digits be available at he 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 for h in the new gTLD process.<br><br>Examples include .3F, A1, .u7. |
| 10 | Two Letters | Top Level | We recommend that the current practice of allowing two letter names at he top level, only for ccTLDs, remains at this ime.[59]<br><br>Examples include .AU, .DE, .UK. |
| 11 | Any combination of Two Letters, Digits | 2nd Level | Registries may propose release provided that measures to avoid confusion with any corresponding country codes are implemented.[60] Examples include ba.aero, ub.cat, 53.com, 3M.com, e8.org. |
| 12 | Tagged Names | Top Level ASCII | In he absence of standardization activity and appropriate IANA registra ion, all labels with hyphens in bo h the third and fourth character posi ions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved at the top-level.[61] |
| 13 | N/A | Top Level IDN | For each IDN gTLD proposed, applicant must provide both the "ASCII compatible encoding" ("A-label") and the "Unicode display form" ("U-label")[62] For example:<br><br>• If the Chinese word for 'Beijing' is proposed as a new gTLD, he applicant would be required to provide the A-label (xn--1lq90i) and the U-label (北京).<br><br>• If the Japanese word for 'Tokyo' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1lqs71d) |

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| | | | and the U-label (東京). |
| 14 | Tagged Names | 2nd Level ASCII | The current reservation requirement be reworded to say, "*In the absence of standardization activity and appropriate IANA registration,* all labels with hyphens in bo h the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the second (2nd) level.[63] – added words in *italics.* (Note that names star ing with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.) |
| 15 | Tagged Names | 3rd Level ASCII | All labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the hird (3rd level) for gTLD registries that register names at he third level."[64] – added words in *italics.* (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.) |
| 16 | NIC, WHOIS, WWW | Top ASCII | The following names must be reserved: nic, whois, www. |
| 17 | NIC, WHOIS, WWW | Top IDN | Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist. |
| 18 | NIC, WHOIS, WWW | Second and Third* ASCII | The following names must be reserved for use in connection with the opera ion of the registry for the Registry TLD: nic, whois, www Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN. (*Third level only applies in cases where a registry offers registrations at the third level.) |
| 19 | NIC, WHOIS, WWW | Second and Third* IDN | Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries. (*Third level only applies in cases where a registry offers registrations at the third level.) |
| 20 | Geographic and geopolitical | Top Level ASCII and IDN | There should be no geographical reserved names (i.e., no exclusionary list, no presump ive right of registration, no separate administra ive procedure, etc.). The proposed challenge mechanisms currently being proposed in the draft new gTLD process would allow national or local governments to initiate a challenge, therefore no additional protection mechanisms are needed. Potential applicants for a new TLD need to represent that the use of the proposed string is not in violation of the na ional laws in which the applicant is incorporated.<br><br>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 he TLD application process, does not constitute a waiver of the authority vested to the GAC under the ICANN Bylaws.<br><br>*Note New gTLD Recommendation 20* |
| 21 | Geographic and geopolitical | All Levels ASCII and IDN | The term 'geopolitical names' should be avoided until such time that a useful definition can be adopted. The basis for this recommenda ion 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.<br><br>*Note New gTLD Recommendation 20* |
| 22 | Geographic and geopolitical | Second Level & Third Level if applicable, ASCII & IDN | The consensus view of the working group is given he 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 |

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| | | | 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.<br><br>For those registries incorporated/organized under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly, it is strongly recommended (but not mandated) that these registries take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with he relevant national laws of the applicable Member State.<br><br>*Note New gTLD Recommendation 20* |
| 23 | gTLD Reserved Names | Second &<br><br>Third Level ASCII and<br><br>IDN (when applicable) | Absent justification for user confusion[65], the recommendation is that gTLD strings should no longer be reserved from registration for new gTLDs at the second or when applicable at the third level. Applicants for new gTLDs should take into consideration possible abusive or confusing uses of existing gTLD strings at the second level of their corresponding gTLD, based on the nature of their gTLD, when developing the startup process for heir gTLD. |
| 24 | Controversial Names | All Levels, ASCII & IDN | There should not be a new reserved names category for Controversial Names. |
| 25 | Controversial Names | Top Level, ASCII & IDN | There should be a list of disputed names created as a result of he dispute process to be created by the new gTLD process.<br><br>*Note New gTLD Recommendation 6* |
| 26 | Controversial Names | Top Level, ASCII & IDN | In the event of the ini iation 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 he 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]<br><br>*Note New gTLD Recommendation 6* |
| 27 | Controversial Names | Top Level, ASCII & IDN | The new GTLD Controversial Names Dispute Resolution Panel should be established as a standing mechanism that is convened at the time a dispute is ini iated. Preliminary elements of that process are provided in this report but further work is needed in his area.<br><br>*Note New gTLD Recommendation 6* |
| 28 | Controversial Names | Top Level, ASCII & IDN | Wi hin 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 organiza ions do not currently have formal processes for receiving, and deciding on such activities, these processes would need to be defined:<br><br>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.<br><br>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 hat committee or organization (i.e., support, opposition, abstention) in compliance wi h bo h the spirit and letter of the ICANN bylaws regarding openness and transparency.<br><br>*Note New gTLD Recommendation 6* |
| 29 | Controversial Names | Top Level, ASCII & IDN | Further work is needed to develop predictable and transparent criteria that can be used by the Controversial Resolution Panel. These criteria must take into account the need to:<br><br>▪ ⚐❒□♦♏♍♦ ↗❒♏♏♎□❍ □↗ ♏⊠◘❒♏⬩⬩⚹□■ |

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| 30 | Controversial Names | Top Level, ASCII & IDN | In any dispute resolution process, or sequence of issue resolution processes, he Controversial name category should be the last category considered.<br>*Note New gTLD Recommendation 6* |

v. With respect to geographic terms, the NCUC's CIS stated that "...We oppose any attempts to create lists of reserved names. Even examples are to be avoided as they can only become prescriptive. We are concerned hat 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 duplica ion 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 recommenda ion may be implemented. Those sugges ions and the process flow were incorporated into he Version 2 of the ICANN Staff *Discussion Points* document for considera ion 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 Cons ituencies 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 wi h 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" wi hin 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 hat 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 wi hin 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 he 1988 European Union Trade Mark Directive 89/104/EEC and within Article 7 (1) (f) of the 1993 European Union Trade Mark Regula ion 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 he *Paris Convention* remains relevant to domain names even hough, 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 wi hout interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Ar icle 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 he 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 fur her 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 expecta ion 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 wi h 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 jus ified, 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 informa ion, 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 his 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 agreemen [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 opera ional capabili ies of he 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 his direction in its Public Policy Principles 2.6, 2.10 and 2.11.

7. **Recommendation 8 Discussion -- Applicants must be able to demonstrate their financial and organisational operational capability.**

i. This recommendation is supported by all GNSO Constituencies and accepted with concern by Ms Doria[69].

ii. The Committee discussed this requirement in detail and determined that it was reasonable to request his informa ion 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 prac ice 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; he 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 he Implementation Plan.

v. The ISPCP discussed the importance of this recommendation in its CIS, as found in Recommenda ion 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 opera ionally 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 hat 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 he process. Normally, therefore, no subsequent additional selec ion criteria should be used in he 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 bo h 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 he levying of an application fee to recover the costs of the applica ion 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 he process for the introduction of new gTLDs be predictable in terms of evaluation requirements and timeframes so that new applicants can properly scope their costs and develop reliable implementation plans." The NCUC said that "...we strongly support his recommendation and again stress the need for all criteria to be limited to minimum operational, financial, and technical considerations. We 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 he 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 he 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-mon h window preceding the application submittal period.

iv. The RyC, in its CIS, said, "...like the comments for Recommendation 9, we believe hat 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 direc ion 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 he ICANN Board.

iii. The draft Implementation Plan in the Implementation Team *Discussion Points* document sets out the way in which he 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 he 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 he principal alloca ion methods for TLD applications. The narra ive 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 modifica ions 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 Implementa ion 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 he 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, opera ional and financial evalua ions. 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 he provision of a base contract prior to he 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 he 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 he 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 condi ions of term leng h 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 recommenda ions 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 Recommenda ion 5 on reserved words as some of he 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 he development of base contract materials.

vi. The Committee found a number of expert reports[75] beneficial. In particular, he 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 he regulatory process to accommodate he 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 he 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 recommenda ion 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 organisa ion that needs to be factored into the applica ion process that will apply to IDN applications. The work includes he 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 he ongoing policy to require he 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 accredita ion of registrars can be found on the ICANN website[78]. The accreditation process is under active discussion but the cri ical 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 his. Dialog with the Registrars Constituency on this topic was ini iated and is ongoing, the goal being to mutually agree on terms that could be presented for considera ion 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 recommenda ions 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 he 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 he 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 recommenda ion 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 recommenda ion, the Board shall (i) articulate he 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 he Board within twenty (20) calendar days after the Council's receipt of the Board Statement. The Board shall determine he 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 recommenda ion unless more than sixty-six (66%) percent of he 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 he Board."
4. The final stage in the PDP is the implementation of he 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

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NCUC supports most of the recommendations in he 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 evalua ion 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 he New gTLD Report states that the evaluation process must be "predictable," and Recommenda ion #1 states hat 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 he 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 hem will avoid risking a challenge under Recommendation #6. In other words, he 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 hat 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 Recommenda ion #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 he 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 adjudica ion 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 interpreta ions, 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 he adjudication of people's rights to use domain names out of the hands of democratically elected representa ives 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 Recommenda ion #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 he 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 hese principles, recommendations and guidelines are not incompatible with my personal opinions, I have some concerns about them.
- I Accept with concern: these recommendations and guidelines do not necessarily correspond to my personal opinions, but I am able to accept them in that they have the broad support of the committee. I do, however, have concerns with these recommendations and guideline.

I believe these comments are consistent with comments I have made throughout the process and do not constitute new input.

**Principles**

| # | Personal level of support | Explanation |
|---|---|---|
| A | Support | |
| B | Support with concerns | While I strongly support the introduction of IDN TLDS, I am concerned that the unresolved issues with IDN ccTLD equivalents may interfere with the introduc ion of IDN TLDs. I am also concerned that some of these issues could impede the introduction of some new ASCII TLDs dealing wi h geographically related iden ifiers. |
| C | Support | |
| D | Support with concerns | While I favor the establishment of a minimum set of necessary technical criteria, I am concerned that this set actually be the basic minimum set necessary to protect the stability, security and global interoperability. |
| E-G | Support | |

**Recommendations**

| # | Level of support | Explanation |
|---|---|---|
| 1 | Support | |
| 2 | Accept with concern | My concern involves using definitions that rely on legal terminology established for trademarks for what I believe should be a policy based on technical criteria.<br>I In the first instance I believe that this is essentially a technical issue that should have been resolved with reference to typography, homologues, or hographic neighbourhood, transliteration and other technically defined attributes of a name hat 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.<br>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.<br>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 transla ion may have he 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. |

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| 3 | Support with concerns | My first concern relates to the protection of what can be called he 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.<br><br>I am also not convinced that trademark law and policy that applies to specific product type within a specific locale is entirely compa ible with a general and global naming system. |
| 4 | Support | |
| 5 | Support with concerns | Until such time as the technical work on IDNAbis is completed, I am concerned about establishing reserved name rules connected to IDNs. My primary concern involves policy decisions made in ICANN for reserved names becoming hard coded in the IDNAbis technical solution and thus becoming technical constraints that are no longer open to future policy reconsideration. |
| 6 | Accept with concern | My primary concern focuses on the term 'morality'. While public order is frequently codified in national laws and occasionally in international law and conventions, the defini ion of what constitutes morality is not generally codified, and when it is, I believe it could be referenced as public order.<br><br>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 he 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 interpreta ion of ICANN's mission, I do not believe it includes the definition of a system of morality. |
| 7 | Support | |
| 8 | Accept with concern | While I accept that a prospective registry must show adequate operational capability, creating a financial criteria is of concern. There may be many different ways of satisfying the requirement for operational capability and stability that may not be demonstrable in a financial statement or traditional business plan. E.g., in the case of an less developed community, the registry may rely on volunteer effort from knowledgeable technical experts.<br><br>Another concern I have with financial requirements and high application fees is that they may act to discourage applications from developing nations or indigenous and minority peoples that have a different set of financial opportunities or capabilities then those recognized as acceptable within an expensive and highly developed region such as Los Angeles or Brussels. |
| 9,10, 12-14 | Support | |
| 15 | Support with concerns | In general I support the idea that a registry that is doing a good job should have the expectancy of renewal. I do, however, believe that a registry, especially a registry with general market dominance, or specific or local market dominance, should be subject to comment from he 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 correc ing 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 | In designing a New gTLD process, one of the original design goals had been to design a predictable and |

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|---|---|---|
| | with concern | 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 bo h 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 communi ies. I am concerned that not providing pricing that enables applications from less developed countries and communities may serve to increase the divide between the haves and the haves nots in the Internet and may lead to a foreign 'land grab' of choice TLD names, especially IDN TLD names in a new form of resource colonialism because only those wi h well developed funding capability will be able to participate in the process as currently planned. |
| O | Support | |
| P | Support with concerns | While I essentially agree with the policy recommendation and its implementation guideline, its social justice and fairness depends heavily on the implementation issues. While the implementation details are not yet settled, I have serious concerns about the published draft plans of the ICANN staff in this regard. The current proposal involves using fees to prevent vexatious or unreasonable objections. In my personal opinion this would be a cause of social injustice in the application of the policy as it would prejudice the objection policy in favor of he 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 hem to be as vexatious as they wish to be.<br><br>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 objec ions.<br><br>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.<br><br>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 he solu ion. IG (P) currently includes support for treating ALAC and GAC as established ins itu ions in regard to raising objections to TLD concerns. I believe this is an important part of he policy recommendation and should be retained in the implementation. I believe that it should be possible for he 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 hat 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 wi h their respective roles and responsibilities as representa ives of the user community and of he interna ional community of nations. I strongly recommend that such a solution be included in he Implementation of he New gTLD process. |
| Q | Support | |

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

STATEMENT OF DISSENT ON RECOMMENDATION #20 &

IMPLEMENTATION GUIDELINES F, H, & P IN THE

GNSO NEW GTLD COMMITTEE'S FINAL REPORT

FROM THE

NON-COMMERCIAL USERS CONSTITUENCY (NCUC)

RE: DOMAIN NAME OBJECTION AND REJECTION PROCESS

25 July 2007

Text of Recommendation #20:

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

**Text of Implementation Guideline F:**

If there is contention for strings, applicants may:

i) resolve contention between them within a pre-established timeframe

ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;

iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

**Text of Implementation Guideline H:**

External dispute providers will give decisions on complaints.

**Text of Implementation Guideline P:**

The following process, definitions, and guidelines refer to Recommendation 20.

Process

Opposition must be objection based.

Determination will be made by a dispute resolu ion 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 objec ion).

Guidelines

The task of the panel is the determina ion of substan ial 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 institu ions. The panel will assess significance proportionate to he 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) explici ly targe ing

Explicitly targeting means there is a description of the intended use of the TLD in the application.

e) implici ly targe ing

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 ins itution

An ins itution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer then 5 years. Exceptional circumstance include but are not limited to reorganisation, merger, or an inheren ly younger community. The following ICANN organizations are defined as established ins itu ions: 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 organisa ion 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) Dissen ing Statement on Recommenda ion #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 Recommenda ion #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 he 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 exis ing 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 he amount of insider lobbying. The proposal would give "established institutions" veto power over applica ions 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 objec ions that can be raised to kill a domain name, no requirement hat actual harm be shown to deny an applica ion, 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 his 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 he 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 lit le 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 wi h 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 informa ion by making it more difficult to obtain information on controversial ideas or from innova ive new-comers.

**Implementation Guideline F**

NCUC does not agree with he part of Implementation Guideline F hat empowers ICANN iden ified "communi ies" to support or oppose applica ions. 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 he 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 he 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 democra ically elected, nor accountable to the public for their decisions. Yet they will take decisions on he 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 he creation of an entirely new international dispute resolution process for the adjudication of legal rights and the creation of new rights is not some hing that can be delegated to a team of experts. Exis ing 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 he 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 he rejec ion of an application if there is "substantial opposition" to it according to ICANN's expert panel. But "substantial" is defined in such as way so as to actually mean "insubstantial" and as a result many legitimate domain names would be rejected by such an extremely low standard for killing an application.

Under IG-P, opposition against and support for an application must be made by an "established institution" for it to count as "significant", again favoring major industry players and mainstream cultural institutions over cultural diversity, innovative individuals, small niche, and medium-sized Internet businesses.

IG-P states that "community" should be interpreted broadly, which will allow for he maximum number of objections to a domain name to count against an application. It includes examples of " he 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 he harm be actual or verifiable. The standard for "community" is entirely subjective and based on the personal beliefs of the objector.

The definition of "implici ly targe ing" further confirms this subjective standard by invi ing 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 wi h 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 competi ion 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 en ities 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 he 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 compe ing businesses, instill the "heckler's veto" into domain name policy, privilege incumbents, price out of the market non-commercial applicants, and give third-parties who have no legal rights to domain names the power to block applications for those domains. A better standard for killing an application for non-technical reasons would be for a domain name to be shown to be illegal in the applicant's jurisdiction before it can rejected.

In conclusion, he 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 compe ition. 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 he global public interest by resisting he tempta ion 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 he DNS protocol and this is the ASCII- |

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| | compatible (ACE) form of an IDNA string; for example "xn--11b5bs1di". |
| ASCII Compatible Encoding | ACE<br><br>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<br><br>ASCII is a common numerical code for computers and other devices hat work with text. Computers can only understand numbers, so an ASCII code is the numerical representation of a character such as 'a' or '@'. See above referenced RFC for more information. |
| Advanced Research Projects Agency | ARPA<br><br>http://www.darpa.mil/body/arpa_darpa.html |
| Commercial & Business Users Constituency | CBUC<br><br>http://www.bizconst.org/ |
| Consensus Policy | A defined term in all ICANN registry contracts usually found in Article 3 (Covenants).<br><br>See, for example, http://www.icann.org/ lds/agreements/biz/registry-agmt-08dec06.htm |
| Country Code Names Supporting Organization | ccNSO<br><br>http://ccnso.icann.org/ |
| Country Code Top Level Domain | ccTLD<br><br>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 he ccTLDs vary significan ly and ccTLD registries limit use of the ccTLD to citizens of the corresponding country.<br><br>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.<br><br>For more information regarding registering names in ccTLDs, including a complete database of designated ccTLDs and managers, please refer to http://www.iana.org/cctld/cctld.htm. |
| Domain Names | The term **domain name** has mul iple 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.<br><br>The product that Domain name registrars provide to their customers. These names are often called **registered domain names**.<br><br>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.<br><br>http://en.wikipedia.org/wiki/Domain_names |
| Domain Name System | The Domain Name System (DNS) helps users to find their way around the Internet. Every computer on the Internet has a unique address - just like a telephone number - which is a rather complicated string of numbers. It is called its "IP address" (IP stands for "Internet Protocol"). IP Addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters ( he "domain name") to be used instead of he arcane IP address. So instead of typing 207.151.159.3, you can type www internic.net. It is a "mnemonic" device that makes addresses easier to remember. |
| Generic Top Level Domain | gTLD<br><br>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.<br><br>In the 1980s, seven gTLDs (.com, .edu, .gov, .int, .mil, .net, and .org) were |

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| | created. Domain names may be registered in three of these (.com, .net, and .org) without restriction; the o her four have limited purposes.<br><br>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.<br><br>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 hus carries out delegated policy-formulation responsibilities over many matters concerning the TLD. |
| Governmental Advisory Committee | GAC<br><br>http://gac.icann.org/web/index.shtml |
| Intellectual Property Cons ituency | IPC<br><br>http://www.ipconstituency.org/ |
| Internet Service & Connection Providers Constituency | ISPCP |
| Internationalized Domain Names | IDNs<br><br>IDNs are domain names represented by local language characters. These domain names may contain characters wi h diacritical marks (required by many European languages) or characters from non-Latin scripts like Arabic or Chinese. |
| Internationalized Domain Names in Application | IDNA<br><br>IDNA is a protocol that makes it possible for applications to handle domain names with non-ASCII characters. IDNA converts domain names with non-ASCII characters to ASCII labels that the DNS can accurately understand. These standards are developed within the IETF (http://www.ietf.org) |
| Internationalized Domain Names – Labels | IDN A Label<br><br>The A-label is what is transmitted in the DNS protocol and this is he ASCII-compatible ACE) form of an IDN A string. For example "xn-1lq90i".<br><br>IDN U Label<br><br>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).<br><br>LDH Label<br><br>The LDH-label strictly refers to an all-ASCII label hat obeys the "hostname" (LDH) conventions and that is not an IDN; for example "icann" in he domain name "icann.org" |
| Internationalized Domain Names Working Group | IDN-WG<br><br>http://forum.icann.org/lists/gnso-idn-wg/ |
| Letter Digit Hyphen | LDH<br><br>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.<br><br>The LDH-label strictly refers to an all-ASCII label hat obeys the "hostname" (LDH) conventions and that is not an IDN; for example "icann" in he domain name "icann.org". |
| Nominating Committee | NomCom<br><br>http://nomcom.icann.org/ |
| Non-Commercial Users Constituency | NCUC<br><br>http://www.ncdnhc.org/ |
| Policy Development Process | PDP<br><br>See http://www icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA |
| Protecting the Rights of O hers Working Group | PRO-WG<br><br>See the mailing list archive at http://forum.icann.org/lists/gnso-pro-wg/ |

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| Punycode | Punycode is the ASCII-compa ible 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 he names. The intention is that domain name registrants and users will never see this encoded form of a domain name. The sole purpose is for the DNS to be able to resolve for example a web-address containing local characters. |
| Registrar | Domain names ending with .aero, .biz, .com, .coop, .info, museum, .name, .net, .org, and .pro can be registered hrough many different companies (known as "registrars") that compete with one another. A listing of these companies appears in the Accredited Registrar Directory.<br><br>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 informa ion and submits the technical information to a central directory known as the "registry." |
| Registrar Constituency | RC<br><br>http://www.icann-registrars.org/ |
| Registry | A registry is the authoritative, master database of all domain names registered in each Top Level Domain. The registry operator keeps the master database and also generates he "zone file" which allows computers to route Internet traffic to and from top-level domains anywhere in the world. Internet users don't interact directly with the registry operator. Users can register names in TLDs including .biz, .com, .info, net, name, .org by using an ICANN-Accredited Registrar. |
| Registry Constituency | RyC<br><br>http://www.gtldregistries.org/ |
| Request for Comment<br><br>A full list of all Requests for Comment http://www.rfc-editor.org/rfcxx00.html<br><br>Specific references used in this report are shown in he next column.<br><br>This document uses language, for example, "should", "must" and "may", consistent with RFC2119. | RFC<br><br>ftp://ftp.rfc-editor.org/in-notes/rfc1591.txt<br><br>ftp://ftp.rfc-editor.org/in-notes/rfc2119.txt<br><br>ftp://ftp.rfc-editor.org/in-notes/rfc2606.txt |
| Reserved Names Working Group | RN-WG<br><br>See the mailing list archive at http://forum.icann.org/lists/gnso-rn-wg/ |
| Root server | A **root nameserver** is a DNS server that answers requests for the root namespace domain, and redirects requests for a particular top-level domain to that TLD's nameservers. Although any local implementation of DNS can implement its own private root nameservers, the term "root nameserver" is generally used to describe the thirteen well-known root nameservers that implement the root namespace domain for the Internet's official global implementation of he Domain Name System.<br><br>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 ra her 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.<br>http://en.wikipedia.org/wiki/Root_server |
| Sponsored Top Level Domain | sTLD<br><br>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 hat the TLD is operated for the benefit of a defined group of stakeholders, known as the Sponsored TLD Community, hat are most direc ly interested in the opera ion 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 rela ionship with the registry operator. The Sponsor must exercise its delegated authority according to fairness standards and in a manner that is representative of the Sponsored TLD Community. |

| | |
|---|---|
| U-label | The U-label is what should be displayed to the user and is the representation of the Internationalized Domain Name (IDN) in Unicode. |
| Unicode Consortium | A not-for-profit organization found to develop, extend and promote use of the Unicode standard. See http://www.unicode.org |
| Unicode | Unicode is a commonly used single encoding scheme that provides a unique number for each character across a wide variety of languages and scripts. The Unicode standard contains tables that list the code points for each local character iden ified. These tables continue to expand as more characters are digitalized. |

**Continue to Final Report: Part B**

[1] http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#I

[2] The ICANN "community" is a complex matrix of intersecting organizations and which are represented graphically here. http://www.icann.org/structure/

[3] The *Final Report* is Step 9 in the GNSO's policy development process which is set out in full at http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA.

[4] Found here http://gnso.icann.org/issues/new-gtlds/.

[5] The ICANN Staff *Discussion Points* documents can be found at http://gnso.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf 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_Industry_Brief/index.html

[15] The announcement is here **http://icann.org/announcements/announcement-03jan06.htm** and the results are here http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm

[16] Found here http://gnso icann.org/issues/new-gtlds/new-g ld-pdp-input.htm

[17] **http://gnso.icann.org/issues/new-gtlds//**

[18] For example, see the GA List discussion thread found at **http://gnso icann.org/mailing-lists/archives/ga/msg03337.html** & earlier discussion on IANA 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 he 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 he 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 he updated recommendation text sent to he g ld-council list after he 7 June meeting. http://forum.icann.org/lists/gtld-council/msg00520.html

[27] Reserved word limitations will be included in the base contract hat 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 applica ion 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 he 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-g ld-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 Cons ituency **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 he 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 exis ing 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 ano her 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 here is confusing similarity and the mark is used on similar goods or services, a likelihood of confusion will usually be found. European trademark law recognizes this point perhaps more readily that U.S. trademark law. As a result, sometimes "confusingly similar" is used as shorthand for "likelihood of confusion". However, these concepts must remain distinct in domain name policy where there is no opportunity to consider how the mark is being used."

[43] In addition, advice was sought from experts within WIPO who continue to provide guidance on this and other elements of dispute resolution procedures.

[44] Kristina Rosette provided the reference to the *Agreement on Trade-Related Aspects of Intellectual Property Rights* which is found online 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 he 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 registra ion are 1- A trademark shall be registered if it is dis inctive, 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. Ar icle 8 Marks which may not be registered as trademarks. The following may not be registered

as trademarks: 10- A mark iden ical 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 hat 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 he 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 abbrevia ions relating to international or regional organizations or those hat 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 hey 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, whe her products or services, and include is par icular 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 combina ion of these elements if used, or meant to be used, to distinguish the precedents of a par icular industry, agriculture, forest or mining venture or any goods, or to indicate the origin of products or goods or heir 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 informa ion 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 prac ice. 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-g lds/final-report-rn-wg-23may07 htm and in full in Part B of the *Report*.

[58] The Committee are aware that he terminology used here for the purposes of policy recommendations requires further refinement and may be at odds with similar terminology developed in o her context. The terminology may be imprecise in other contexts than he 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 he 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), Sec ion 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 considera ion 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 continua ion of the recommendation in he original RN-WG report, modified to synchronize with the additional work done in he 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 conven ions, 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 he 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 he 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 sa isfying 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 wi h financial requirements and high application fees is that they may act to discourage applications from developing nations or indigenous and minority peoples that have a different set of financial opportunities or capabilities then those recognized as acceptable within an expensive and highly developed region such as Los Angeles or Brussels."

[70] "In general I support the policy hough I do have concerns about the implementation which I discuss below in rela ion 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 he 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 he 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 rela ing to morality and public order hat 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.

Comments concerning the layout, construction and functionality of this site should be sent to webmaster [at] gnso icann.org

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# R-59

RESPONDENT'S EXHIBIT

TRANSLATE
bing

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

# GNSO Council Teleconference Minutes

Last Updated: 31 August 2009

**Date:** 6 September 2007

6 September 2007
Proposed agenda and documents

**List of attendees:**
Philip Sheppard - Commercial & Business Users C - absent apologies
Mike Rodenbaugh - Commercial & Business Users C.
Bilal Beiram - Commercial & Business Users C -
Greg Ruth - ISCPC
Antonio Harris - ISCPC
Tony Holmes - ISCPC - absent - apologies
Thomas Keller- Registrars
Ross Rader - Registrars - absent - apologies
Adrian Kinderis - Registrars
Chuck Gomes - gTLD registries
Edmon Chung - gTLD registries
Cary Karp - gTLD registries
Kristina Rosette - Intellectual Property Interests C
Ute Decker - Intellectual Property Interests C
Cyril Chau - Intellectual Property Interests C
Robin Gross - NCUC
Norbert Klein - NCUC
Mawaki Chango - NCUC
Sophia Bekele - Nominating Committee appointee
Jon Bing - Nominating Committee appointee
Avri Doria - Nominating Committee appointee

18 Council Members
(23 Votes - quorum)

**ICANN Staff**
John Jeffrey - General Counsel.
Denise Michel - Vice President, Policy Development
Olof Nordling - Manager, Policy Development Coordination
Kurt Pritz - Senior Vice President, Services
Liz Williams - Senior Policy Counselor
Craig Schwartz - Chief gTLD Registry Liaison
Patrick Jones - Registry Liaison Manager
Glen de Saint G[illegible]ry - GNSO Secretariat

**GNSO Council Liaisons**
Suzanne Sene - GAC Liaison
Alan Greenberg - ALAC Liaison

Rita Rodin - ICANN Board member - absent - apologies
Bruce Tonkin - ICANN Board member - absent - apologies

Observers

Miriam Sapiro - consultant
Liz Gasster - consultant

MP3 Recording

**Avri Doria** chaired this meeting

**Approval of the agenda**

**Item 1: Update any Statements of Interest**
**No updates**

**Item 2: Discussion of New gTLDs**

**2.1 - review reports**
**Final Report Introduction of New Generic Top-Level Domains**
**Part A: Final Report**
**http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm**

**Introduction of New Generic Top-Level Domains**
**Part B: Final Report**
**http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-partb-01aug07.htm**

**2.2 - review public comments**
**http://forum.icann.org/lists/gtldfinalreport-2007/**

**Liz Williams** reported that the Final Report Part A and B, Introduction of New Generic Top-Level Domains posted for he public comments, included the edits posted by individual Council members among whom were mentioned Avri Doria and Chuck Gomes, incorporated all the small group discussions and the final committee meeting on 6 August 2007.
The public comment forum ran from 10 to 30 August 2007
http://www.icann.org/announcements/announcement-10aug07.htm
There were 81 comments in all and a synopsis of he comments was posted at
http://forum.icann.org/lists/gtldfinalreport-2007/msg00082.html

The issues fell into hree categories.
1. The first category related to recommendations 6 and 20 with similar language about the way in which morality and public order issues and their lead objection process would be handled.

2. The second category of comments were general ones related to he process and urging ICANN to move towards having a robust and objective application process available as quickly as possible.

3. The third category's comment related to specific elements which included discussions of IDN issues, Recommendation 19 with respect to the use of Accredited ICANN Registrars and protecting the rights of others.

The arbitrary cutoff date was midday, CEST on 30 August, 2007 for producing the synopsis of comments for Council members. Comments that were received after that time (but before the posted deadline) would be included in the Board report.

The agreed process was to discuss he principles or recommendations where there were issues or comments.

**Principle A**

New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way
**No comments**

**Principle B**

Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.
**No comments**

**Principle C**

The reasons for introducing new top-level domains include that here 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 compe ition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity.

**Mike Rodenbaugh** asked for clarification of the statement "the reasons for introducing new TLDs include their demand from potential applicants"

**Avri Doria** commented that in the absence of statistics or metric of demand, anecdotally demand was visible.
**Tony Harris** commented that there was a lack of available domain options which was a good basic reason to introduce new ones.

**Chuck Gomes** called atten ion to the wording of the principle,
"there is demand from potential applicants for new top-level domains.."
which did not quantify, but stated that was there is demand from potential applicants. Public comments and personal requests received attested to the demand from applicants.

**Mawaki Chango** added that during the ICANN public forum in San Juan forum, many participants called for the completion of the process so that they could apply for TLDs.

**Principle D**

A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming he operational stability, security and global interoperability of the Internet.

**No comments**

**Principle E**

A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance hat an applicant has the capability to meets its obligations under the terms of ICANN's registry agreement.
**No comments**

**Principle F**

A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.
**No comments**

**Principle G**

The string evalua ion process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.
**No comments**

**Recommendation 1**

ICANN must implement a process that allows the introduction of new top-level domains.
The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimina ion.
All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initia ion of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.

**No comments**

**Recommendation 2**

Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.

**Mawaki Chango** expressed concern about moving away from the terms 'visually confusing' or 'visually similar' to 'confusingly similar'.
**Chuck Gomes** clarified that the committee had chosen 'confusingly similar' because it was a broader term used in some international treaties and hat this was fully noted in:
*Recommendation 2*
*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.*

**Mawaki Chango** also expressed specific concern about the new gTLD policy in the context of multi-script TLD strings. Addressing the reason invoked by his colleagues to reiterate the existing concept of "confusingly similar", Mawaki contended that such reiteration is not necessarily wi hout risk for potentially different outcomes in a different context (whether historical, spatial or by the subject matter.) There may certainly be situa ions where restating the status quo ante in a different context would equate to creating not only new rights, but completely new types of rights – thus, a new concept under the formal disguise of an old one. We all know that this new gTLD policy is developed for a new, international, multi-script domain name space. "Confusingly similar" did certainly not mean, more than a century ago, to establish an ownership right over meanings or phonemes across linguistic contexts. In the present circumstances though, and as I have heard in he discussions with my colleagues on the IDN working group, it might be used to claim such rights from a linguistic universe to another.

I therefore urge the GNSO Council to make clear in this new gTLD report the limits intended to its use of the concept "confusingly similar" in this particular context, and later on the ICANN Board to seek fur her advice, as necessary, from legal experts and au horities. The main objective for such consultation should be to establish legally and internationally valid mechanisms by which this concept may be operationalized (and the policy enforced) in the fair spirit – not just the letter – of the law as recognized by all par ies involved.

**Avri Doria** commented that there had been specific discussion of multiple-script TLD strings.

**Mike Rodenbaugh** expressed concern that an 'Implementation Plan' was mentioned in Recommendation 2 xvii) while in fact it was not yet available.
*"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."*

**Staff** commented that there was work in progress, experts were being consulted, and he goal would be to have confusingly similar disputes resolved by an algorithm that would be posted ahead of time.

**Avri Doria** commented that the draft implementa ion note from the staff indicated that a series of tests using the algorithm have not been formulized or finalized.

**It was agreed that the language should be changed from "implementation plan" to "work in progress".**

**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.
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).

**No Comments**

**Recommendation 4**

Strings must not cause any technical instability.

**Avri Doria** commented that there were public comments on this recommendation.

**Recommendation 5**

Strings must not be a Reserved Word.

**No comments**

**Recommendation 6**

Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.
Examples of such principles of law include, but are not limited to, the Universal Declara ion 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).

**Robin Gross** reiterated NCUC's continued objection to Recommendation 6 as stated in the Statement of DISSENT on Recommendation #6
http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#_Toc43798015
and called attention to the many comments that were received in the public comment period objecting to Recommendation Number 6.

**Robin Gross** fur her stated:
"I think hat Recommendation Number 6 is so bad that I will vote against the entire report based upon Recommendation Number 6 and 20 alone."

**Norbert Klein** expressed concern that although many comments were recorded on recommendation 6, there had been no consequence and they had not received sufficient attention.

**Chuck Gomes** agreed hat there were recommendations that not everyone could agree on, but in the general approach of trying to reach a rough consensus that a strong majority of the group could support, considerable time and a sincere and effective effort was made on recommendation 6 to try and address the concerns of competing constituencies and interests. The NCUC concerns were addressed in a reasonable manner considering that there was no way the group could reach a posi ion that perfectly met everyone's interest.

**Avri Doria** commented personally for the record:
"while I have come to accept this Number 6 because the majority of the people in he group did accept it, I am still very concerned about how ICANN can actually create fair processes dealing with morality when morality is such a broad subject. And I just wanted to reiterate that. So even though I have accepted it because the rough consensus was there and as a chair, accept it, personally, I still find it very difficult to understand how we'll do it."

**Recommendation 7**

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

**No comments**

**Recommendation 8**

Applicants must be able to demonstrate their financial and organisational operational capability.

**No comments**

**Recommendation 9**

There must be a clear and pre-published application process using objective and measurable criteria.

**No comments**

**Recommendation 10**

There must be a base contract provided to applicants at he beginning of he application process.

**No comments**

**Recommendation 11**

[Replaced with Recommendation 20 and Implementation Guideline P and inserted into Term of Reference 3 Allocation Methods section]

**Recommendation 12**

Dispute resolution and challenge processes must be established prior to the start of the process.

**No comments**

**Recommendation 13**

Applications must initially be assessed in rounds until he scale of demand is clear.

**No comments**

**Recommendation 14**

The initial registry agreement term must be of a commercially reasonable length.

**No comments**

**Recommendation 15**

There must be renewal expectancy.

**No comments**

**Recommendation 16**

Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.

**No comments**

**Recommendation 17**

A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.

**No comments**

**Recommendation 18**

If an applicant offers an IDN service, hen ICANN's IDN guidelines[28] must be followed.

There were comments on the public comment list pertaining to this recommendation.

**Recommendation 19**

Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.

The Chinese registrar in the public comments suggested that it was not a good idea to use ICANN accredited registrars only:
http://forum.icann.org/lists/gtldfinalreport-2007/msg00055.html
http://forum.icann.org/lists/gtldfinalreport-2007/msg00049.html

**Chuck Gomes** commented that the registry community and some public comments articulated clear concerns relating to small registries only, sugges ing that an exception could be made for them. Chuck went on to comment that in an effort to support the rough consensus process, the registries would support the total package including this recommendation in spite of the fact that hey did not get what they wanted.

**Tony Harris** commented that the Chinese registrar
http://forum.icann.org/lists/gtldfinalreport-2007/msg00055.html
made a valid point because new TLDs combined with IDNs in regions where there are no ICANN accredited registrars would require other options in the development of new TLDs.

**Avri Doria** commented that an implication of recommendation 19 could be a possible review of the registrar accreditation processes, costs and eventual barriers to accrediting registrars in non-developed areas.

**Chuck Gomes** expressed empathy for the Chinese registrar and others in similar situations and supported a review of accreditation requirements to assure hat they adequately meet the needs of regions sparsely populated by registrars.

**Kurt Pritz** commented that ICANN had undertaken coaching new registries to acquaint them with ways in which they could satisfy the registrar requirements. ICANN, in he past couple of years has held outreach meetings, the most recent being in Hong Kong with a large number of registrar representatives from Asian and other countries.
Kurt was optimistic hat in the implementation of recommendation 19, ICANN would facilitate the implementa ion of new registrars in thinly registrar-populated regions.

**Adrian Kinderis** repeated former comments that the recommendation tried to be all-encompassing and combined two distinct channels
1. Registries should use ICANN accredited registrars
2. Registries must use a registrar
If broken down, it could address the issue that if registrars were used, they must be be ICANN accredited or as a registry, if it was decided to use a registrar, hen they should be ICANN accredited.
Adrian added that from a registrar point of view it would be a problem going forward because it could rule out potential new TLDs.

**Avri Doria** commented that while there was discussion at the committee level after Adrian joined the committee, no changes were made to he recommendation.

**Chuck Gomes** confirmed that registrars had the op ion of offering which ever TLDs hey wished and that his was one of the ra ionales behind the registry's concern, because some TLDs business models were too weak for registrars to support, thus registries were at the mercy of the registrars who justifiably might not be interested in providing any support at all for the new TLD.

**Adrian Kinderis** acknowledged that the Registry Constituency's support of Recommendation 19 was as a part of the "total package" as reflected in Chuck Gomes' comments on the call and not poten ially of Recommenda ion 19 in isolation. The Registrars Constituency, having helped author the recommendation completely support Recommendation 19 in its entirety.

**Adrian Kinderis** also made comment that he believed that no other constituencies or groups wi hin the gNSO had really thought about he ramifica ions of Recommendation 19 and as such it is only the Registry Constituency and the Registrar Constituency that could comment wi h any authority. In this circumstance, because of the lack of understanding, Adrian Kinderis also pointed out that the Registry Constituency was "on a hiding to nothing" if it spoke against the recommendation which was an unfortunate position.

**Avri Doria** confirmed that the current discussion was noted in the discussion in the report under recommendation 19 and that there was ongoing dialogue between registrars and registries where new agreements may come on line that would change the condition for the recommendation.

**Alan Greenberg** commented that because existing registries and registrars might be willing to accept the recommenda ion, did not factor in that it concerned potential new TLDs in areas where they may be no registrars and no registries and it would be a no-win situation for a geographic TLD in an area where here were no registrars.

**Kurt Pritz** commented that the accredited registrars operated through a contract with ICANN and hat provided certain protection for registrants. Current debate is taking place that is streng hening protection for registrants hrough making changes to the RAA and making registrars more responsive to the needs of the user such as addressing small registries and amending their agreement to allow for graduated sanc ions. Replacing this with another model would require deeper discussion and reflection.

**Avri Doria** suggested hat when it came to the vote, recommendation 19 could be voted on separately if councillors so wished.

**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 explici ly or implicitly targeted.

**Liz Williams** drew Council's atten ion to where the discussion of **Recommendation 20** was to be found, that is in the **Terms of Reference Three - Allocation Methods** and that **Recommendation 19** was to be found in the **Terms of Reference Four - Contractual Conditions** and was the last in he flow of the recommendations through the report.

**Robin Gross** reiterated an objection to recommendation 20, just as for recommendation 6, largely because of he harmful impact to freedom of expression that hese recommenda ions still contained.
Particularly, the NCUC finds Recommenda ion 20 to have unpredictable, non-transparent criteria. The NCUC is concerned because it lacks objectivity and its advantages established institutions and industry incumbents at the expense of start up and non-commercial users. Unfortunately, Number 6 and Number 20 unravel all the other attempts and all the other recommendations that propose predictable and objective criteria.
" So, based on the harmful impact of freedom of expression, I'm inclined to vote against the en ire report based upon Recommendations 20 and 6. "

**Mawaki Chango** commented given he definition provided for 'community' and for 'explicit and implicit target' Council needed to define what was a 'TLD that was targeted to a community' in order to help the community understand what TLD would not be included in the category of TLD applica ions that explicitly or implicitly targeted a community.

**Avri Doria** commented that there was no requirement that a TLD be explicitly targeted towards the community and there may well be TLD applications that do not specifically target a community.

**Chuck Gomes** cited as an example that if .Berlin was proposed but the proposer did not state that it was targeting the members of the Berlin communities around the world, here would still seem to be an implicit targeting of that community.

**Mike Rodenbaugh** asked what would happen in the event that a community was targeted in the original application, then they changed their business model, as has been he case in several of the country code TLDs to date.
Should there be a promise that the applicant makes that they would stick to their intention to target a community for a certain amount of ime?

**Tony Harris** commented and questioned that with sponsored TLD applications, there could be requirements which would have to be respected.

**Alan Greenberg** reiterated previous comments, giving dot China as an example, whether it would refer to the country or pottery and believed the answer was, that the contractual agreements included the applications as part of its documentation, and they are held largely to that, although business model changes could be accommodated.

**Kurt Pritz** commented that it was a complex issue that had not yet been settled.
The way the recommendations were written to staff indicated that he implementation should include an ability for the applicant, in case of a string conten ion, to show that he string representing a community brings some value to the domain name space and that it should be considered in a string conten ion.
On the other hand, it is not envisaged that ICANN should police a string or a TLD to ensure that it would continue to dedicate itself towards that community. ICANN's function lies in writing contracts and seeing that businesses are launched

**Adrian Kinderis** commented on the definition of gTLD and that the premise of the en ire document fell under the banner of gTLD.

**Chuck Gomes** commented that historically, he definition of the gTLD, included both sTLDs and unsponsored TLDs. In fact in he registry constituency, has divided its members into those two categories.

In the current round a specific sTLD category is not being suggested and old sTLD are still considered gTLD. A gTLD is not a ccTLD in the broadest definition of the term. There is no requirement to be sponsored in his round.

**Adrian Kinderis** confirmed that a supported or non supported community could equally apply for a gTLD.

**Mike Rodenbaugh** expressed the concern and asked what would be the role of ICANN in the case of an applicant with a sponsored community, applying to ICANN for a gTLD, ICANN granting the application, and hen the applicant essentially changing its business model completely. For example, if dot Cat became a TLD for actual feline cat owners, instead of Catalan speakers.
**Mike Rodenbaugh** commented that there was a difference between policing and acting on complaints.

**Kurt Pritz** commented that the sponsoring community was free to arrive at an agreement with the registry sponsor or the registry itself. And in order to support that registry and have an agreement between them, that would be a form of guarantee for hem that the registry operations would continue to support he original intent of he sponsored community represented TLD.

**Alan Greenberg** commented that Kurt's comment was different from what came out in the committee discussions, that it was acknowledged at that point that ICANN was not going to police but could, since he original application was part of the contract, react to complaints, which was very different from policing and very different from what Kurt had said that that a separate contract would be required between the two bodies if he sponsored organization wants to try to enforce any hing.

**Robin Gross** commented it was important to leave room for innovation In the domain name space. For a domain name to be registered for one purpose, and then used for an entirely different purpose was perfectly lawful as long as there was not any kind of broader misrepresentation for which there would be legal recourse anyway.

**Avri Doria** called for comments on he Implementation Guidelines to be found in the Summary - Principles, Recommenda ions and Implementation Guidelines

**Avri Doria** clarified that input from the discussion, with regard to he guidelines, could be added in the report but wording would not be changed.

**Liz Williams** confirmed that a full analysis of the public comments including Mawaki Chango's comment on paragraph H, line T in the Implementation Guidelines on page 22 of he Report Part A and all the other comments would be included for the board report.
There would also be an opportunity to raise issues at the new gTLD workshop during the Los Angeles meetings.

**Mike Rodenbaugh** requested clarifica ion on paragraph I
"An applicant granted a TLD string must use it wi hin a fixed timeframe which will be specified in the applica ion process."

It was clarified that the guideline referred to a timeframe.

**Item 3: Vote on New gTLDs**

**Avri Doria** called for a vote on all the recommendations as a block, unless there was a proposed and seconded a motion which obtained a majority vote in favor of separating out any question, any recommendation or any set of recommendations for a separate and prior vote. There could be more than one motion for separation.

**Norbert Klein**, seconded by **Robin Gross** proposed a motion to separate recommendation 6 and recommendation 20 as a unit for a separate vote.

**Avri Doria** called for a roll call vote on the motion.

Vote in favour: Robin Gross, Mawaki Chango, Norbert Klein, Jon Bing

**Total number of votes in favour: 4**

Vote against: Mike Rodenbaugh, Bilal Beiram, Ute Decker, Kristina Rosette, Cyril Chua, Tony Harris, Greg Ruth, Avri Doria, Sophia Bekele (each holding one vote),
Adrian Kinderis, Cary Karp, Edmon Chung, Chuck Gomes (each holding 2 votes)

**Total number of votes against: 17**

**Abstention: Tom Keller (holding 2 votes)**

Council members absent who did not vote: Philip Sheppard, Tony Holmes, Ross Rader.

**The motion did not carry.**

**Mawaki Chango** proposed a motion of separating Recommendation 2 from the rest of the recommendations.

There was no second for he motion, thus here was no vote.

**Avri Doria** seconded by **Tony Harris** proposed the motion:

The GNSO Council supports the 20 recommendations, as a whole, as set out in he Final Report of the ICANN Generic Names Supporting Organisa ion on the Introduc ion of New Generic Top-Level Domains
http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm
going forward to he ICANN Board.

**Avri Doria** called for a roll call vote.

Vote in favour:
Mike Rodenbaugh, Bilal Beiram, Ute Decker, Kristina Rosette, Tony Harris, Greg Ruth, Avri Doria, Jon Bing, Sophia Bekele (each holding one vote),
Tom Keller, Adrian Kinderis, Cary Karp, Edmon Chung, Chuck Gomes (each holding 2 votes)
**Total number of votes in favour 19**

Vote against:
Robin Gross 1 vote

Abstain:
Cyril Chua, Norbert Klein, Mawaki Chango (3 votes)

Council members absent who did not vote: Philip Sheppard, Tony Holmes, Ross Rader. (4 votes)

The motion carried with a supermajority vote as defined in he ICANN bylaws, section 16
http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA

**Councilor's comments on the voting:**
**Votes in favour**
**Mike Rodenbaugh:**
"The business constituency, as we've said in our recent public comments, have some pretty serious concerns about what will happen in new TLDs. We think hat these recommendations do not address those concerns at all, but we have been actively participating in this process now for two years.

We feel like this forum, perhaps, was't the best forum to deal with those concerns about abusive registrations since hey need to deal with existing TLDs as well.

We're hopeful that our participation and our acceptance of these recommendations will result in Council and ICANN taking seriously our issues about abusive registrations in existing and new TLDs, and in the interest of consensus, we will support these recommendations."

**Kristina Rosette:**
"Support wi h the observation that there appears to be a logical inconsistency between on the one hand including Recommendations 2 and 3, but on he o her hand refusing to recommend to new TLD applicants that they provide rights protection mechanisms."

**Votes against**

**Robin Gross:**
" I vote against he report largely because of the harmful impact on freedom of expression that Recommendations Number 6 and 20, the noticeable lack of legitimate authority for ICANN to adjudicate people's rights has not gone unnoticed in this process, so I vote against the report."

**Abstentions**

**Norbert Klein:**
"I will abstain, but I hope that all the discussion which went on will be also forwarded to the board."

**Mawaki Chango:**
"I abstain because I am in favor of introducing new gTLDs and I would have loved to support this policy. But I still have a substantial issues with some of the recommendations namely the Recommendation 2. "

**Decision 1:**
**The GNSO Council supports the 20 recommendations, as a whole, as set out in the Final Report of the ICANN Generic Names Supporting Organisation on the Introduction of New Generic Top-Level Domains http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm going forward to the ICANN Board.**

**Item 4: Planning for New gTLD background presentations in Los Angeles**

A group made up of Avri Doria, Kristina Rosette, Adrian Kinderis, Chuck Gomes, Denise Michel, Craig Schwartz and Kurt Pritz is planning the workshop on New gTLDs in Los Angeles on Monday 29 October 2007. Constituency feedback will be requested on the draft schedule.

Work is in progress on a supplemental document, as requested in the public comments, not intended to replace the New gTLDs report, but to simplify the recommendations, principles, guidelines and discussions making it easier for people to participate in the workshop.

**Item 5 AOB**
**5.1**
**Avri Doria** noted hat a formal request had been made to the Council to recognise he new set of GA List Rules by which he General Assembly were intending to govern themselves.

**Denise Michel** noted that he Board Governance Committee's working group planned to address mailing lists and the GA list was part of their recommendation.

**Chuck Gomes** clarified that the General Assembly, under the former Domain Name Suppor ing Organisation (DNSO), was actually a part of the DNSO and the 'ga mailing list' was a part of the former DNSO General Assembly at the ime. With he change over to the GNSO, under ICANN Evolution and Reform process, the General Assembly fell away but the 'ga mailing list ' was maintained.

**Avri Doria**, seconded by **Chuck Gomes** and amended as by **Mike Rodenbaugh** proposed:

Whereas he GA list sent a request to the GNSO council for approval of its new list rules,

and whereas
*"the GNSO Council is responsible for managing open forums, in the form of mailing lists,"*
http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#X
and the GA list is one such open forum,

Resolved:
The GNSO chair will send a message to the GA List stating the following:

The GNSO council acknowledges the GA List's charter request and thanks the participants for consulting with the GNSO council on this issue.

Given the Council's by-law responsibilities for the moderation of he GA list, he Council encourages he GA List's movement toward self moderation and supports he GA List in implementing the mailing list rules (found at http://www.geolang.com/draftGAListRules5.htm)
indicated in Section 2, 3, 4, 5, and 7 with the following excep ion in section 2:

The Announce list is and should remain solely for the sole use of the GNSO Secretariat for notifying the subscribers of GNSO and other ICANN informational items.

With regard to the organizational sections of he charter, specifically sections 6, 8, and 9, the GNSO council accepts that members participating on the list are free to determine heir own organizational structure, with the following excep ions in section 8 on elections:

An election is usually held near the end of the term of office for the chair of the General Assembly. The exact time is decided by the outgoing Chair and he Chair of the GNSO.

The GNSO council, and its chair, cannot accept any responsibility for the internal governance of an organizational movement on the GA List at this time and restricts the council's actions to issues concerning the moderation of he GA List as determined by the by-laws.

Please note that the members of the GA list can only speak for the GA list and not for ICANN, the GNSO, its Council or its constituencies.

The voice vote carried.

2 Abstentions were noted from **Kristina Rosette** and **Mike Rodenbaugh.**

**Decision 2:**
**Whereas the GA list sent a request to the GNSO council for approval of its new list rules,**
**and whereas**
***"the GNSO Council is responsible for managing open forums, in the form of mailing lists,"***
**http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#X**

**and the GA list is one such open forum,**

**Resolved:**
The GNSO chair will send a message to the GA List stating the following:

The GNSO council acknowledges the GA List's charter request and thanks the participants for consulting with the GNSO council on this issue.

Given the Council's by-law responsibilities for the moderation of the GA list, the Council encourages the GA List's movement toward self modera ion and supports the GA List in implementing the mailing list rules (found at http://www geolang.com/draftGAListRules5.htm)
indicated in Section 2, 3, 4, 5, and 7 with the following exception in section 2:

The Announce list is and should remain solely for the sole use of the GNSO Secretariat for notifying the subscribers of GNSO and other ICANN informational items.

**With regard to the organizational sections of the charter, specifically sections 6, 8, and 9, the GNSO council accepts that members participating on the list are free to determine their own organizational structure, with the following exceptions in section 8 on elections:**

**An election is usually held near the end of the term of office for the chair of the General Assembly. The exact time is decided by the outgoing Chair and the Chair of the GNSO.**

**The GNSO council, and its chair, cannot accept any responsibility for the internal governance of an organizational movement on the GA List at this time and restricts the council's actions to issues concerning the moderation of the GA List as determined by the by-laws.**

**Please note that the members of the GA list can only speak for the GA list and not for ICANN, the GNSO, its Council or its constituencies.**

**5.2 Motion to complete the WHOIS work**
**Avri Doria** proposed the following motion:

Whereas the Whois Task force report has not yet been voted on as required by the by-laws,

Whereas the Whois WG was created to collect further information as defined in its terms of reference,

Whereas the Whois WG has now completed its work,

Whereas almost 6 months have gone by since the release of the Whois Task force report,

Resolved:

A - The GNSO council acknowledges the report and thanks the members and the chair of the Working group for their efforts.

B - The GNSO Council should now complete this work on Whois and make its report to the ICANN community and to the ICANN Board.

C - In order to complete the work the following steps will be taken as scheduled:

1 - Staff will produce a Draft Final Report hat references he TF report, the WG charter and the WG report by and which includes an overall description of the process by September 13. This overview should include the text of motions to be voted on at the end of this process.

2 - This report will be sent out for Constituency Statement Review on September 13. Constituencies will be asked to follow the by-laws on constituency statements. Specifically the ICANN by-laws section 7 d.1

1. Constituency Statements.
The Representatives will each be responsible for soliciting the position of their constituencies, at a minimum, and other comments as each Representative deems appropriate, regarding the issue under consideration. This position and other comments, as applicable, should be submitted in a formal statement to the task force chair (each, a "Constituency Statement") within thirty-five (35) calendar days after initiation of the PDP.
Every Constituency Statement shall include at least the following:

(i) If a Supermajority Vote was reached, a clear statement of he constituency's position on the issue;

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

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

(iv) An analysis of how the issue would affect the cons ituency, including any financial impact on the cons ituency; and

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

(end Quote)

Final Date for updated statement: October 4, 2007
which is 35 days from he meeting when the Whois WG report was discussed

3 - Staff will Incorporate Constituency comments into the Final Report by October 11, 2007

4 - Staff is requested to produce staff implementation notes by October 15

5 - Community Public Comment on Final Report: October 15 - November 6, 2007

6 - A Public and Council Discussion will be held during the LA Public Meeting

7 - Final vote on first GNSO Council meeting after November 6, 2007

**Ross Rader,** seconded by **Tom Keller** proposed the following amendment to the mo ion:

hat "November 6, 2007" be replaced with "October 31, 2007"
hat "after November 6, 2007" be replaced with "during the LA Public Meeting".

**Avri Doria** explained that the three days would come out of the addi ional second public comment period. The Task force report had already received a public comment period.
http://forum.icann.org/lists/whois-services-comments/
The intended Final Report that would include all the Whois work would be open for public comment for 17 instead of 20 days from 15 to 31 October 2007, which would bring the date for voting on the report to the Council meeting in Los Angeles.

The amendment carried by Voice vote
3 against

**Decision 3: That the time line in the proposed motion to complete the work of the WHOIS be changed as follows:**

**that "November 6, 2007" be replaced with "October 31, 2007"**
**that "after November 6, 2007" be replaced with "during the LA Public Meeting".**

**Denise Michel** noted that he October 4 deadline was very ambitious for completion however there would be a status report by that date. The data from that report would be available to the board and to the implementa ion team.

**Kurt Pritz** noted that it was not certain if there would be a report on the WHOIS accuracy audit available by the October 4 deadline, but work was currently in progress and would be presented by the compliance staff at the Los Angeles ICANN meetings.

**Tom Keller** supported the motion because some of the councillors, who had been involved in the WHOIS process over several years, would be leaving the Council as their terms would end after the ICANN Annual General meeting in Los Angeles.

**Suzanne Sene** clarified hat the GAC reference should be to the WHOIS GAC principles, Sec ion 4.2

**Avri Doria** made a motion, seconded by **Chuck Gomes**, to accept the friendly amendment by **Mike Rodenbaugh** to **Ross Rader's** amendment; he amended motion to be voted on by the Council in L A. follows here:

Whereas he Whois WG has now completed its work,

Therefore:

The GNSO Council accepts he Final Outcomes Report of the Working Group 2007
http://gnso.icann.org/drafts/icann-whois-wg-report-final-1-9.pdf
and appreciates he efforts made by WG participants and ICANN staff in preparing this report.

Further, the GNSO council:

a) graciously thanks all of the volunteers, consultants, staff and others who have participated in he Task Force and Working Group.

b) makes no specific policy recommendation to the ICANN board at this ime concerning Whois or related policy.

c) requests ICANN Staff proceed with a study of gTLD registrations and registrants and how Whois data is used and misused as described in the GAC Principles Regarding gTLD WHOIS Service paragraph 4.2,
http://gac.icann.org/web/home/WHOIS_principles.pdf
and by the Working Group Final Outcomes Report.
http://gnso.icann.org/drafts/icann-whois-wg-report-final-1-9.pdf
This study should include a review and analysis of he different proxy services available today and a summary of any other sta istical studies hat Staff can locate. We ask staff to report back to the Council on the 'study to date' by October 4.

d) requests an update on the WHOIS Data Accuracy Program outlined by ICANN Staff on April 27th, including any sta istical information that can be summarized thus far.
See http://www.icann.org/whois/whois-data-accuracy-program-27apr07 pdf.

e) requests an update on the pending SSAC study on "Information Gathering Using Domain Name Registration Records" outlined in September, 2006.

See http://www.icann.org/committees/security/information-gathering-28Sep2006.pdf

f) shall review any additional factual information, in conjunction with the policy suggestions from the Task Force and Working Group reports, complete this work on Whois, and make a report to the ICANN community and to the ICANN Board, as follows:

1 - Staff will produce a Draft Final Report that references the Task Force report, the WG charter and the WG report and which includes an overall descrip ion of the process by September 13, 2007. This overview should include the text of motions to be voted on at the end of this process.

2 - This report will be sent out for Constituency Statement Review on September 13, 2007.
Constituencies will be asked to follow the by-laws on constituency statements.
http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA
Section 7 d. Collection of Information.
Specifically

*"1. Constituency Statements. The Representatives will each be responsible for soliciting the position of their constituencies, at a minimum, and other comments as each Representative deems appropriate, regarding the issue under consideration. This position and other comments, as applicable, should be submitted in a formal statement to the task force chair (sic) (each, a "Constituency Statement") within thirty-five (35) calendar days after initiation of the PDP (sic). Every Constituency Statement shall include at least the following:*

*(i) If a Supermajority Vote was reached, a clear statement of the constituency's position on the issue;*

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

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

*(iv) An analysis of how the issue would affect the constituency, including any financial impact on the constituency; and*

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

**Final Date for updated constituency statement: October 4, 2007

3 - Staff will Incorporate Constituency comments and any additional factual information into Final Report by October 11, 2007

4 - Staff is requested to produce staff implementation notes by October 15, 2007.

5 - Community Public Comment on Final Report: October 15 - 31 , 2007.

6 - A Public and Council Discussion will be held during the Los Angeles Public Meeting.

7 - Final vote during the Los Angeles public GNSO Council meeting.

The mo ion to amend the motion carried unanimously by Voice vote.

**Decision 4:**
**Whereas the Whois WG has now completed its work,**

**Therefore:**

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**http://gnso.icann.org/drafts/icann-whois-wg-report-final-1-9.pdf**
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**http://gac.icann.org/web/home/WHOIS_principles.pdf**
**and by the Working Group Final Outcomes Report.**
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**This study should include a review and analysis of the different proxy services available today and a summary of any other statistical studies that Staff can locate. We ask staff to report back to the Council on the 'study to date' by October 4.**

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**See http://www.icann.org/whois/whois-data-accuracy-program-27apr07.pdf.**

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**f) shall review any additional factual information, in conjunction with the policy suggestions from the Task Force**

and Working Group reports, complete this work on Whois, and make a report to the ICANN community and to the ICANN Board, as follows:

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Constituencies will be asked to follow the by-laws on constituency statements.
http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA
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Specifically

*"1. Constituency Statements. The Representatives will each be responsible for soliciting the position of their constituencies, at a minimum, and other comments as each Representative deems appropriate, regarding the issue under consideration. This position and other comments, as applicable, should be submitted in a formal statement to the task force chair (sic) (each, a "Constituency Statement") within thirty-five (35) calendar days after initiation of the PDP (sic). Every Constituency Statement shall include at least the following:*

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5 - Community Public Comment on Final Report: October 15 - 31 , 2007.

6 - A Public and Council Discussion will be held during the Los Angeles Public Meeting.

7 - Final vote during the Los Angeles public GNSO Council meeting.

Item 6
Any Other Business

**Avri Doria**, on behalf of the GNSO Council proposed a vote of thanks to **Liz Williams**.

**Avri** noted that it was the last meeting where **Liz Williams** would be part of the GNSO Council team and expressed apprecia ion personally and on behalf of the Council for all Liz's excellent work.

The mo ion passed with acclamation.

**Decision 5: Council expresses thanks and appreciation to Liz Williams who is leaving.**

**Avri Doria adjourned the GNSO Council meeting and thanked everyone for their participation.**

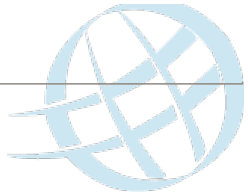
**The meeting ended at 16:36 UTC.**

**Next GNSO Council teleconference will be on 20 September 2007 at 14:00 UTC.**
see: Calendar

**Action items arising from the Minutes:**

**Item 4: A clear, easy to understand Supplemental Document on new gTLDs.**

**Item 5.1: Message from the GNSO Chair to the GA list informing of the Council resolution.**



Comments concerning the layout, construction and functionality of this site should be sent to webmaster [at] gnso icann.org

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# R-60

RESPONDENT'S EXHIBIT

# gTLD Applicant Guidebook

## Proposed Final Version

Please note that this is a "proposed" version of the Applicant Guidebook that has not been approved as final by the Board of Directors. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

**12 November 2010**

ICANN
Addressing the global Internet

Rod Beckstrom
President and CEO

12 November 2010

Dear Prospective Applicant,

ICANN works toward the common good of providing a stable and secure global Internet. In performing its core functions of supplying oversight for the Internet's unique identifier systems, ICANN also promotes competition and consumer choice.

When ICANN was created in 1998, the generic top-level (gTLD) domain space was limited to eight generic Top-Level Domains. After rounds to introduce a limited number of gTLDs in 2000 and 2004, the generic domain name space had only expanded to 22 gTLDs.

The launch of the New gTLD Program will create more choice for Internet users, empower innovation, stimulate economic activity, and generate new business opportunities around the world.

This *Proposed Final Applicant Guidebook* is a significant milestone in the program's development. Like previous versions, it provides detailed information about the rules, requirements and process of applying for a new generic top- level domain. The Guidebook is the product of countless hours of dedicated effort by ICANN's multi-stakeholder community which includes registries, registrars, intellectual property experts, ISPs, businesses, governments, non-commercial entities such as universities and nonprofit organizations, and individual Internet users. More than 1,000 public comments have been taken into consideration, and strong trademark protections and malicious conduct mitigation measures are now in place.

No one could have envisioned all that the Internet has become. With publication of the *Proposed Final Applicant Guidebook*, the next era of online innovation is beginning. It offers a wealth of opportunity as applicants and billions of Internet users around the world, together, create the Internet of tomorrow.

Rod Beckstrom
President and CEO

*One World. One Internet.*

# 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 21 gTLDs and 273 ccTLDs operating on various models. Each of the gTLDs has a designated "registry operator" according to 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 is now 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 have been 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 is establishing the resources needed to successfully launch and operate the program.

This draft of the Applicant Guidebook is available for public comment and possible adoption to enable completion of the implementation work on the 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.

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# Applicant Guidebook

## Proposed Final Version

## Module 1

Please note that this is a "proposed" version of the Applicant Guidebook that has not been approved as final by the Board of Directors. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

**12 November 2010**

# 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.

A glossary of relevant terms is included at the end of this Applicant Guidebook.

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 application submission period opens at [time] UTC [date].

The application submission period closes at [time] UTC [date].

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. In Figure 1-1, 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.

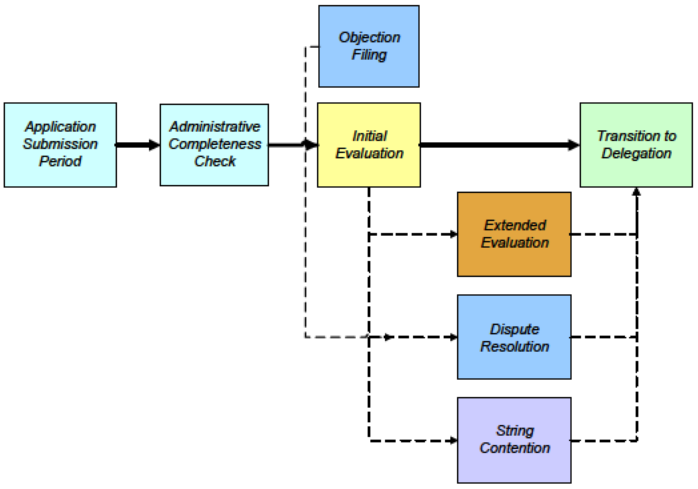



**Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.**

### 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 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 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.

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 check 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 all applications considered complete and ready for evaluation as soon as practicable after 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 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 4 weeks, subject to extension depending on volume. In the event that all applications cannot be processed within a 4-week period, ICANN will post updated process information and an estimated timeline.

### *1.1.2.3 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 must pass this step before the Initial Evaluation reviews are carried out.

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 capability 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.

A process external to the application submission process will be employed to establish evaluation priority. This process will be based on an online ticketing system or other objective criteria.

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.[1]

### *1.1.2.4 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 5 ½ 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 1.1.2.3), 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

[1] See the paper "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.

during the objection filing period will be addressed in the dispute resolution stage, which is outlined in subsection 1.1.2.7 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 possible, consult with interested parties to mitigate any concerns in advance.

### *1.1.2.5 Public Comment*

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.

In the new gTLD application process, all applicants should be aware that public 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.

ICANN will open a public comment period at the time applications are publicly posted on ICANN's website (refer to subsection 1.1.2.2), which will remain open for 45 calendar days. This period will allow time for the community to review and submit comments on posted application materials, and will allow for subsequent consolidation of the received comments, distribution to the panels performing reviews, and analysis and consideration of the comments by the evaluators within the 5-month timeframe allotted for Initial Evaluation. This public

comment 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 public comment forum within the stated time period.**

Comments received during the public comment period will be tagged to a specific application. Evaluators will perform due diligence on the 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. Consideration of the applicability of the information submitted through public comments will be included in the evaluators' reports.

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.

A distinction should be made between public 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. Public comments associated with formal objections will not be considered by panels during Initial Evaluation; however, they may be subsequently considered by an expert panel during a dispute resolution proceeding (see subsection 1.1.2.7).

Governments may provide a notification using the public comment forum to communicate concerns relating to national laws. However, a government's notification of concern will not in itself be deemed to be a formal objection. A notification by a government does not constitute grounds for rejection of a gTLD application.

Governments may also communicate directly to applicants using the contact information posted in the application, e.g., to send a notification that an applied-for gTLD string might be contrary to a national law, and to try to address any concerns with the applicant.

As noted above, applicants are encouraged to identify potential sensitivities in advance and work with the relevant parties to mitigate concerns related to the application.

### *1.1.2.6 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.

### *1.1.2.7 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.

Public comments may also be relevant to one or more objection grounds. (Refer to Module 3, Dispute Resolution Procedures, for the objection grounds.) The DRSPs will have access to all public comments received, and will have discretion to consider them.

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.

#### *1.1.2.8 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 geographical 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.

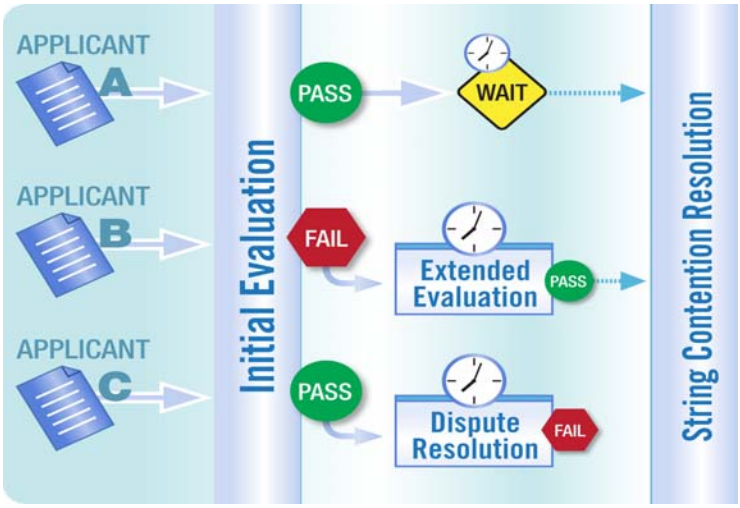



Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

Applicants prevailing in a string contention resolution procedure will proceed toward delegation of the applied-for gTLDs.

In the event of a community priority evaluation (see Module 4, String Contention Procedures), ICANN will provide the comments received during the public comment period to the evaluators with instructions to take the relevant information into account in reaching their conclusions.

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.

#### *1.1.2.9 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 8 months, as follows:

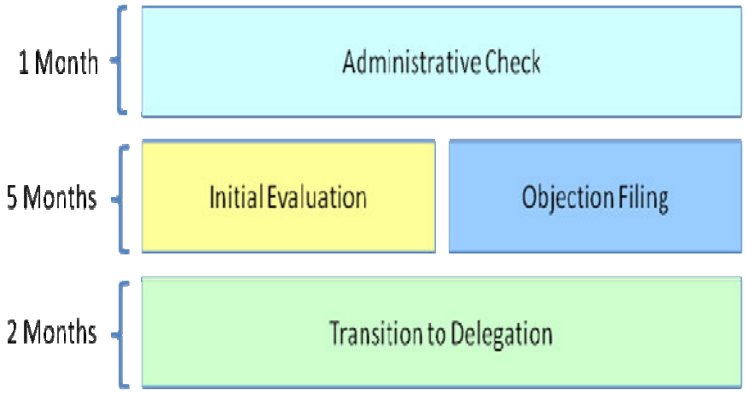



Figure 1-3 – A straightforward application could have an approximate 8-month lifecycle.

The lifecycle for a highly complex application could be much longer, such as 19 months in the example below:

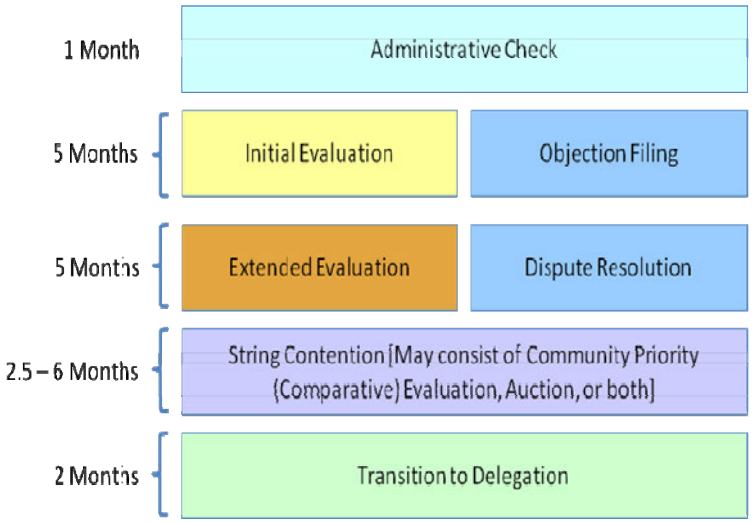



Figure 1-4 – A complex application could have an approximate 19-month lifecycle.

### *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 |
|---|---|
| End of Administrative Check | Public portions of all applications that have passed the Administrative Completeness Check. |
| During Initial Evaluation | Status updates for applications withdrawn or ineligible for further review.<br>Contention sets resulting from String Similarity review. |
| End of Initial Evaluation | Application status updates with all Initial Evaluation results. |
| End of Extended Evaluation | Application status updates with all Extended Evaluation results.<br>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.<br>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.<br>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 eight months, it is expected that most applications will complete the process within the eight-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 | 8 months |
| 2 | Fail | Pass | None | No | Yes | 13 months |
| 3 | Pass | N/A | None | Yes | Yes | 10.5 – 14 months |
| 4 | Pass | N/A | Applicant prevails | No | Yes | 13 months |
| 5 | Pass | N/A | Objector prevails | N/A | No | 11 months |
| 6 | Fail | Quit | N/A | N/A | No | 6 months |
| 7 | Fail | Fail | N/A | N/A | No | 11 months |
| 8 | Fail | Pass | Applicant prevails | Yes | Yes | 15.5 – 19 months |
| 9 | Fail | Pass | Applicant prevails | Yes | No | 13.5 – 17 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, Dispute Resolution 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.

## *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.

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 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.

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, or to contact the applicant with additional questions, based on the information obtained in the background screening process.

**Applicants with confirmed convictions of the types listed in (a) – (k) below will be automatically disqualified from the program.**

Circumstances where ICANN may deny an otherwise qualified application include, but are not limited to instances where the applicant, or any individual named in the application:

a. within the past ten years, has been convicted of a felony, or of a misdemeanor 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 deemed 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 a weapon, force, or the threat of force;

f. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;

g. has been convicted of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes within the respective timeframes specified above;

h. 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) for any of the listed crimes within the respective timeframes listed above;

i. is the subject of a disqualification imposed by ICANN and in effect at the time the application is considered;

j. 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;

k. has been involved in of a pattern of decisions indicating that the applicant or individual named in the application was engaged in cybersquatting as defined in the UDRP, 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.

l. fails to provide a good faith effort to disclose all relevant information relating to items (a) – (k).

All applicants are required to provide complete and detailed explanations regarding any of the above events as part of the application. Crimes of a personal nature that do not meet any of the criteria listed in (a) – (k) will not be considered for the purpose of criminal background screening and do not need to be disclosed. 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 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.

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.
2. ***Government support or non-objection*** – If an applicant has applied for a gTLD string that is a geographic name, the applicant is required to submit a statement 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 geographical 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 an 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, Dispute Resolution 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. ICANN must approve all material changes to the contract, including changes to community-based nature of the gTLD and any associated provisions.

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 domain.

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

ICANN and its stakeholders are currently developing a special designation for "High Security Zone Top Level Domains" ("HSTLDs"). This work is currently focusing on developing a standard for possible adoption by an international standards body who can administer audits and certifications on an independent basis.

This voluntary designation is for top-level domains that demonstrate and uphold enhanced security-minded practices and policies. While any registry operator, including successful new gTLD applicants, will be eligible to participate in this program, its development and operation are beyond the scope of this guidebook. An applicant's election to pursue an HSTLD designation is entirely independent of the evaluation process and will require completion of an additional set of requirements.

For more information on the HSTLD program, including current program development material and activities, please refer to http://www.icann.org/en/topics/new-gtlds/hstld-program-en.htm.

### 1.2.9 Security and Stability

*Root Scaling:* 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. However, 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.

### 1.2.10 Resources for Applicant Assistance

A variety of support resources are available to gTLD applicants. More information will be available on ICANN's website at http://www.icann.org/en/topics/new-gtld-program.htm.[2]

## 1.3 Information for Internationalized Domain Name Applicants

Some applied-for gTLD strings are expected to be Internationalized Domain Names (IDNs). IDNs are domain

[2] The Joint SO/AC New gTLD Applicant Support Working Group is currently developing recommendations for support resources that may be available to gTLD applicants. Information on these resources will be published on the ICANN website once identified.

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 TLD 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).[3]

   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.

### *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 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

[3] See examples at http://stupid.domain.name/node/683

applied-for gTLD string (the "top level tables"). IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second or lower levels.

Each applicant is responsible for developing its IDN Tables, including specification of any variant characters. Tables must comply with ICANN's IDN Guidelines[4] 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.

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

[4] *See* http://www.icann.org/en/topics/idn/idn-guidelines-26apr07.pdf

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 IDN table.

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.[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 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.

[5] 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.

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 independently determine which strings are variants of one another, and will not necessarily treat the applicant's list of purported variants as dispositive in the process.

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 listed must also conform to the string requirements in section 2.2.1.3.2.

Variant strings listed in the application will be reviewed for consistency with the IDN 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.

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 use of the system.

#### 1.4.1.1 User Registration

TAS user registration 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(a) | Deposit payment confirmation |

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 request five application slots, 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 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 [date to be inserted in final version of Applicant Guidebook].

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(b) | 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 geographical name? If geographical, documents of support required |
| 22 | Measures for protection of geographical names at second level |
| 23 | Registry Services: name and full description of all registry services to be provided |
| **No.** | **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 |
| | **Technical and Operational Questions (Internal)** |
| 30 | Technical overview of proposed registry |
| 31 | Architecture |
| 32 | Database capabilities |
| 33 | Geographic diversity |
| 34 | DNS service compliance |
| 35 | Security |
| 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) |
| **No.** | **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: financial instrument |

### 1.4.2 Customer Support during the Application Process

TAS will also provide applicants with access to support mechanisms during the application process. A support link will be available in TAS where users can refer to reference documentation (such as FAQs or user guides), or contact customer support.

When contacting customer support, users can expect to receive a tracking ticket number for a support request, and a response within 48 hours. Support requests will be routed to the appropriate person, depending upon the nature of the request. For example, a technical support request would be directed to the personnel charged with resolving TAS technical issues, while a question concerning the nature of the required information or documentation would be directed to an appropriate contact. The response will be added to the reference documentation available for all applicants.

### 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 application slots 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 [time] UTC [date].

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 geographical names, technical and operational, or financial reviews. The evaluation fee also covers community priority evaluation fees in cases where the applicant achieves a passing score.

***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 made, as follows:

| Refund Available to Applicant | Percentage of Evaluation Fee | Amount of Refund |
|---|---|---|
| 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 and submit the required form to request a refund, including agreement to the terms and conditions for withdrawal. 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 will be deducted from the amount paid.

***Note on 2000 proof-of-concept round applicants --*** Participants in ICANN's proof-of-concept application process in 2000 may be eligible for a credit toward the evaluation fee. The credit is in the amount of USD 86,000 and is subject to:

- submission of documentary proof by the applicant that it is the same entity, a successor in interest to the same entity, or an affiliate of the same entity that applied previously;
- a confirmation that the applicant was not awarded any TLD string pursuant to the 2000 proof of concept application round and that the applicant has no legal claims arising from the 2000 proof-of-concept process; and
- submission of an application, which may be modified from the application originally submitted in 2000, for the same TLD string that such entity applied for in the 2000 proof-of-concept application round.

Each participant in the 2000 proof-of-concept application process is eligible for at most one credit. A maximum of one credit may be claimed for any new gTLD application submitted according to the process in this guidebook. Eligibility for this credit is determined by ICANN.

### *1.5.2 Fees Required in Some Cases*

Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable. Those possible additional fees 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. 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.

- ***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.[6]

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 through TAS. Applicants who are unsure of the information being sought in a question or the parameters for

[6] 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.

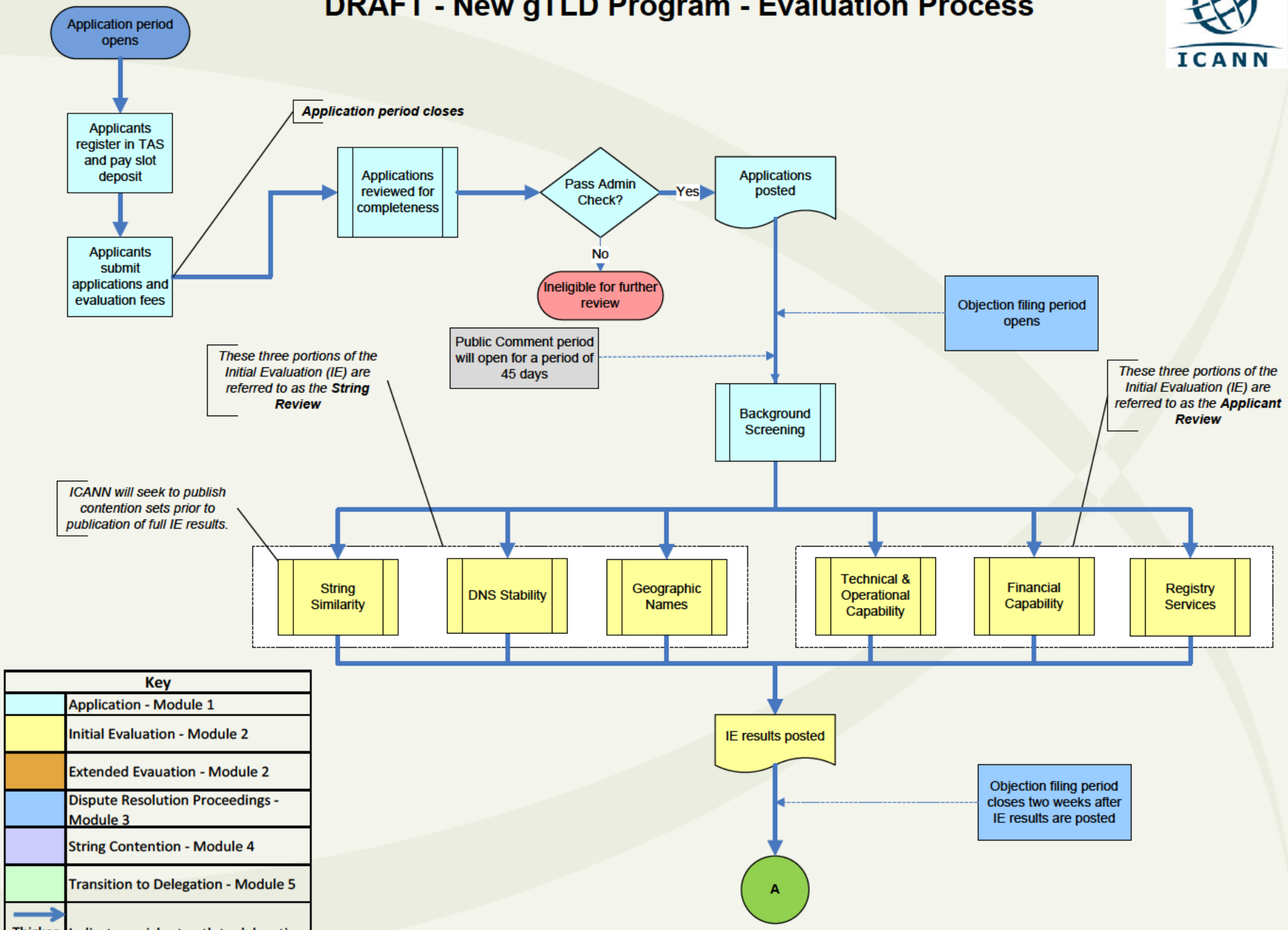
acceptable documentation are encouraged to communicate these questions through the appropriate support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with the application.

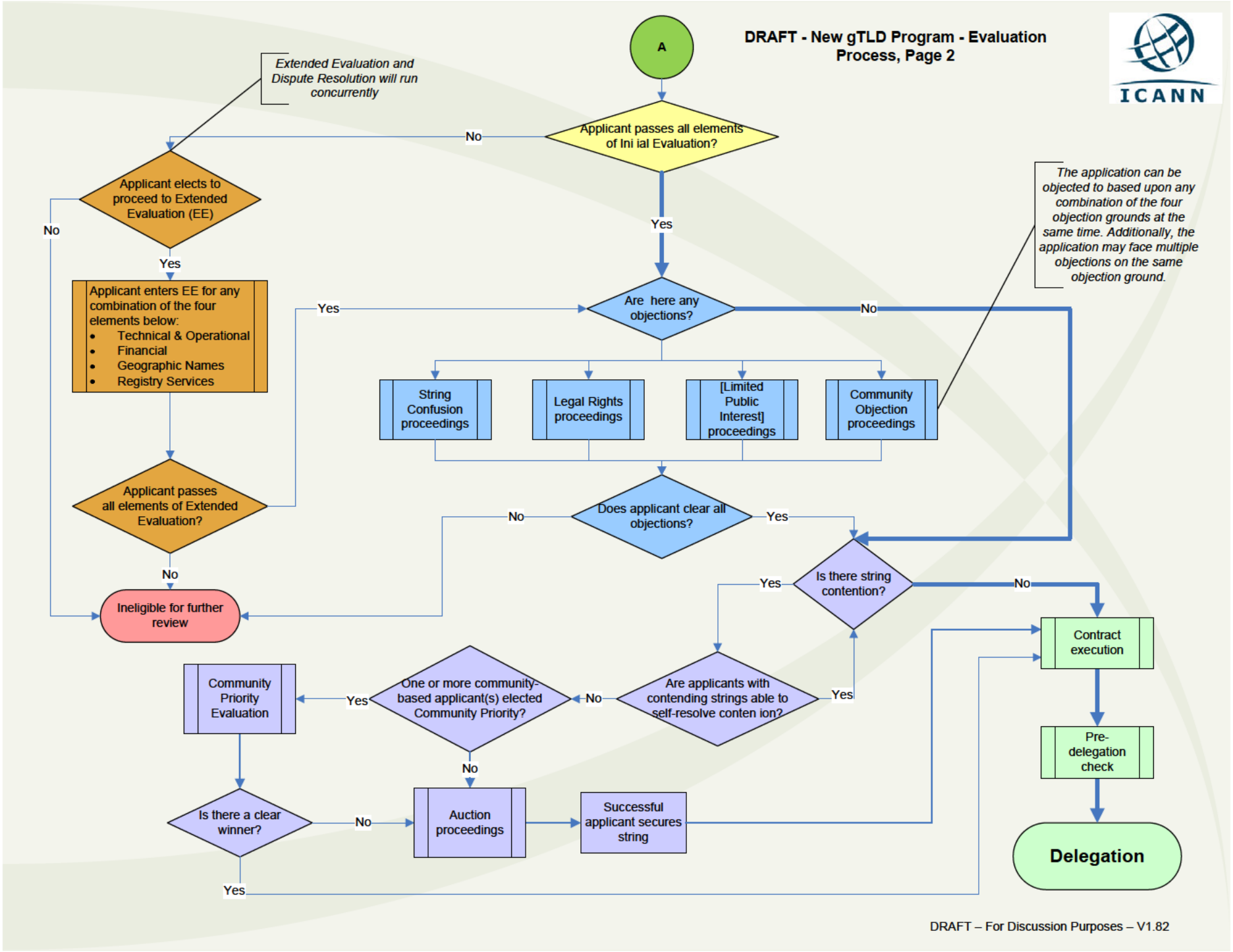
Questions may be submitted via the TAS support link. To provide all applicants equitable access to information, ICANN will make all questions and answers publicly available.

All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted in writing via the designated support channels. 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 dedicated online question and answer area.

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

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ICANN
A
Extended Evaluation and Dispute Resolution will run concurrently
Applicant passes all elements of Ini ial Evaluation?
No
Yes
Applicant elects to proceed to Extended Evaluation (EE)
No
Yes
Applicant enters EE for any combination of the four elements below:
Technical & Operational
Financial
Geographic Names
Registry Services
Applicant passes all elements of Extended Evaluation?
Yes
No
Ineligible for further review
Are here any objections?
Yes
No
The application can be objected to based upon any combination of the four objection grounds at the same time. Additionally, the application may face multiple objections on the same objection ground.
String Confusion proceedings
Legal Rights proceedings
[Limited Public Interest] proceedings
Community Objection proceedings
Does applicant clear all objections?
No
Yes
Is there string contention?
Yes
No
Are applicants with contending strings able to self-resolve conten ion?
Yes
No
One or more community-based applicant(s) elected Community Priority?
Yes
No
Community Priority Evaluation
Is there a clear winner?
No
Yes
Auction proceedings
Successful applicant secures string
Contract execution
Pre-delegation check
Delegation
DRAFT – For Discussion Purposes – V1.82

# Applicant Guidebook

## Proposed Final Version

## Module 2

Please note that this is a "proposed" version of the Applicant Guidebook that has not been approved as final by the Board of Directors. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

**12 November 2010**

# 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. 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. This service 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.

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. If any hits are returned, they 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 pass this portion of the background screening.

[1] See http://www.world-exchanges.org/files/statistics/excel/EQUITY109.xls

### 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. If any hits are returned, the application will be matched with the disclosures provided by the applicant and those issues will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will 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 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, 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

[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.

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*

All applied-for gTLD strings are compared with the list of top-level Reserved Names to ensure that the applied-for gTLD string does not appear on that list.

Top-Level Reserved Names List

| | | |
|---|---|---|
| *AFRINIC* | *IANA-SERVERS* | *NRO* |
| *ALAC* | *ICANN* | *RFC-EDITOR* |
| *APNIC* | *IESG* | *RIPE* |
| *ARIN* | *IETF* | *ROOT-SERVERS* |
| *ASO* | *INTERNIC* | *RSSAC* |
| *CCNSO* | *INVALID* | *SSAC* |
| *EXAMPLE** | *IRTF* | *TEST** |
| *GAC* | *ISTF* | *TLD* |
| *GNSO* | *LACNIC* | *WHOIS* |
| *GTLD-SERVERS* | *LOCAL* | *WWW* |
| *IAB* | *LOCALHOST* | |
| *IANA* | *NIC* | |
| *Note that in addition to the above strings, ICANN will reserve translations of the terms "test" and "example" in multiple languages. The remainder of the strings are reserved only in the form included above. | | |

If an applicant enters a Reserved Name as its applied-for gTLD string, the application system will recognize the

Reserved Name and will not allow the application to be submitted.

In addition, applied-for gTLD strings are reviewed during the String Similarity review to determine whether they are similar to a Reserved Name. An application for a gTLD string that is identified as too similar to a Reserved Name will not pass this review.

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. 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.

#### *2.2.1.3 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.

##### *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*[4]

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*

[4] The string requirements have been revised according to revisions of RFC 1123 in progress in the IETF. See http://tools.ietf.org/html/draft-liman-tld-names-04.

*(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 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, as defined by IDNA, must be PVALID and be accompanied by unambiguous contextual rules where necessary.[5]

2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Ll, Lo, Lm, Mn).

2.1.4 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 Must consist entirely of characters with the same directional property.

[5] It is expected that conversion tools for IDNA 2008 will be available before the Application Submission period begins, and that labels will be checked for validity under IDNA2008. In this case, labels valid under the previous version of the protocol (IDNA2003) but not under IDNA2008 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 IDNA2008 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 IDNA2008 in the broader software applications environment will occur gradually. During that time,TLD labels that are valid under IDNA2008, but not under IDNA2003, will have limited functionality.

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-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.

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. 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.

#### 2.2.1.4 Geographic Names Review

Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names. The requirements and procedure ICANN will follow in the evaluation process are described in the following paragraphs. Applicants should review these requirements even if they do not believe their intended gTLD string is a geographic name. All applied-for gTLD strings will be reviewed according to the requirements in this section, regardless of whether the application indicates it is for a geographic name.

##### 2.2.1.4.1 Treatment of Country or Territory Names[6]

Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program in this application round. A string shall be considered to be a country or territory name if:

i. it is an alpha-3 code listed in the ISO 3166-1 standard.

ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.

iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.

iv. it is the short- or long-form name association with a code that has been designated as "exceptionally reserved" by the ISO 3166 Maintenance Agency.

v. it is a separable component of a country name designated on the "Separable Country Names List," or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.

vi. It is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces,

[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.

insertion of punctuation, and addition or removal of grammatical articles like "the." A transposition is considered a change in the sequence of the long or short–form name, for example, "RepublicCzech" or "IslandsCayman."

#### 2.2.1.4.2 *Geographic Names Requiring Government Support*

The following types of applied-for strings are considered geographic names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

1. An application for any string that is a representation, in any language, of the *capital city name* of any country or territory listed in the ISO 3166-1 standard.

   In this case, it is anticipated that the relevant government or public authority would be at the national level.

2. An application for a *city name*, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

   City names present challenges because city names may also be generic terms or brand names, and in many cases no city name is unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.

   An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:

   (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and

(b) The applied-for string is a city name as listed on official city documents.[7]

In the case of an application that meets conditions (a) and (b), documentation of support will be required only from the relevant government or public authority of the city named in the application.

3. An application for any string that is an exact match of a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.

In this case, it is anticipated that the relevant government or public authority would be at the sub-national level, such as a state, provincial or local government or authority.

4. An application for a string listed as a UNESCO region[8] or appearing on the "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" list.[9]

In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.

Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the "composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" takes precedence.

An applied-for gTLD string that falls into any of 1 through 4 listed above is considered to represent a geographic name. In the event of any doubt, it is in the applicant's interest to consult with relevant governments and public

[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.

authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.

In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

- identify whether its applied-for gTLD string falls into any of the above categories; and
- determine the relevant governments or public authorities; and
- identify which level of government support is required.

The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to subsection 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community.

#### *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]

[10] *See* http://gac.icann.org/gac-members

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 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.

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.[11]

#### *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 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

[11] 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 registry operator has deviated from the conditions of original support or non-objection.

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 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 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 settled 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 methodology 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 the online application system, rather than by phone, letter, email, or other means. Unless otherwise noted, such communications will include a 3-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
- DNS Security Extensions

The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.

Any additional registry services that are unique to the proposed gTLD registry should be described in detail. Directions for describing the registry services are provided at http://www.icann.org/en/registries/rsep/rrs_sample.html.

#### 2.2.3.3 TLD Zone Contents

ICANN receives a number of inquiries about use of various record types in a registry zone, as entities contemplate different business and technical models. Permissible zone contents for a TLD zone are:

- Apex SOA record.
- Apex NS records and in-bailiwick glue for the TLD's DNS servers.
- NS records and in-bailiwick glue for DNS servers of registered names in the TLD.
- DS records for registered names in the TLD.
- Records associated with signing the TLD zone (i.e., RRSIG, DNSKEY, NSEC, and NSEC3).

An applicant wishing to place any other record types into its TLD zone should describe in detail its proposal in the registry services section of the application. This will be evaluated and could result in an extended evaluation to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Applicants should be aware that a service based on use of less-common DNS resource records in the TLD zone, even if approved in the registry services review, might not work as intended for all users due to lack of application support.

#### 2.2.3.4 Methodology

Review of the applicant's proposed registry services will include a preliminary determination of whether any of the proposed registry services could raise significant security or stability issues and require additional consideration.

If the preliminary determination reveals that there may be significant security or stability issues (as defined in subsection 2.2.3.1) surrounding a proposed service, the application will be flagged for an extended review by the Registry Services Technical Evaluation Panel (RSTEP), see http://www.icann.org/en/registries/rsep/rstep.html). This review, if applicable, will occur during the Extended Evaluation period (refer to Section 2.3).

In the event that an application is flagged for extended review of one or more registry services, an additional fee to cover the cost of the extended review will be due from the applicant. Applicants will be advised of any additional fees due, which must be received before the additional review begins.

### 2.2.4 Applicant's Withdrawal of an Application

An applicant who does not pass the Initial Evaluation may withdraw its application at this stage and request a partial refund (refer to subsection 1.5 of Module 1).

## 2.3 Extended Evaluation

An applicant may request an Extended Evaluation if the application has failed to pass the Initial Evaluation elements concerning:

- Geographic names (refer to subsection 2.2.1.4) – There is no additional fee for an extended evaluation in this instance.
- Demonstration of technical and operational capability (refer to subsection 2.2.2.1). There is no additional fee for an extended evaluation in this instance.
- Demonstration of financial capability (refer to subsection 2.2.2.2). There is no additional fee for an extended evaluation in this instance.
- Registry services (refer to subsection 2.2.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

An Extended Evaluation does not imply any change of the evaluation criteria. The same criteria used in the Initial Evaluation will be used to review the application in light of clarifications provided by the applicant.

From the time an applicant receives notice of failure to pass the Initial Evaluation, eligible applicants will have 15 calendar days to submit to ICANN the Notice of Request for Extended Evaluation. If the applicant does not explicitly request the Extended Evaluation (and pay an additional fee in the case of a Registry Services inquiry) the application will not proceed.

### 2.3.1 Geographic Names Extended Evaluation

In the case of an application that has been identified as a geographic name requiring government support, but where the applicant has not provided 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 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 and clarify its answers to those questions or sections on which it received a non-passing score. The answers should be responsive to the evaluator report that indicates the reasons for failure. 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 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 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 contract 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 review each applied-for string to determine whether the 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 represents a geographic name and requires 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 the proposed registry services in the application to determine if any registry services 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 is in the process of selecting qualified third-party providers to perform the various reviews.[12] 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.

The providers will be formally engaged and announced on ICANN's website prior to the opening of the Application Submission period.

### 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

[12] *See* http://icann.org/en/topics/new-gtlds/open-tenders-eoi-en.htm.

credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected 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.

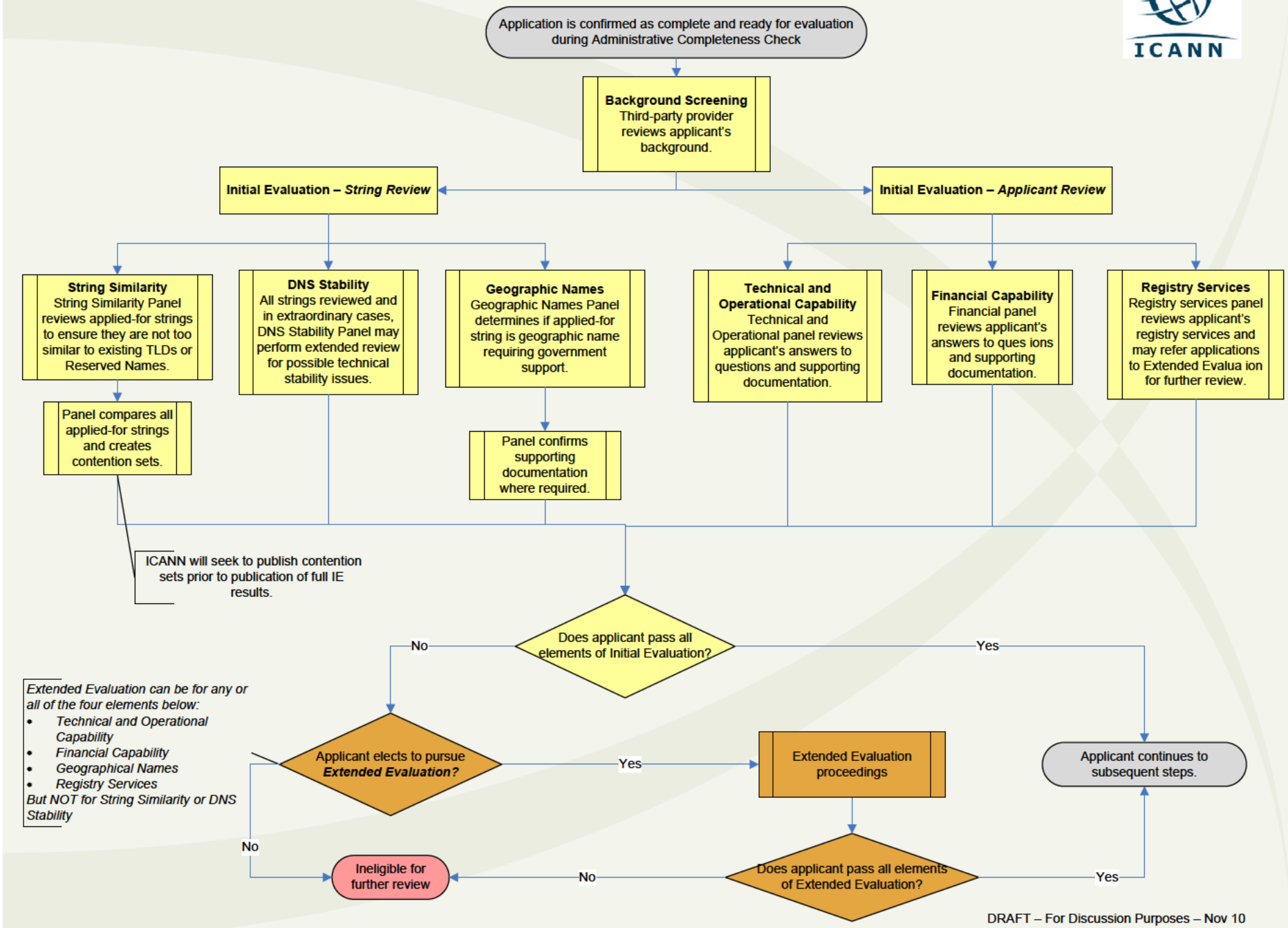
Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period. Concerns of applicants regarding panels should be communicated via the defined support channels (see subsection 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



## Annex: Separable Country Names List

Under various proposed ICANN policies, 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 |
| ba | Bosnia and Herzegovina | A | Bosnia |
| | | A | Herzegovina |
| br | Brazil | C | Fernando de Noronha Island |
| | | C | Martim Vaz Islands |
| | | C | Trinidade Island |
| io | British Indian Ocean Territory | C | Chagos Archipelago |
| | | C | Diego Garcia |
| bn | Brunei Darussalam | B1 | Brunei |
| | | C | Negara Brunei Darussalam |
| cv | Cape Verde | C | São Tiago |
| | | C | São Vicente |
| ky | Cayman Islands | C | Grand Cayman |
| cl | Chile | C | Easter Island |
| | | C | Juan Fernández Islands |
| | | C | Sala y Gómez Island |
| | | C | San Ambrosio Island |
| | | C | San Félix Island |
| cc | Cocos (Keeling) Islands | A | Cocos Islands |
| | | A | Keeling Islands |
| co | Colombia | C | Malpelo Island |
| | | C | San Andrés Island |
| | | C | Providencia Island |
| km | Comoros | C | Anjouan |
| | | C | Grande Comore |
| | | C | Mohéli |
| ck | Cook Islands | C | Rarotonga |
| cr | Costa Rica | C | Coco Island |
| ec | Ecuador | C | Galápagos Islands |
| gq | Equatorial Guinea | C | Annobón Island |
| | | C | Bioko Island |
| | | C | Río Muni |
| fk | Falkland Islands (Malvinas) | B1 | Falkland Islands |
| | | B1 | Malvinas |

| | | | |
|---|---|---|---|
| fo | Faroe Islands | A | Faroe |
| fj | Fiji | C | Vanua Levu |
| | | C | Viti Levu |
| | | C | Rotuma Island |
| pf | French Polynesia | C | Austral Islands |
| | | C | Gambier Islands |
| | | C | Marquesas Islands |
| | | C | Society Archipelago |
| | | C | Tahiti |
| | | C | Tuamotu Islands |
| | | C | Clipperton Island |
| tf | French Southern Territories | C | Amsterdam Islands |
| | | C | Crozet Archipelago |
| | | C | Kerguelen Islands |
| | | C | Saint Paul Island |
| gr | Greece | C | Mount Athos |
| | | B1 | ** |
| gd | Grenada | C | Southern Grenadine Islands |
| | | C | Carriacou |
| gp | Guadeloupe | C | la Désirade |
| | | C | Marie-Galante |
| | | C | les Saintes |
| hm | Heard Island and McDonald Islands | A | Heard Island |
| | | A | McDonald Islands |
| va | Holy See (Vatican City State) | A | Holy See |
| | | A | Vatican |
| hn | Honduras | C | Swan Islands |
| in | India | C | Amindivi Islands |
| | | C | Andaman Islands |
| | | C | Laccadive Islands |
| | | C | Minicoy Island |
| | | C | Nicobar Islands |
| ir | Iran, Islamic Republic of | B1 | Iran |
| ki | Kiribati | C | Gilbert Islands |
| | | C | Tarawa |
| | | C | Banaba |
| | | C | Line Islands |
| | | C | Kiritimati |
| | | C | Phoenix Islands |
| | | C | Abariringa |
| | | C | Enderbury Island |
| kp | Korea, Democratic People's Republic of | C | North Korea |
| kr | Korea, Republic of | C | South Korea |
| la | Lao People's Democratic Republic | B1 | Laos |
| ly | Libyan Arab Jamahiriya | B1 | Libya |
| 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 |
| an | Netherlands Antilles | B1 | Antilles |
| | | C | Bonaire |
| | | C | Curaçao |
| | | C | Saba |
| | | C | Saint Eustatius |
| | | C | Saint Martin |
| nc | New Caledonia | C | Loyalty Islands |
| mp | Northern Mariana Islands | C | Mariana Islands |
| | | C | Saipan |
| om | Oman | C | Musandam Peninsula |
| pw | Palau | C | Caroline Islands (see also fm) |
| | | C | Babelthuap |
| ps | Palestinian Territory, Occupied | B1 | Palestine |
| pg | Papua New Guinea | C | Bismarck Archipelago |
| | | C | Northern Solomon Islands |
| | | C | Bougainville |
| pn | Pitcairn | C | Ducie Island |
| | | C | Henderson Island |
| | | C | Oeno Island |
| re | Réunion | C | Bassas da India |
| | | C | Europa Island |
| | | C | Glorioso Island |
| | | C | Juan de Nova Island |
| | | C | Tromelin Island |
| ru | Russian Federation | B1 | Russia |
| | | C | Kaliningrad Region |
| sh | Saint Helena, Ascension, and Tristan de Cunha | A | Saint Helena |
| | | A | Ascension |
| | | A | Tristan de Cunha |
| | | C | Gough Island |
| | | C | Tristan de Cunha Archipelago |
| kn | Saint Kitts and Nevis | A | Saint Kitts |
| | | A | Nevis |
| pm | Saint Pierre and Miquelon | A | Saint Pierre |
| | | A | Miquelon |
| vc | Saint Vincent and the Grenadines | A | Saint Vincent |
| | | A | The Grenadines |
| | | C | Northern Grenadine Islands |
| | | C | Bequia |
| | | C | Saint Vincent Island |
| ws | Samoa | C | Savai'i |
| | | C | Upolu |
| st | Sao Tome and Principe | A | Sao Tome |
| | | A | Principe |
| sc | Seychelles | C | Mahé |
| | | C | Aldabra Islands |
| | | C | Amirante Islands |
| | | C | Cosmoledo Islands |
| | | C | Farquhar Islands |
| sb | Solomon Islands | C | Santa Cruz Islands |
| | | C | Southern Solomon Islands |
| | | C | Guadalcanal |
| za | South Africa | C | Marion Island |

| | | | |
|---|---|---|---|
| | | C | Prince Edward Island |
| gs | South Georgia and the South Sandwich Islands | A | South Georgia |
| | | A | South Sandwich Islands |
| sj | Svalbard and Jan Mayen | A | Svalbard |
| | | A | Jan Mayen |
| | | C | Bear Island |
| sy | Syrian Arab Republic | B1 | Syria |
| tw | Taiwan, Province of China | B1 | Taiwan |
| | | C | Penghu Islands |
| | | C | Pescadores |
| tz | Tanzania, United Republic of | B1 | Tanzania |
| tl | Timor-Leste | C | Oecussi |
| to | Tonga | C | Tongatapu |
| tt | Trinidad and Tobago | A | Trinidad |
| | | A | Tobago |
| tc | Turks and Caicos Islands | A | Turks Islands |
| | | A | Caicos Islands |
| tv | Tuvalu | C | Fanafuti |
| ae | United Arab Emirates | B1 | Emirates |
| us | United States | B2 | America |
| um | United States Minor Outlying Islands | C | Baker Island |
| | | C | Howland Island |
| | | C | Jarvis Island |
| | | C | Johnston Atoll |
| | | C | Kingman Reef |
| | | C | Midway Islands |
| | | C | Palmyra Atoll |
| | | C | Wake Island |
| | | C | Navassa Island |
| vu | Vanuatu | C | Efate |
| | | C | Santo |
| ve | Venezuela, Bolivarian Republic of | B1 | Venezuela |
| | | C | Bird Island |
| vg | Virgin Islands, British | B1 | Virgin Islands |
| | | C | Anegada |
| | | C | Jost Van Dyke |
| | | C | Tortola |
| | | C | Virgin Gorda |
| vi | Virgin Islands, US | B1 | Virgin Islands |
| | | C | Saint Croix |
| | | C | Saint John |
| | | C | Saint Thomas |
| wf | Wallis and Futuna | A | Wallis |
| | | A | Futuna |
| | | C | Hoorn Islands |
| | | C | Wallis Islands |
| | | C | Uvea |
| ye | Yemen | C | Socotra Island |

**Maintenance**

A Separable Country Names Registry will be maintained and published by ICANN Staff.

Each time the ISO 3166-1 standard is updated with a new entry, this registry will be reappraised to identify if the changes to the standard warrant changes to the entries in this registry. Appraisal will be based on the criteria listing in the "Eligibility" section of this document.

Codes reserved by the ISO 3166 Maintenance Agency do not have any implication on this registry, only entries derived from normally assigned codes appearing in ISO 3166-1 are eligible.

If an ISO code is struck off the ISO 3166-1 standard, any entries in this registry deriving from that code must be struck.

**Eligibility**

Each record in this registry is derived from the following possible properties:

**Class A:** The ISO 3166-1 English Short Name is comprised of multiple, separable parts whereby the country is comprised of distinct sub-entities. Each of these separable parts is eligible in its own right for consideration as a country name. For example, "Antigua and Barbuda" is comprised of "Antigua" and "Barbuda."

**Class B:** The ISO 3166-1 English Short Name (1) or the ISO 3166-1 English Full Name (2) contains additional language as to the type of country the entity is, which is often not used in common usage when referencing the country. For example, one such short name is "The Bolivarian Republic of Venezuela" for a country in common usage referred to as "Venezuela."

** Macedonia is a separable name in the context of this list; however, due to the ongoing dispute listed in UN documents between the Hellenic Republic (Greece) and the Former Yugoslav Republic of Macedonia over the name, no country will be afforded attribution or rights to the name "Macedonia" until the dispute over the name has been resolved. See http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/240/37/IMG/N9324037.pdf.

**Class C:** The ISO 3166-1 Remarks column containing synonyms of the country name, or sub-national entities, as denoted by "often referred to as," "includes", "comprises", "variant" or "principal islands".

In the first two cases, the registry listing must be directly derivative from the English Short Name by excising words and articles. These registry listings do not include vernacular or other non-official terms used to denote the country.

Eligibility is calculated in class order. For example, if a term can be derived both from Class A and Class C, it is only listed as Class A.

# *Attachment to Module 2*

## *Sample Letter of Government Support*

**[This letter should be provided on official letterhead]**

ICANN
Suite 330, 4676 Admiralty Way
Marina del Rey, CA 90292

Attention: New gTLD Evaluation Process

Subject: Letter for support for [TLD requested]

This letter is to confirm that [government entity] fully supports the application for [TLD] submitted to ICANN by [applicant] in the New gTLD Program. As the [Minister/Secretary/position] I confirm that I have the authority of the [x government/public authority] to be writing to you on this matter. [Explanation of government entity, relevant department, division, office, or agency, and what its functions and responsibilities are]

The gTLD will be used to [explain your understanding of how the name will be used by the applicant. This could include policies developed regarding who can register a name, pricing regime and management structures.] [Government/public authority/department] has worked closely with the applicant in the development of this proposal.

The [x government/public authority] supports this application, and in doing so, understands that in the event that the application is successful, [applicant] will be required to enter into a Registry Agreement with ICANN. In doing so, they will be required to pay fees to ICANN and comply with consensus policies developed through the ICANN multi-stakeholder policy processes.

[Government / public authority] further understands that the Registry Agreement provides that, in the event of a dispute between [government/public authority] and the applicant, ICANN may implement the order of any court sitting in such jurisdiction in favor of such governmental entity related to the TLD.

**[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 [xx 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 10 years ago 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 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 nearly all cases, 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. In several questions, 1 point is the maximum score that may be awarded. 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 will receive all communications regarding the application. Either the primary or the secondary contact may respond. In the event of a conflict, the communication received from the primary contact will be taken as authoritative. Both contacts listed should also be prepared to receive inquiries from the public. | | | |
| | | Title | Y | | | | |
| | | Address | Y | | | | |
| | | Phone number | Y | | | | |
| | | Fax number | Y | | | | |
| | | Email address | Y | | | | |
| **Secondary Contact for this Application** | 7 | Name | Y | The secondary contact will be copied on all communications regarding the app ication. Either the primary or the secondary contact may respond. | | | |
| | | Title | Y | | | | |
| | | Address | Y | | | | |
| | | Phone number | Y | | | | |
| | | Fax number | Y | | | | |
| | | Email address | Y | | | | |
| **Proof of Legal Establishment** | 8 | (a) Legal form of the Applicant. (e.g., limited liability partnership, corporation, non-profit institution). | Y | | | | |
| | | (b) State the specific national or other jurisdictional law that defines the type of entity identified in 8(a). Identify any relevant section references and provide a URL to the document if available online. | Y | | | | |
| | | (c) Attach evidence of the applicant's establishment as the type of entity identified in Question 8(a) above, in accordance with the app icable laws identified in Question 8(b). | Y | Applications without valid proof of legal establishment will not be evaluated further. | | | |
| | 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, contact information (permanent residence), and position of all directors (i.e., members of the applicant's Board of Directors, if applicable). | N | Background checks may be conducted on individuals named in the applicant's response to question 11.<br><br>Any material misstatement or misrepresentation (or omission of material information) may cause the application to be rejected. | | | |
| | | (b) Enter the full name, 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. | N | | | | |
| | | (c) Enter the full name, contact information (permanent residence of individual or principal place of business of entity) and position of all shareholders holding at least 15% of shares, with percentage shares held by each. | N | | | | |

| | # | Question | Included in public posting | Notes | Scoring Range | Criteria | Scoring |
|---|---|---|---|---|---|---|---|
| | | (d) Indicate whether the applicant or any of its directors, officers, partners, or shareholders named above:<br>i. within the past ten years, has been convicted of a felony, or of a misdemeanor 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 similar or related to any of these;<br>ii. within the past ten years, has been disciplined by a government for conduct involving dishonesty or misuse of funds of others;<br>iii. within the past ten years has been convicted of any willful tax-related fraud or w llful evasion of tax liabilities;<br>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;<br>v. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;<br>vi. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;<br>vii. has been convicted of aiding, abetting, facilitating, enabling, conspiring to commit, or fa ling to report any of the listed crimes within the respective timeframes specified above;<br>viii. 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) for any of the listed crimes within the respective timeframes listed above;<br>ix. is the subject of a disqualification imposed by ICANN and in effect at the time of this application.<br><br>If any of the above events have occurred, please provide details. | N | ICANN may deny an otherwise qualified application if eligibility criteria are not met. See section 1.2.1 of the guidebook. | | | |
| | | (e) Indicate whether the applicant or any of its directors, officers, partners, or shareholders 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 UDRP, ACPA, or other equivalent legislation. | N | ICANN may deny an otherwise qualified application if eligibility criteria are not met. See section 1.2.1 of the guidebook. | | | |
| | | (f) Disclose whether the applicant 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 if eligibility criteria are not met. See section 1.2.1 of the guidebook for details. | | | |
| | | (g) Provide an explanation for any additional background information that may be found concerning the applicant or any individual named in the application. | N | | | | |
| **Evaluation Fee** | 12 | (a) Enter the confirmation information for payment of the evaluation fee (e.g., wire transfer confirmation number). | N | The evaluation fee is paid in the form of a deposit at the time of user registration, and submission of the remaining amount at the time the full application is submitted. The information in question 12 is required for each payment. | | | |
| | | (b) Payer name | N | | | | |
| | | (c) Payer address | N | | | | |
| | | (d) Wiring bank | N | | | | |
| | | (e) Bank address | N | | | | |
| | | (f) Wire date | N | | | | |

| | # | Question | Included in public posting | Notes | Scoring Range | Criteria | Scoring |
|---|---|---|---|---|---|---|---|
| **Applied-for gTLD string** | 13 | Provide the applied-for gTLD string. If applying for an IDN, provide the A-label (beginning with "xn--"). | Y | Responses to Questions 13- 17 are not scored, but are used for database and validation purposes. | | | |
| | 14 | (a) If applying for an IDN, provide the U-label. | Y | The U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character. | | | |
| | | (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 app icant. | Y | | | | |
| | | (c) If an IDN, provide the language of the label (both in English and as referenced by ISO 639 1). | Y | | | | |
| | | (d) If an IDN, provide the script of the label (both in English and as referenced by ISO 15924). | Y | | | | |
| | | (e) If an IDN, list all code points contained in the U-label according to Unicode form. | Y | For example, the string "HELLO" would be listed as U 0048 U 0065 U 006C U 006C U 006F. | | | |
| | 15 | (a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include:<br>1-the applied-for gTLD string relevant to the tables,<br>2- the script or language designator (as defined in BCP 47),<br>3- table version number,<br>4- effective date (DD-Month-YYYY), and<br>5- contact name, email address, and phone number.<br>Submission of IDN tables in a standards-based format is encouraged. | Y | In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string. IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second level. | | | |
| | | (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 with the submitted IDN tables and will, if the application is approved, 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 app icant. | | | |
| | 16 | If an IDN, 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, descr be steps that will be taken to mitigate these issues in software and other applications. | Y | | | | |
| | 17 | OPTIONAL:<br>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 | Describe the mission/purpose of your proposed gTLD. | Y | Applicants are encouraged to provide a thorough and detailed description to enable informed consultation and comment. Responses to this question are not scored.<br><br>An applicant wishing to designate this application as community-based should ensure that this response is consistent with its responses for question 20 below. | | | |
| **Community-based Designation** | 19 | Is the application for a community-based gTLD? | Y | There is a presumption that the application is a standard application (as defined in the Applicant Guidebook) if this question is left unanswered. The applicant's designation as standard or community-based cannot be changed once the application is submitted. | | | |
| | 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. | Y | Descriptions should include:<br>• 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.<br>• How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required.<br>• When the community was established, including the date(s) of formal organization, if any, as well as a description of community activities to date.<br>• The current estimated size of the community, both as to membership and geographic extent. | | Responses to Question 20 will be regarded as firm commitments to the specified community and reflected in the Registry Agreement, provided the application is successful. Responses are not scored in the Initial Evaluation. Responses may be scored in a community priority evaluation, if applicable. Criteria and scoring methodology for the community priority evaluation are described in Module 4 of the Applicant Guidebook. | |
| | | (b) Explain the applicant's relationship to the community identified in 20(a). | Y | Explanations should clearly state:<br>• Relations to any community organizations.<br>• Relations to the community and its constituent parts/groups.<br>• Accountab lity mechanisms of the applicant to the community. | | | |

| | # | Question | Included in public posting | Notes | Scoring Range | Criteria | Scoring |
|---|---|---|---|---|---|---|---|
| | | (c) Provide a description of the community-based purpose of the applied-for gTLD. | Y | Descriptions should include:<br>• Intended registrants in the TLD.<br>• Intended end-users of the TLD.<br>• Related activities the applicant has carried out or intends to carry out in service of this purpose.<br>• Explanation of how the purpose is of a lasting nature. | | | |
| | | (d) Explain the relationship between the applied-for gTLD string and the community identified in 20(a). | Y | Explanations should clearly state:<br>• relationship to the established name, if any, of the community.<br>• relationship to the identification of community members.<br>• any connotations the string may have beyond the community. | | | |
| | | (e) Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set. | Y | Descriptions should include proposed policies, if any, on the following:<br>• Eligibility: who is eligible to register a second-level name in the gTLD, and how will eligibility be determined.<br>• Name selection: what types of second-level names may be registered in the gTLD.<br>• Content/Use: what restrictions, if any, the registry operator will impose on how a registrant may use its registered name.<br>• 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 institutions/groups representative of the community identified in 20(a). An applicant may submit endorsements by multiple institutions/groups, if relevant to the community. | Y | Endorsements from institutions/groups not mentioned in the response to 20(b) should be accompanied by a clear description of each such institution's/group's relationship to the community. | | | |
| **Geographic Names** | 21 | (a) Is the application for a geographic name? | Y | An applied-for gTLD string is considered a geographic name requiring government support if it is: (a) the capital city name of a country or territory listed in the ISO 3166-1 standard; (b) a city name, where it is clear from statements in the application that the applicant intends to use the gTLD for purposes associated with the city name; (c) a sub-national place name listed in the ISO 3166-2 standard; or (d) a name listed as a UNESCO region or appearing on the "Composition of macro geographic (continental) or regions, geographic sub-regions, and selected economic and other groupings" list. See Module 2 for complete definitions and criteria.<br><br>An application for a country or territory name, as defined in the Applicant Guidebook, will not be approved. | | | |
| | | (b) If a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities. | N | See the documentation requirements in Module 2 of the Applicant Guidebook. | | | |
| **Protection of Geographic Names** | 22 | Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names. | Y | Applicants should consider and describe how they will incorporate Governmental Advisory Committee (GAC) advice in their management of second-level domain name registrations. See "Principles regarding New gTLDs" at http://gac.icann.org/gac-documents. For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain. Proposed measures will be posted for public comment as part of the application. | | | |

| | # | Question | Included in public posting | Notes | Scoring Range | Criteria | Scoring |
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| **Registry Services** | 23 | Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns. The following registry services are customary services offered by a registry operator:<br><br>A. Receipt of data from registrars concerning registration of domain names and name servers.<br>B. Dissemination of TLD zone files.<br>C. Dissemination of contact or other information concerning domain name registrations (Whois service).<br>D. Internationalized Domain Names, where offered.<br>E. DNS Security Extensions (DNSSEC).<br><br>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.<br><br>Additional proposed registry services that are unique to the registry must also be described. | Y | Registry Services are defined as the following: (1) operations of the Registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the Registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the Registry Agreement; and (2) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy; (3) any other products or services that only a Registry Operator is capable of providing, by reason of its designation as the Registry Operator. A full definition of Registry Services can be found at http://www.icann.org/en/registries/rsep/rsep.html<br><br>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.<br><br>Stability: For purposes of this Applicant Guidebook, an effect on stab lity shall mean that the proposed Registry Service (1) is not compliant with app icable 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. | | 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. | |
| **Demonstration of Technical & Operational Capability (External)** | 24 | SRS Performance: describe the plan for operation of a robust and reliable Shared Registration System. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. Please refer to the requirements in the Registry Interoperability, Continuity, and Performance Specification (Specification 6) attached to the draft Registry Agreement. Describe resourcing plans (number and description of personnel roles allocated to this area). | Y | The questions in this section (24-44) are intended to give applicants an opportunity to demonstrate their technical and operational capabilities to run a registry. In the event that an applicant chooses to outsource one or more parts of its registry operations, the applicant should still provide the full details of the technical arrangements.<br><br>Questions 24-29 are designed to provide a description of the applicant's intended technical and operationa approach for those registry functions that are outward-facing, i.e., interactions with registrars, registrants, and various DNS users. Responses to these questions will be published to allow review by affected parties. | 0-1 | Complete answer demonstrates:<br><br>(1) a robust plan for operating a reliable SRS;<br>(2) scalability and performance are consistent with the overall business approach, and planned size of the registry;<br>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and<br>(4) evidence of compliance with Specification 6 to the Registry Agreement. | 1 - meets requirements: Response includes<br>(1) Evidence of highly developed and detailed plan to operate a robust and reliable SRS;<br>(2) SRS plans are sufficient to result in compliance with the Registry Continuity, Interoperability, and Performance Specifications;<br>(3) Full interplay and consistency of technical and business requirements; and<br>(4) Demonstrates that technical resources are already on hand, or committed or read ly available.<br>0 - fails requirements:<br>Does not meet all the requirements to score 1. |

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| | 25 | EPP: provide a detailed description of the interface with registrars, including how the applicant will comply with Extensible Provisioning Protocol in the relevant RFCs, including but not limited to: RFCs 3735 and 5730-5734. Provide the EPP templates and schemas that will be used. Include resourcing plans (number and description of personnel roles allocated to this area). | Y | | 0-1 | Complete answer demonstrates:<br><br>(1) complete knowledge and understanding of this aspect of registry technical requirements;<br>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and<br>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section. | 1 - meets requirements: Response includes<br>(1) Adequate level of detail to substantially demonstrate capability and knowledge required to meet this element;<br>(2) EPP templates and schemas are comp iant with RFCs and provide all necessary functionalities for registrar interface;<br>(3) Full interplay and consistency of technical and business requirements; and<br>(4) Demonstrates that technical resources are already on hand, or committed or readily available.<br>0 - fails requirements:<br>Does not meet the requirements to score 1. |
| | 26 | Whois: describe how the applicant will comply with ICANN's Registry Publicly Available Registration Data (Whois) specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 6 to the Registry Agreement. Describe how the Applicant's Registry Publicly Available Registration Data (Whois) service will comply with RFC 3912. Describe resourcing plans (number and description of personnel roles allocated to this area). | Y | Note: A searchable Whois service as included in some current registry agreements (.ASIA, .MOBI, .POST) was previously included as a requirement in Specification 4 of the draft registry agreement, for community discussion. As an alternative to a uniform requirement, a searchable Whois service has been included provisiona ly here as an optional service, for which an applicant could receive a higher score. Additional community input is sought on this option, which may provide an additional tool to those involved in identifying and confronting malicious conduct in the namespace, providing that the methods and standards used to perform searches have a control structure designed to reduce the malicious use of the searching capability itself. As a point of reference, .NAME (http://www.icann.org/en/tlds/agreements/name/appendix-05-15aug07.htm) has had an "extensive WHOIS" searching function available since its inception. The searching function is based on a tiered access model that helps reduce the potential malicious use of the function. Comment is invited in particular on how this type of service could help address certain types of malicious conduct, and on alternate solutions whereby use of Whois data for registered names can be an effective tool in the context of mitigating malicious conduct in new gTLDs. If the provision is supported, suggestions on development of a uniform technical specification for a search function are also sought. | 0-2 | Complete answer demonstrates:<br><br>(1) complete knowledge and understanding of this aspect of registry technical requirements;<br>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and<br>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section. | 2 – exceeds requirements: Response includes<br>(1) highly developed and detailed plans to ensure compliance with protocols and required performance specifications;<br>(2) full interplay and consistency of technical and business requirements;<br>(3) evidence of technical resources already on hand or fully committed; and<br>(4) Searchable Whois: 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 includes appropriate provisions to ensure that access is limited to legitimate authorized users, and is in compliance with any app icable privacy laws or policies.<br>1 - meets requirements: Response includes<br>(1) adequate level of detail to substantially demonstrate capability and knowledge required to meet this element;<br>(2) Whois services compliant with RFCs and contractual requirements and provide all necessary functionalities for user interface;<br>(3) Whois capabilities commensurate with the overall business approach as described in the application; and<br>(4) demonstrates that technical resources required to carry through the plans for this element are already on hand or readily available.<br>0 - fails requirements:<br>Does not meet all the requirements to score 1. |

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| | 27 | Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must explain the various registration states as well as the criteria and procedures that are used to change state. It must describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply. Any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers - must also be clearly explained. Describe resourcing plans (number and description of personnel roles allocated to this area). | Y | | 0-1 | Complete answer demonstrates:<br><br>(1) complete knowledge and understanding of registration lifecycles and states; and<br>(2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD. | 1 - meets requirements: Response includes<br>(1) Evidence of highly developed registration life cycle with definition of various registration states and transition between the states;<br>(2) Consistency of registration lifecycle with any commitments to registrants and with technical and financial plans; and<br>(3) Demonstrates that technical resources required to carry through the plans for this element are already on hand or readily available.<br>0 - fails requirements:<br>Does not meet all the requirements to score 1. |
| | 28 | Abuse Prevention and Mitigation: Applicants should describe the proposed po icies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. Answers should include:<br>• safeguards the applicant will implement at the time of registration, policies to reduce opportunities for abusive behaviors using registered domain names in the TLD, and policies for handling complaints regarding abuse. Each registry operator will be required 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.<br>• a description of rapid takedown or suspension systems that will be implemented.<br>• proposed measures for management and removal of orphan glue records for names removed from the zone.<br>• resourcing plans (number and description of personnel roles allocated to this area). | Y | | 0-1 | Complete answer demonstrates:<br><br>(1) Comprehensive abuse policies and procedures that will effectively minimize potential for abuse in the TLD;<br>(2) Plans are adequately resourced in the planned costs detailed in the financial section;<br>(3) Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and<br>(4) When executed in accordance with the Registry Agreement, plans wi l result in compliance with contractual requirements. | 1 - meets requirements: Response includes<br>(1) Evidence of highly developed abuse policies and procedures;<br>(2) Plans are consistent with overall business approach and any commitments made to registrants; and<br>(3) Plans are sufficient to result in compliance with contractual requirements.<br>0 – fails requirements:<br>Does not meet all the requirements to score 1. |

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| | 29 | Rights Protection Mechanisms: Applicants should describe how their proposal will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others. Describe how the registry operator will implement safeguards against allowing unqualified registrations, and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer either a Sunrise period or a Trademark Claims service, and implement decisions rendered under the URS. Answers may also include additional measures such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants. Describe resourcing plans (number and description of personnel roles allocated to this area). | Y | | 0-2 | Complete answer describes mechanisms designed to:<br><br>(1) prevent abusive registrations, and<br>(2) identify and address the abusive use of registered names on an ongoing basis. | 2 - exceeds requirements:<br>(1) Provides a coherent, well-developed plan for rights protection;<br>(2) Mechanisms provide effective protection at least meeting minimum requirements, and may include other protections, beyond the start-up period;<br>1 - meets requirements:<br>(1) Proposed registry operator commits to and describes protection of rights mechanisms sufficient to comply with minimum requirements;<br>(2) These mechanisms provide protections at least at registry start-up, and may include other protections beyond the start-up period.<br>0 - fails requirements:<br>Does not meet all the requirements to score a 1. |
| **Demonstration of Technical & Operational Capability (Internal)** | 30 | Technical Overview of Proposed Registry: provide a technical overview of the proposed registry.<br><br>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.<br><br>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.<br><br>In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions. If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.<br><br>This high level summary should not repeat answers to questions below. | N | Questions 30-44 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. | 0-2 | Complete answer demonstrates:<br><br>(1) complete knowledge and understanding of technical aspects of registry requirements;<br>(2) an adequate level of resiliency for the registry's technical operations;<br>(3) consistency with currently deployed technical/operational solutions;<br>(4) consistency with the overall business approach and planned size of the registry; and<br>(5) adequate resourcing for technical plan in the planned costs detailed in the financial section.. | 2 - exceeds requirements: Response includes<br>(1) Highly developed technical plans;<br>(2) Provision of a high level of availability;<br>(3) Full interplay and consistency of technical and business requirements; and<br>(4) Evidence of technical resources already on hand or fully committed.<br>1 - meets requirements: Response includes<br>(1) Adequate level of development to substantially demonstrate capability and knowledge required to meet this element;<br>(2) Technical plans are commensurate with the overall business approach as described in the application;<br>(3) Demonstrates that technical resources required to carry through the plans for this element are readily available.<br>0 - fails requirements:<br>Does not meet all the requirements to score 1. |
| | 31 | 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 may include multiple diagrams or other components sufficient to describe:<br>• Network and associated systems necessary to support registry operations, including:<br>o Anticipated TCP/IP addressing scheme<br>o Hardware (CPU and RAM, Disk space, networking components, virtual machines)<br>o Operating system and versions<br>o Software and applications (with version information) necessary to support registry operations, management, and monitoring<br>• General overview of capacity planning, including bandwidth allocation plans<br>• List of providers / carriers<br>• Number and description of personnel roles allocated to this area | N | | 0-2 | Complete answer demonstrates:<br><br>(1) detailed and coherent network architecture;<br>(2) architecture providing resiliency for registry systems;<br>(3) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and<br>(4) a technical plan that is adequately resourced in the planned costs detailed in the financial section. | 2 - exceeds requirements: Response includes<br>(1) Evidence of highly developed and detailed network architecture;<br>(2) Evidence of a highly available, robust, and secure infrastructure;<br>(3) Network architecture shows full interplay and consistency of technical and business requirements; and<br>(4) Evidence of technical resources already on hand or fully committed.<br>1 - meets requirements: Response includes<br>(1) Plans for network architecture describe all necessary elements;<br>(2) Descriptions demonstrate adequate network architecture providing robustness and security of the registry;<br>(3) Bandwidth and SLA are commensurate with overall business approach as described in the application; and<br>(4) Demonstrates that technical resources required to carry through the plans for this element are readily available.<br>0 - fails requirements:<br>Does not meet all the requirements to score 1. |

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| | 32 | Database Capabi ities: provide details of database capabilities including:<br>• database software,<br>• storage capacity (both in raw terms [e.g., MB, GB] and in number of registrations / registration transactions),<br>• maximum transaction throughput (in total and by type of transaction),<br>• scalability,<br>• procedures for object creation, editing, and deletion,<br>• high availability,<br>• change notifications,<br>• registrar transfer procedures,<br>• grace period implementation,<br>• reporting capabilities, and<br>• number and description of personnel roles allocated to this area. | N | | 0-2 | Complete answer demonstrates:<br><br>(1) complete knowledge and understanding of database capabilities to meet the registry technical requirements;<br>(2) database capabilities consistent with the overall business approach and planned size of the registry; and<br>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section. | 2 - exceeds requirements: Response includes<br>(1) Highly developed and detailed description of database capabilities;<br>(2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices;<br>(3) Database capabilities showing full interplay and consistency of technical and business requirements; and<br>(4) Evidence of technical resources already on hand or fully committed.<br>1 - meets requirements: Response includes<br>(1) Plans for database capabilities describe all necessary elements;<br>(2) Descriptions demonstrate adequate database capabilities (not leading practices), with database throughput, scalability, and database operations with limited operational governance;<br>(3) Database capabilities are commensurate with overall business approach as described in the application; and<br>(4) Demonstrates that technical resources required to carry through the plans for this element are readily available.<br>0 - fails requirements:<br>Does not meet all the requirements to score 1. |
| | 33 | Geographic Diversity: provide a description of plans for geographic diversity of:<br><br>a. name servers, and<br>b. operations centers.<br><br>This should include the intended physical locations of systems, primary and back-up operations centers (including security attributes), and other infrastructure. This may include registry plans to use Anycast or other geo-diversity measures. This should include resourcing plans (number and description of personnel roles allocated to this area). | N | | 0-2 | Complete answer demonstrates:<br><br>(1) geographic diversity of nameservers and operations centers;<br>(2) proposed geo-diversity measures are consistent with the overall business approach and planned size of the registry; and<br>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section. | 2 - exceeds requirements: Response includes<br>(1) Evidence of highly developed measures for geo-diversity of operations, with locations and functions;<br>(2) A high level of availability, security, and bandwidth;<br>(3) Full interplay and consistency of technical and business requirements; and<br>(4) Evidence of technical resources already on hand or committed.<br>1 - meets requirements: Response includes<br>(1) Description of geodiversity plans includes all necessary elements;<br>(2) Plans provide adequate geo-diversity of name servers and operations;<br>(3) Geo-diversity plans are commensurate with overall business approach as described in the application; and<br>(4) Demonstrates that technical resources required to carry through the plans for this element are readily available.<br>0 - fails requirements:<br>Does not meet all the requirements to score 1. |
| | 34 | DNS Service Compliance: describe the configuration and operation of nameservers, including how the applicant will comply with RFCs. All name servers used for the new gTLD must be operated in comp iance 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.<br><br>Describe the DNS services to be provided, the resources used to implement the services, and demonstrate how the system will function. Suggested information includes:<br>Services. Query rates to be supported at initial operation, and reserve capacity of the system. How will these be scaled as a function of growth in the TLD? Similarly, describe how services will scale for name server update method and performance.<br>Resources. Describe complete server hardware and software. Describe how services are compliant with RFCs. Are these dedicated or shared with any other functions (capacity/performance) or DNS zones? Describe network bandwidth and addressing plans for servers. Describe resourcing plans (number and description of personnel roles allocated to this area).<br>Describe how the proposed infrastructure will be able to deliver the performance described in the Performance Specification (Specification 6) attached to the Registry Agreement.<br>Examples of evidence include:<br>• Server configuration standard (i.e., planned configuration)<br>• Network addressing and bandwidth for query load and update propagation | N | Note that the use of DNS wildcard resource records as described in RFC 4592 or any other method or technology for synthesizing DNS resource records or using redirection within the DNS by the registry is prohibited in the Registry Agreement.<br><br>Also note that name servers for the new gTLD must comply with IANA Technical requirements for authoritative name servers: http://www.iana.org/procedures/nameserver-requirements.html. | 0-2 | Complete answer demonstrates:<br><br>(1) adequate description of configurations of nameservers and compliance with respective DNS protocol-related RFCs;<br>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;<br>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and<br>(4) evidence of compliance with Specification 6 to the Registry Agreement. | 2 - exceeds requirements: Response includes:<br>(1) Highly developed and detailed plans to ensure compliance with DNS protocols and required performance specifications;<br>(2) A high level of availability;<br>(3) Full interplay and consistency of technical and business requirements; and<br>(4) Evidence of technical resources already on hand or committed.<br>1 - meets requirements: Response includes:<br>(1) Adequate level of detail to substantially demonstrate capability and knowledge required to meet this element;<br>(2) Plans are sufficient to result in compliance with DNS protocols and required performance specifications; and<br>(3) Plans are commensurate with overall business approach as described in the application; and<br>(4) Demonstrates that technical resources required to carry through the plans for this element are readily available.<br>0 - fails requirements:<br>Does not meet all the requirements to score 1. |

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| | 35 | Security Policy: provide the security policy and procedures for the proposed registry, including:<br>• 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;<br>• provisioning and other measures that mitigate risks posed by denial of service attacks;<br>• computer and network incident response policies, plans, and processes;<br>• plans to minimize the risk of unauthorized access to its systems or tampering with registry data;<br>• intrusion detection mechanisms,<br>• a threat analysis for the proposed registry, the defenses that will be deployed against those threats, and provision for periodic threat analysis updates;<br>• details for auditing capability on all network access;<br>• physical security approach;<br>• identification of department or group responsible for the registry's security organization;<br>• background checks conducted on security personnel;<br>• independent assessment report to demonstrate security capabilities (if any), and provision for periodic independent assessment reports to test security capabilities;<br>• resources to secure integrity of updates between registry systems and nameservers, and between nameservers, if any;<br>• number and description of personnel roles allocated to this area; and<br>• description of any augmented security levels or capabilities commensurate with the nature of the app ied for gTLD string.<br>Answers should specify the main security threats to the registry operation that have been identified. | N | 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. | 0-2 | Complete answer demonstrates:<br><br>(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;<br>(2) security capabilities are consistent with the overall business approach and planned size of the registry;<br>(3) a technical plan adequately resourced in the planned costs detailed in the financial section; and<br>(4) security measures are consistent with any commitments made to registrants regarding security levels; and<br>(5) security measures are appropriate for the applied-for gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to provide a commensurate level of security). | 2 - exceeds requirements: Response includes<br>(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;<br>(2) Independent assessment report is provided demonstrating effective security controls (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 HSTLD designation, this could also be included.);<br>(3) Full interplay of business and technical requirements; and<br>(4) Evidence of technical resources already on hand or fully committed.<br>1 - meets requirements: Response includes:<br>(1) Adequate level of detail to substantially demonstrate capability and knowledge to meet this element;<br>(2) Evidence of adequate security capabilities, enforcement of logical access control, threat analysis, incident response and auditing. Ad-hoc oversight and governance and leading practices being followed;<br>(3) Security capabilities aligned with the overall business approach as described in the application, and any commitments made to registrants;<br>(4) Demonstrates that technical resources required to carry through the plans for this element are readily available; and<br>(5) Proposed security measures are commensurate with the nature of the applied-for gTLD string.<br>0 - fails requirements:<br>Does not meet all the requirements to score 1. |
| | 36 | IPv6 Reachability: the registry supports access to Whois, Web-based Whois and any other Registration Data Publication Service as described in Specification 6 to the Registry Agreement. The registry also supports DNS servers over an IPv6 network for at least 2 nameservers. IANA currently has a minimum set of technical requirements for IPv4 name service. These include two nameservers separated by geography and by network topology, each serving a consistent set of data, and are reachable from multiple locations across the globe. Describe how the registry will meet this same criterion for IPv6, requiring IPv6 transport to their network. List all services that will be provided over IPv6, and describe the IPv6 connectivity and provider diversity that will be used. Describe resourcing plans (number and description of personnel roles allocated to this area). | N | IANA nameserver requirements are available at http://www.iana.org/procedures/nameserver-requirements.html. | 0-1 | Complete answer demonstrates:<br><br>(1) complete knowledge and understanding of this aspect of registry technical requirements;<br>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and<br>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section. | 1 - meets requirements: Response includes<br>(1) Adequate level of detail to substantially demonstrate capability and knowledge required to meet this element;<br>(2) Evidence of adequate implementation plan addressing requirements for IPv6 reachability, indicating IPv6 reachability allowing IPv6 transport in the network in compliance to IPv4 IANA specifications with at least 2 separated nameservers;<br>(3) IPv6 plans commensurate with overall business approach as described in the application; and<br>(4) demonstrates that technical resources required to carry through the plans for this element are already on hand or readily available.<br>0 - fails requirements:<br>Does not meet all the requirements to score 1. |
| | 37 | Data Backup Policies & Procedures: provide<br>• details of frequency and procedures for backup of data,<br>• hardware, and systems used for backup<br>• data format,<br>• data backup features,<br>• backup testing procedures,<br>• procedures for retrieval of data/rebuild of database,<br>• storage controls and procedures, and<br>• resourcing plans (number and description of personnel roles allocated to this area). | N | | 0-2 | Complete answer demonstrates:<br><br>(1) detailed backup and retrieval processes deployed;<br>(2) backup and retrieval process and frequency are consistent with the overall business approach and planned size of the registry; and<br>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section. | 2 - exceeds requirements: Response includes<br>(1) Evidence of highly developed data backup policies and procedures, with continuous robust monitoring, continuous enforcement of backup security, regular review of backups, regular recovery testing, and recovery analysis. Leading practices being followed;<br>(2) A high level of resiliency;<br>(3) Full interplay and consistency of technical and business requirements; and<br>(4) Evidence of technical resources already on hand or fully committed.<br>1 - meets requirements: Response includes<br>(1) Adequate backup procedures, recovery steps, and retrieval capabilities available;<br>(2) Minimal leading practices being followed;<br>(3) Backup procedures commensurate with the overall business approach as described in the application; and<br>(4) Demonstrates that technical resources required to carry through the plans for this element are readily available.<br>0 - fails requirements:<br>Does not meet all the requirements to score a 1. |

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| | 38 | Escrow: describe how the applicant will comply with the escrow arrangements documented in the Registry Data Escrow Specifications (Specification 2 of the Registry Agreement). Describe resourcing plans (including number and description of personnel roles allocated to this area). | N | | 0-2 | Complete answer demonstrates:<br><br>(1) compliance with Specification 2 of the Registry Agreement;<br>(2) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and<br>(3) the escrow arrangement is consistent with the overall business approach and size/scope of the registry. | 2 - exceeds requirements: Response includes<br>(1) Evidence of highly developed and detailed data escrow procedures;<br>(2) Procedures are in place to ensure compliance with Specification 2 of the Registry Agreement;<br>(3) Full interplay of technical and business requirements; and<br>(4) Evidence of technical resources already on hand or committed.<br>1 – meets requirements: Response includes<br>(1) Adequate level of detail to substantially demonstrate capab lity and knowledge required to meet this element;<br>(2 ) Data escrow plans are sufficient to result in compliance with the Data Escrow Specification;<br>(3) Escrow capabilities are commensurate with the overall business approach as descr bed in the application; and<br>(4) Demonstrates that technical resources required to carry through the plans for this element are readily available.<br>0 – fails requirements:<br>Does not meet all the requirements to score a 1. |
| | 39 | Registry Continuity: describe how the applicant will comply with registry continuity obligations as described in the Registry Interoperabi ity, Continuity and Performance Specification (Specification 6), attached 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. Descr be resourcing plans (number and description of personnel roles allocated to this area). | N | For reference, applicants should review the ICANN gTLD Registry Continuity Plan at http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf. | 0-2 | Complete answer demonstrates:<br><br>(1) detailed description showing plans for compliance with registry continuity obligations;<br>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and<br>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section. | 2 - exceeds requirements: Response includes<br>(1) Highly developed and detailed processes for maintaining registry continuity;<br>(2) A high level of availab lity;<br>(3) Full interplay and consistency of technical and business requirements, and<br>(4) Evidence of technical resources already on hand or committed.<br>1 - meets requirements: Response includes<br>(1) Adequate level of detail to substantially demonstrate capab lity and knowledge required to meet this element;<br>(2) Continuity plans are sufficient to result in compliance with requirements;<br>(3) Continuity plans are commensurate with overall business approach as described in the application; and<br>(4) Demonstrates that technical resources required to carry through the plans for this element are readily available.<br>0 - fails requirements: Does not meet all the requirements to score a 1. |
| | 40 | Registry Transition: provide a plan that could be followed in the event that it becomes necessary to transition the proposed gTLD to a new operator, including a transition process. | N | | 0-1 | Complete answer demonstrates:<br><br>(1) complete knowledge and understanding of this aspect of registry technical requirements;<br>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and<br>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section. | 1 - meets requirements: Response includes<br>(1) Adequate level of detail to substantially demonstrate capab lity and knowledge required to meet this element;<br>(2) Evidence of adequate registry transition plan with ad hoc monitoring during registry transition;<br>(3) Transition plan is commensurate with the overall business approach as described in the application; and<br>(4) Resources for registry transition are fully committed.<br>0 - fails requirements: Does not meet all the requirements to score a 1. |

| | # | Question | Included in public posting | Notes | Scoring Range | Criteria | Scoring |
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| | 41 | Failover Testing: provide a description of the failover testing plan, including mandatory annual testing of the plan. Examples may include a description of plans to test failover of data centers or operations to alternate sites, from a hot to a cold facility, or registry data escrow testing. Describe resourcing plans (number and description of personnel roles allocated to this area). | N | | 0-2 | Complete answer demonstrates:<br><br>(1) complete knowledge and understanding of this aspect of registry technical requirements;<br>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and<br>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section. | 2 - exceeds requirements: Response includes<br>(1) Evidence of highly developed and detailed failover testing plan, including periodic testing, robust monitoring, review, and analysis;<br>(2) A high level of resiliency;<br>(3) Full interplay and consistency of technical and business requirements;<br>(4) Evidence of technical resources for failover testing already on hand or fully committed.<br>1 - meets requirements: Response includes<br>(1) Adequate level of detail to substantially demonstrate capability and knowledge required to meet this element;<br>(2) Evidence of adequate failover testing plan with ad hoc review and analysis of failover testing results;<br>(3) Failover testing plan is commensurate with the overall business approach as described in the application; and<br>(4) Demonstrates that technical resources required to carry through the plans for this element are readily available.<br>0 - fails requirements: Does not meet all the requirements to score a 1. |
| | 42 | Monitoring and Fault Escalation Processes: provide a description of the proposed (or actual) arrangements for monitoring critical registry systems (including SRS, database systems, DNS servers, Whois service, network connectivity, routers and firewalls). This description should explain how these systems are monitored and the mechanisms that will be used for fault escalation and reporting, and should provide details of the proposed support arrangements for these registry systems.<br><br>Describe resourcing plans (number and description of personnel roles allocated to this area). | N | | 0-2 | Complete answer demonstrates:<br><br>(1) complete knowledge and understanding of this aspect of registry technical requirements;<br>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;<br>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and<br>(4) consistency with the commitments made to registrants regarding system maintenance. | 2 - exceeds requirements: Response includes<br>(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;<br>(2) A high level of availability;<br>(3) Full interplay and consistency of technical and business requirements; and<br>(4) Evidence of technical resources for monitoring and fault escalation already on hand or fully committed.<br>1 - meets requirements: Response includes<br>(1) Adequate level of detail to substantially demonstrate capability and knowledge required to meet this element;<br>(2) Evidence showing adequate fault tolerance/monitoring systems planned with ad hoc monitoring and limited periodic review being performed;<br>(3) Plans are commensurate with overall business approach; and<br>(4) Demonstrates that technical resources required to carry through the plans for this element are readily available.<br>0 - fails requirements: Does not meet all the requirements to score 1. |
| | 43 | DNSSEC: Describe 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). Describe resourcing plans (number and description of personnel roles allocated to this area). | N | | 0-1 | Complete answer demonstrates:<br><br>(1) complete knowledge and understanding of this aspect of registry technical requirements;<br>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and<br>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section. | 1 - meets requirements: Response includes<br>(1) Adequate level of detail to substantially demonstrate capability and knowledge required to meet the requirement to offer DNSSEC at time of launch, in comp iance with required RFCs, and to provide secure encryption key management (generation, exchange, and storage);<br>(2) Key management procedures for registrants in the proposed TLD;<br>(3) Technical plan is commensurate with the overall business approach as described in the application; and<br>(4) Demonstrates that technical resources required to carry through the plans for this element are already on hand or readily available.<br>0 - fails requirements:<br>Does not meet all the requirements to score 1. |

| | # | Question | Included in public posting | Notes | Scoring Range | Criteria | Scoring |
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| | 44 | OPTIONAL.<br>IDNs: state whether the proposed registry will support the registration of IDN labels in the TLD, and if so, how. For example, explain which characters will be supported, and provide the associated IDN Tables with variant characters identified, along with a corresponding registration policy. This includes public interfaces to the databases such as Whois and EPP. Describe resourcing plans (including number and description of personnel roles allocated to this area). Describe how the IDN implementation will comply with RFCs 5890, 5891, 5892, and 5893 as well as the ICANN IDN Guidelines at http://www.icann.org/en/topics/idn/implementation-guidelines.htm. | N | IDNs are an optional service at time of launch. Absence of IDN implementation or plans will not detract from an applicant's score. Applicants who respond to this question with plans for implementation of IDNs at time of launch will be scored according to the criteria indicated here. | 0-2 | IDNs are an optional service. Complete answer demonstrates:<br><br>(1) complete knowledge and understanding of this aspect of registry technical requirements;<br>(2) a technical plan that is adequately resourced in the planned costs detailed in the financial section;<br>(3) consistency with the commitments made to registrants in the purpose of the registration and registry services descriptions; and<br>(4) issues regarding use of scripts are settled and IDN tables are complete and publicly available. | 2 - exceeds requirements: Response includes<br>(1) Evidence of highly developed and detailed procedures for IDNs, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, periodic monitoring of IDN operations;<br>(2) Evidence of ability to resolve rendering and known IDN issues or IDN spoofing attacks;<br>(3) Full interplay and consistency of technical and business requirements; and<br>(4) Evidence of technical resources already on hand or committed.<br>1 - meets requirements: Response includes<br>(1) Adequate level of detail to substantially demonstrate capability and knowledge required to meet this element;<br>(2) Evidence of adequate implementation plans for IDNs in comp iance with IDN/IDNA guidelines;<br>(3) IDN plans are consistent with the overall business approach as described in the application;<br>(4) Demonstrates that technical resources required to carry through the plans for this element are read ly available.<br>0 - fails requirements: Does not meet all the requirements to score a 1. |
| **Demonstration of Financial Capability** | 45 | Financial Statements: provide audited or independently certified financial statements (balance sheet, income statement, statement of shareholders equity/partner capital, and cash flow statement) for the most recently completed fiscal year for the applicant, and unaudited financial statements for the most recently ended interim financial period for the applicant. For newly-formed applicants, provide the latest available financial statements.<br><br>Financial statements are used in the analysis of projections and costs. | N | The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry. | 0-1 | Audited or certified financial statements are prepared in accordance with IFRS (International Financial Reporting Standards) adopted by the IASB (International Accounting Standards Board) or nationally recognized accounting standards (e.g., GAAP). This wi l include a balance sheet and income statement reflecting the applicant's financial position and results of operations. In the event the applicant is an entity newly formed for the purpose of applying for a gTLD and without an operating history, the applicant must submit pro forma financial statements reflecting the entity's capita ization for the registry operator. Funding in this latter case must be verifiable as a true and accurate reflection and cannot include prospective funding. Where audited or independently certified statements are not available, applicant has provided adequate explanation as to practices in its jurisdiction and has provided, at a minimum, unaudited financial statements. | 1 - meets requirements: Complete audited or certified financial statements are provided, at the highest level available in the applicant's jurisdiction. Where such 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.<br>0 - fails requirements: Does not meet all the requirements to score 1. For example, entity with an operating history fails to provide audited or certified statements. |

| | # | Question | Included in public posting | Notes | Scoring Range | Criteria | Scoring |
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| | 46 | Projections Template: provide financial projections for costs and funding using Template 1 (attached) for the most likely scenario. The template is intended to provide commonality among TLD applications and thereby facilitate the evaluation process. Include explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding. Describe the basis / assumptions for the numbers provided, and the rationale for the basis / assumptions. This may include studies, reference data, or other steps taken to develop the responses and validate any assumptions made. | N | | 0-2 | 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).<br>Applicant's description of projections development is sufficient to show due diligence and basis for projections. | 2 - exceeds requirements:<br>(1) Model is described in sufficient detail to be determined as a conservative balance of cost, funding and risk, i.e., funding and costs are highly consistent and are representative of a robust on-going concern;<br>(2) Demonstrates resources and plan for sustainable operations; and<br>(3) Lead-up work done in developing projections is described fully and indicates a sound basis for numbers provided.<br>1 - meets requirements:<br>(1) Model is described in sufficient detail to be determined as a reasonable balance of cost, funding and risk, i.e., funding and costs are consistent and are representative of an on-going concern;<br>(2) Demonstrates resources and plan for sustainable operations;<br>(3) Financial assumptions about the registry services, funding and market are identified; and<br>(4) Financial estimates are defens ble.<br>0 - fails requirements: Does not meet all the requirements to score a 1. |
| | 47 | (a) Costs and capital expenditures: describe and explain the expected costs and capital expenditures of setting up and operating the proposed Registry. 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 the template to: 1) maintain registry operations, 2) provide registry services described above, and 3) satisfy the technical requirements described in the Demonstration of Technical & Operational Capabi ity section. Costs should include both fixed and variable costs. | N | Questions 47-48 correspond to Template 1, submitted in response to question 46. | 0-2 | Costs identified are consistent with the proposed registry services, adequately fund technical requirements, and are consistent with proposed mission/purpose of the registry. Costs projected are reasonable for a registry of size and scope described in the application. Costs identified include the financial instrument described in question 50 below. | 2 - exceeds requirements:<br>(1) Cost elements described are clearly and separately tied to each of the aspects of registry operations: registry services, technical requirements, and other aspects as described by the applicant;<br>(2) Estimated costs are conservative and consistent with an operation of the registry volume/scope/size as described by the app icant;<br>(3) Most estimates are derived from actual examples of previous registry operations or equivalent; and<br>(4) Conservative estimates are based on those experiences and describe a range of anticipated costs and use the high end of those estimates.<br>1 - meets requirements:<br>(1) Cost elements described reasonably cover all of the aspects of registry operations: registry services, technical requirements and other aspects as described by the app icant; and<br>(2) Estimated costs are consistent and defensible with an operation of the registry volume/scope/size as described by the app icant.<br>0 - fails requirements: Does not meet all the requirements to score a 1. |
| | | (b) Describe anticipated ranges in projected costs. Describe factors that affect those ranges. | N | | | | |
| | 48 | (a) Funding and Revenue: Funding can be derived from several sources (e.g., existing capital or proceeds/revenue from operation of the proposed registry). For each source (as applicable), describe: I) How existing funds will provide resources for both: a) start-up of operations, and b) ongoing operations, II) a description of the revenue model including projections for transaction volumes (if the applicant does not intend to rely on registration revenue in order to cover the costs of the registry's operation, it must clarify how the funding for the operation will be developed and maintained in a stable and sustainable manner), 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 for each type. | N | | 0-2 | Funding resources are clearly identified and adequately provide for registry cost projections. Sources of capital funding are clearly identified, held apart from other potential uses of those funds and available. The plan for transition of funding sources from available capital to revenue from operations (if applicable) is described. Outside sources of funding are documented and verified and must not include prospective sources of funds. 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. | 2 - exceeds requirements:<br>(1) Existing funds are quantified, segregated and earmarked for registry operations;<br>(2) If on-going operations are to be resourced from existing funds (rather than revenue from on-going operations) that funding is segregated and earmarked for this purpose only in an amount adequate for three years operation;<br>(3) Revenues are clearly tied to projected business volumes, market size and penetration;<br>(4) Assumptions made are conservative;<br>(5) Cash flow models are prepared which link funding and revenue assumptions to actual business activity; and<br>(6) Capital is adequately broken down into secured vs. pledged and is linked to cash flows.<br>1 - meets requirements:<br>(1) Existing funds are quantified, identified as available and budgeted;<br>(2) If on-going operations are to be 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;<br>(3) Revenues are directly related to projected business volumes, market size and penetration; and<br>(4) Assumptions made are reasonable and defensible.<br>0 - fails requirements: Does not meet all the requirements to score a 1. |

| | # | Question | Included in public posting | Notes | Scoring Range | Criteria | Scoring |
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| | | (b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges. | N | | | | |
| | 49 | (a) Contingency Planning: describe your contingency planning: identify any projected barriers to implementation of the business approach described in the application and how they affect cost, funding or timeline in your planning. Identify any particular regulation, law or policy that might impact the Registry Services offering.<br><br>For each contingency, include impact to projected revenue and costs for the 3-year period presented in Template 1. | N | | 0-2 | Contingencies and risks are identified and included in the cost 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 probab lity and resource impact of the contingencies identified. | 2 - exceeds requirements<br>(1) Model identifies thoroughly the key risks and the chances that each will occur: operational, business, legal, and other outside risks; and<br>(2) Action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.<br>1 - meets requirements:<br>(1) Model identifies the key risks with sufficient deta l to be understood by a business person with experience in this area;<br>(2) Response gives consideration to probability of contingencies identified; and<br>(3) If resources are not available to fund contingencies in the existing plan, funding sources and a plan for obtaining them are identified.<br>0 - fails requirements: Does not meet all the requirements to score a 1. |
| | | (b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, how will on-going technical requirements be met? Complete a financial projections template (Template 2) for the worst case scenario. | N | | | | |
| | | (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? | N | | | | |
| | 50 | (a) Continuity: Provide a cost estimate for funding critical registry operations on an annual basis. The critical functions of a registry which must be supported even if an applicant's business and/or funding fa ls are:<br><br>i) DNS resolution for registered domain names;<br>ii) Operation of the Shared Registration System;<br>iii) Provision of Whois service;<br>iv) Registry data escrow deposits; and<br>v) Maintenance of a properly signed zone in accordance with DNSSEC requirements.<br><br>List the estimated annual cost for each of these functions (specify currency used). | N | Registrant protection is critical and thus new gTLD applicants are requested to provide evidence indicating that critical functions will continue to be performed even if the registry fails. Registrant needs are best protected by a clear demonstration that the critical 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.<br><br>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 overa l business approach described elsewhere in the application. Second (Part b), methods of securing the funds required to perform those functions for at least three years are to be described by the applicant in accordance with the criteria below. Two types of instruments will fulfill this requirement. The applicant must identify which of the two methods is being described. The instrument is required to be in place at the time of the execution of the Registry Agreement. | 0-3 | Figures provided are based on an accurate estimate of costs. Documented evidence or detailed plan for ability to fund ongoing critical registry operations for registrants for a period of three to five years in the event of registry failure, default, or until a successor operator can be designated. Evidence of financial wherewithal to fund this requirement prior to delegation. This requirement must be met prior to or concurrent with the execution of the Registry Agreement. | 3 - exceeds requirements:<br>(1) Costs are commensurate with technical plans and overall business approach as described in the application; and<br>(2) Financial instrument is secured and in place to provide for on-going operations for at least three years in the event of failure.<br>1 - meets requirements:<br>(1) Costs are commensurate with technical plans and overall business approach as described in the application; and<br>(2) Funding is identified and instrument is described to provide for on-going operations of at least three years in the event of failure.<br>0 - fails requirements:<br>Does not meet all the requirements to score a 1. |

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| | | (b) Applicants must provide evidence as to how the funds required for performing these critical registry functions will be available and guaranteed to fund registry operations (for the protection of registrants in the new gTLD) for a minimum of three years. ICANN has identified two methods to fulfill this requirement:<br>i) Irrevocable standby letter of credit (LOC) issued by a reputable financial institution.<br>• 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.<br>• 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.<br>• 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.<br>• The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. This may include a bank or insurance company with a strong international reputation that has a strong credit rating issued by a third party rating agency such as Standard & Poor's (AA or above), Moody's (Aa or above), or A.M. Best (A-X or above). Documentation should indicate by whom the issuing institution is insured.<br>• 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.<br>• 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 wi l be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement.<br>• The LOC must contain at least the following required elements:<br>o Issuing bank and date of issue.<br>o Beneficiary: ICANN / 4676 Admiralty Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee.<br>o Applicant's complete name and address.<br>o LOC identifying number.<br>o Exact amount in USD.<br>o Expiry date.<br>o Address, procedure, and required forms whereby presentation for payment is to be made.<br>o Conditions:<br>• Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit.<br>• All payments must be marked with the issuing bank name and the bank's standby letter of credit number.<br>• LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument.<br>• The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590).<br><br>ii) A deposit into an irrevocable cash escrow account held by a reputable financial institution.<br>• The amount of the deposit must be equal to or greater than the amount required to fund registry operations for at least three years.<br>• 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.<br>• The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. This may include a bank or insurance company with a strong international | N | | | | |

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| | | reputation that has a strong credit rating issued by a third party rating agency such as Standard & Poor's (AA or above), Moody's (Aa or above), or A.M. Best (A-X or above). Documentation should indicate by whom the issuing institution is insured.<br>• 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.<br>• The escrow agreement must have a term of five years from the delegation of the TLD.<br>• The funds in the deposit escrow account are not considered to be an asset of ICANN.<br>• 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.<br>• 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 operations due to a triggering event or after five years, whichever is greater.<br>• 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.<br>• 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. | | | | | |

| | # | Question | Included in public posting | Notes | Scoring Range | Criteria | Scoring |
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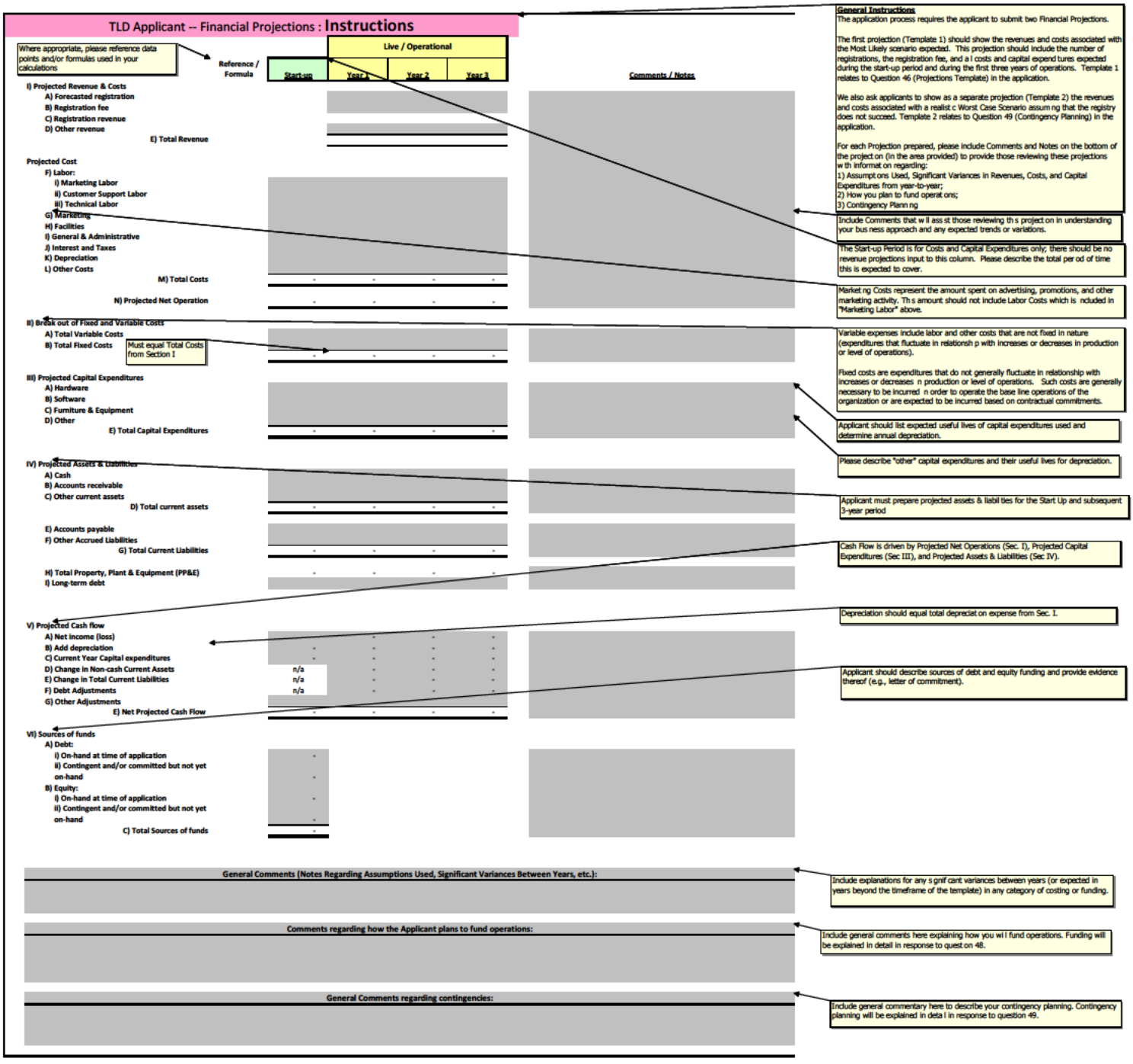
| | | reputation that has a strong credit rating issued by a third party rating agency such as Standard & Poor's (AA or above), Moody's (Aa or above), or A.M. Best (A-X or above). Documentation should indicate by whom the issuing institution is insured.<br>• The escrow agreement relating to the escrow 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.<br>• The escrow agreement must have a term of five years from the delegation of the TLD.<br>• The funds in the deposit escrow account are not considered to be an asset of ICANN.<br>• 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.<br>• 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 operations due to a triggering event or after five years, whichever is greater.<br>• 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.<br>• 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. | | | | | |


TLD Applicant -- Financial Projections : Instructions
Where appropriate, please reference data points and/or formulas used in your calculations
Reference / Formula
Live / Operational
Start-up
Year 1
Year 2
Year 3
Comments / Notes
I) Projected Revenue & Costs
A) Forecasted registration
B) Registration fee
C) Registration revenue
D) Other revenue
E) Total Revenue
Projected Cost
F) Labor:
i) Marketing Labor
ii) Customer Support Labor
iii) Technical Labor
G) Marketing
H) Facilities
I) General & Administrative
J) Interest and Taxes
K) Depreciation
L) Other Costs
M) Total Costs
N) Projected Net Operation
II) Break out of Fixed and Variable Costs
A) Total Variable Costs
B) Total Fixed Costs
Must equal Total Costs from Section I
III) Projected Capital Expenditures
A) Hardware
B) Software
C) Furniture & Equipment
D) Other
E) Total Capital Expenditures
IV) Projected Assets & Liabilities
A) Cash
B) Accounts receivable
C) Other current assets
D) Total current assets
E) Accounts payable
F) Other Accrued Liabilities
G) Total Current Liabilities
H) Total Property, Plant & Equipment (PP&E)
I) Long-term debt
V) Projected Cash flow
A) Net income (loss)
B) Add depreciation
C) Current Year Capital expenditures
D) Change in Non-cash Current Assets
E) Change in Total Current Liabilities
F) Debt Adjustments
G) Other Adjustments
E) Net Projected Cash Flow
n/a
n/a
n/a
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:
General Instructions
The application process requires the applicant to submit two Financial Projections.
The first projection (Template 1) should show the revenues and costs associated with the Most Likely scenario expected. This projection should include the number of registrations, the 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 applicants to show as a separate projection (Template 2) the revenues and costs associated with a realistic Worst Case Scenario assuming that the registry does not succeed. 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 Revenues, Costs, and Capital Expenditures from year-to-year;
2) How you plan to fund operations;
3) Contingency Planning
Include Comments that will assist those reviewing this projection in understanding your business approach and any expected trends or variations.
The Start-up Period is for Costs and Capital Expenditures only; there should be no revenue projections input to this column. Please describe the total period of time this is expected to cover.
Marketing Costs represent the amount spent on advertising, promotions, and other marketing activity. This amount should not include Labor Costs which is included in "Marketing Labor" above.
Variable expenses include labor and other costs that are not fixed in nature (expenditures that fluctuate in relationship with increases or decreases in production or level of operations).
Fixed costs 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.
Applicant should list expected useful lives of capital expenditures used and determine annual depreciation.
Please describe "other" capital expenditures and their useful lives for depreciation.
Applicant must prepare projected assets & liabilities for the Start Up and subsequent 3-year period
Cash Flow is driven by Projected Net Operations (Sec. I), Projected Capital Expenditures (Sec III), and Projected Assets & Liabilities (Sec IV).
Depreciation should equal total depreciation expense from Sec. I.
Applicant should describe sources of debt and equity funding and provide evidence thereof (e.g., letter of commitment).
Include explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding.
Include general comments here explaining how you will fund operations. Funding will be explained in detail in response to question 48.
Include general commentary here to describe your contingency planning. Contingency planning will be explained in detail in response to question 49.

## **Template 1** -- Financial Projections : **Most Likely**

| Sec. | Reference / Formula | Start-up Costs | Live / Operational Year 1 | Year 2 | Year 3 | Comments / Notes |
|---|---|---|---|---|---|---|
| **I) Projected Revenue & Cost** | | | | | | |
| A) Forecasted registration | | | | | | |
| B) Registration fee | | | | | | |
| C) Registration revenue | | | - | - | - | |
| D) Other revenue | | | | | | |
| E) Total Revenue | | | - | - | - | |
| **Projected Cost** | | | | | | |
| F) Labor: | | | | | | |
| i) Marketing Labor | | | | | | |
| ii) Customer Support Labor | | | | | | |
| iii) Technical Labor | | | | | | |
| G) Marketing | | | | | | |
| H) Facilities | | | | | | |
| I) General & Administrative | | | | | | |
| J) Interest and Taxes | | | | | | |
| K) Depreciation | | | | | | |
| L) Other Costs | | | | | | |
| M) Total Costs | | - | - | - | - | |
| N) Projected Net Operation (Revenues less Costs) | | - | - | - | - | |
| **II) Break out of Fixed and Variable Costs** | | | | | | |
| A) Total Variable Costs | | | | | | |
| B) Total Fixed Costs | | | | | | |
| | | - | - | - | - | |
| **III) Projected Capital Expenditures** | | | | | | |
| A) Hardware | | | | | | |
| B) Software | | | | | | |
| C) Furniture & Other Equipment | | | | | | |
| D) Other | | | | | | |
| E) Total Capital Expenditures | | - | - | - | - | |
| **IV) Projected Assets & Liabilities** | | | | | | |
| A) Cash | | | | | | |
| B) Accounts receivable | | | | | | |
| C) Other current assets | | | | | | |
| D) Total current assets | | - | - | - | - | |
| E) Accounts payable | | | | | | |
| F) Other Accrued Liabilities | | | | | | |
| G) Total Current Liabilities | | - | - | - | - | |
| H) Total Property, Plant & Equipment, net of depreciation | | | | | | |
| I) Total Long-term Debt | | | | | | |
| **V) Projected Cash flow** | | | | | | |
| A) Net income (loss) | | - | - | - | - | |
| B) Add depreciation | | - | - | - | - | |
| C) Capital expenditures | | - | - | - | - | |
| D) Change in Non-Cash Current Assets | | n/a | - | - | - | |
| E) Change in Total Current Liabilities | | n/a | - | - | - | |
| F) Debt Repayment | | n/a | - | - | - | |
| G) Other Adjustments | | | | | | |
| F) 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**

| Sec. | Reference / Formula | Start-up Costs | Live / Operational Year 1 | Year 2 | Year 3 | Comments / Notes |
|---|---|---|---|---|---|---|
| **I) Projected Revenue & Cost** | | | | | | |
| A) Forecasted registration | | | | | | |
| B) Registration fee | | | | | | |
| C) Registration revenue | | | - | - | - | |
| D) Other revenue | | | | | | |
| E) Total Revenue | | | - | - | - | |
| Projected Cost | | | | | | |
| F) Labor: | | | | | | |
| i) Marketing Labor | | | | | | |
| ii) Customer Support Labor | | | | | | |
| iii) Technical Labor | | | | | | |
| G) Marketing | | | | | | |
| H) Facilities | | | | | | |
| I) General & Administrative | | | | | | |
| J) Interest and Taxes | | | | | | |
| K) Depreciation | | | | | | |
| L) Other Costs | | | | | | |
| M) Total Costs | | - | - | - | - | |
| N) Projected Net Operation (Revenues less Costs) | | - | - | - | - | |
| **II) Break out of Fixed and Variable Costs** | | | | | | |
| A) Total Variable Costs | | | | | | |
| B) Total Fixed Costs | | - | - | - | - | |
| **III) Projected Capital Expenditures** | | | | | | |
| A) Hardware | | | | | | |
| B) Software | | | | | | |
| C) Furniture & Other Equipment | | | | | | |
| D) Other | | | | | | |
| E) Total Capital Expenditures | | - | - | - | - | |
| **IV) Projected Assets & Liabilities** | | | | | | |
| A) Cash | | | | | | |
| B) Accounts receivable | | | | | | |
| C) Other current assets | | | | | | |
| D) Total current assets | | - | - | - | - | |
| E) Accounts payable | | | | | | |
| F) Other Accrued Liabilities | | | | | | |
| G) Total Current Liabilities | | - | - | - | - | |
| H) Total Property, Plant & Equipment, net of depreciation | | | | | | |
| I) Total Long-term Debt | | | | | | |
| **V) Projected Cash flow** | | | | | | |
| A) Net income (loss) | | - | - | - | - | |
| B) Add depreciation | | - | - | - | - | |
| C) Capital expenditures | | - | - | - | - | |
| D) Change in Non-Cash Current Assets | | n/a | - | - | - | |
| E) Change in Total Current Liabilities | | n/a | - | - | - | |
| F) Debt Repayment | | n/a | - | - | - | |
| G) Other Adjustments | | | | | | |
| F) 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:**

## TLD Applicant -- Financial Projections : **Sample**

| Sec. | Reference / Formula | Start-up Costs | Live / Operational Year 1 | Year 2 | Year 3 | Comments / Notes |
|---|---|---|---|---|---|---|
| **I) Projected Revenue & Cost** | | | | | | |
| A) Forecasted registration | | - | 62,000 | 80,600 | 104,780 | Registration was forecasted based on recent market surveys. |
| B) Registration fee | | $ - | $ 5.00 | $ 6.00 | $ 7.00 | We do not anticipate significant increases in Registration Fees subsequent to year 3. |
| C) Registration revenue | A * B | - | 310,000 | 483,600 | 733,460 | |
| D) Other revenue | | - | 35,000 | 48,000 | 62,000 | Other revenues represent advertising revenue from display ads on our website. |
| E) Total Revenue | | - | 345,000 | 531,600 | 795,460 | |
| **Projected Cost** | | | | | | |
| F) Labor: | | | | | | |
| i) Marketing Labor | | 25,000 | 66,000 | 72,000 | 81,000 | Costs are further detailed and explained in response to question 47. |
| ii) Customer Support Labor | | 5,000 | 68,000 | 71,000 | 74,000 | |
| iii) Technical Labor | | 32,000 | 45,000 | 47,000 | 49,000 | |
| G) Marketing | | 40,000 | 44,000 | 26,400 | 31,680 | |
| H) Facilities | | 7,000 | 10,000 | 12,000 | 14,400 | |
| I) General & Administrative | | 14,000 | 112,000 | 122,500 | 136,000 | |
| J) Interest and Taxes | | 27,500 | 29,000 | 29,800 | 30,760 | |
| K) Depreciation | | 51,933 | 69,333 | 85,466 | 59,733 | Depreciation reflects total projected capital expenditures ($173k) divided by useful lives<br>Start up $130k/3 + $43k/5 $51,933<br>Subsequent depreciation amounts reflect previous year's depreciation expense plus depreciation for additional capital expenditures over appropriate useful lives. |
| L) Other Costs | | 12,200 | 18,000 | 21,600 | 25,920 | |
| M) Total Costs | | 214,633 | 461,333 | 487,766 | 502,493 | |
| N) Projected Net Operation (Revenues less Costs) | E - M | (214,633) | (116,333) | 43,834 | 292,967 | |
| **II) Break out of Fixed and Variable Costs** | | | | | | |
| A) Total Variable Costs | | 92,000 | 195,250 | 198,930 | 217,416 | Variable Costs<br>-Start Up equals all labor plus 75% of marketing.<br>-Years 1 through 3 equal 75% of all labor plus 50% of Marketing, and 30% of G&A and Other costs |
| B) Total Fixed Costs | | 122,633 | 266,083 | 288,836 | 285,077 | Fixed Costs equals Total Costs less Variable Costs |
| | Sec. I) M | 214,633 | 461,333 | 487,766 | 502,493 | |
| **III) Projected Capital Expenditures** | | | | | | |
| A) Hardware | | 98,000 | 21,000 | 16,000 | 58,000 | -Hardware & Software have a useful life of 3 years |
| B) Software | | 32,000 | 18,000 | 24,000 | 11,000 | |
| C) Furniture & Other Equipment | | 43,000 | 22,000 | 14,000 | 16,000 | -Furniture & other equipment have a useful life of 5 years |
| D) Other | | | | | | |
| E) Total Capital Expenditures | | 173,000 | 61,000 | 54,000 | 85,000 | |
| **IV) Projected Assets & Liabilities** | | | | | | |
| A) Cash | | 705,300 | 556,300 | 578,600 | 784,600 | |
| B) Accounts receivable | | | 70,000 | 106,000 | 160,000 | |
| C) Other current assets | | | 40,000 | 60,000 | 80,000 | |
| D) Total current assets | | 705,300 | 666,300 | 744,600 | 1,024,600 | |
| E) Accounts payable | | 41,000 | 110,000 | 113,000 | 125,300 | |
| F) Other Accrued Liabilities | | | | | | |
| G) Total Current Liabilities | | 41,000 | 110,000 | 113,000 | 125,300 | |
| H) Total Property, Plant & Equipment (PP&E) | Sec III) E: cumulative Prior Years + Cur Yr | 173,000 | 234,000 | 288,000 | 373,000 | |
| I) Total Long-term Debt | | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest will be paid as incurred and is reflected in Sec I) J. |
| **V) Projected Cash flow** | | | | | | |
| A) Net income (loss) | Sec. I) N | (214,633) | (116,333) | 43,834 | 292,967 | |
| B) Add depreciation | Sec. I) K | 51,933 | 69,333 | 85,466 | 59,733 | |
| C) Capital expenditures | Sec. III) E | (173,000) | (61,000) | (54,000) | (85,000) | |
| D) Change in Non Cash Current Assets | Sec. IV) (B+C): Prior Yr - Cur Yr | n/a | (110,000) | (56,000) | (74,000) | |
| E) Change in Total Current Liabilities | Sec. IV) G: Cur Yr - Prior Yr | 41,000 | 69,000 | 3,000 | 12,300 | The $41k in Start Up Costs represents an offset of the Accounts Payable reflected in the Projected balance sheet. Subsequent years are based on changes in Current Liabilities where Prior Year is subtracted from the Current year |
| F) Debt Adjustments | Sec IV) I: Cur Yr - Prior Yr | n/a | - | - | - | |
| G) Other Adjustments | | | | | | |
| F) Projected Net Cash flow | | **(294,700)** | **(149,000)** | **22,300** | **206,000** | |
| **VI) Sources of funds** | | | | | | |
| A) Debt: | | | | | | |
| i) On-hand at time of application | | 1,000,000 | | | | See below for comments on funding. Revenues are further detailed and explained in response to question 48. |
| ii) Contingent and/or committed but not yet on-hand | | | | | | |
| B) Equity: | | | | | | |
| i) On-hand at time of application | | | | | | |
| ii) Contingent and/or committed but not yet on-hand | | - | | | | |
| C) Total Sources of funds | | 1,000,000 | | | | |

**General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):**

We expect the number of registrations to grow at approximately 30% per year with an increase in the registration fee of $1 per year for the first three years. 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. 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. 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.

**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.

# Applicant Guidebook

## Proposed Final Version

## Module 3

Please note that this is a "proposed" version of the Applicant Guidebook that has not been approved as final by the Board of Directors. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

**12 November 2010**

# Module 3

## Dispute Resolution Procedures

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 an objection may be filed against any application, and of the procedures and options available in the event of such an objection.

### 3.1 Purpose and Overview of the 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.

#### 3.1.1 Grounds for Objection

An 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]***[1] – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

***Community Objection*** – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm.

### 3.1.2 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 |
| 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 |

#### 3.1.2.1 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

[1] "[Limited Public Interest Objection]" here replaces what was termed a "Morality and Public Order Objection" in previous versions of the Guidebook. This term is subject to community consultation and revision and is used in brackets throughout. The details of this objection are described to provide applicants with an understanding of this objection basis, and may be revised based on further community consultation before the Guidebook is approved by the Board and the New gTLD Program is launched.

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.

### *3.1.2.2 Legal Rights Objection*

A rightsholder has standing to file a legal rights objection. The source and documentation of the existing legal rights the objector is claiming (which may include either registered or unregistered trademarks) are infringed by the applied-for gTLD must be included in the filing.

An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name[2]:

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.

### *3.1.2.3 [Limited Public Interest Objection]*

[2] See also http://www.iana.org/domains/int/policy/.

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 3.4.3).

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 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.[3]

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

[3] 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).

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).

#### *3.1.2.4 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:

***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 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.

### 3.1.3 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 in principle to administer disputes brought pursuant to string confusion objections.
- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed in principle to administer disputes brought pursuant to legal rights objections.
- The International Center of Expertise of the International Chamber of Commerce has agreed in principle to administer disputes brought pursuant to [Limited Public Interest] and Community Objections.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest[4] 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.

### 3.1.4 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.

[4] *See* http://www.icann.org/en/announcements/announcement-21dec07.htm.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

### *3.1.5 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.

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 comments from the appropriate time period, running through the Initial Evaluation period until the close of the deadline for the IO to submit an objection.

***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.

## 3.2 Filing Procedures

The information included in this section provides a summary of procedures for filing:

- Objections; and
- Responses to objections.

For a comprehensive statement of filing requirements applicable generally, refer to the New gTLD Dispute Resolution Procedure ("Procedure") included as an attachment to this module. In the event of any discrepancy between the information presented in this module and the Procedure, the Procedure shall prevail.

Note that the rules and procedures of each DRSP specific to each objection ground must also be followed.

- For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures

for ICANN's New gTLD Program. These rules are available in draft form and have been posted along with this module.

- For a Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution. These rules are available in draft form and have been posted along with this module.

- For a [Limited Public Interest Objection], the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.[5]

- For a Community Objection, Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.[6]

### *3.2.1 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.

[5] *See* http://www.iccwbo.org/court/expertise/id4379/index.html

[6] *Ibid.*

- 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.

ICANN and/or the DRSPs will publish, and regularly update, a list on its website identifying all objections as they are filed and ICANN is notified.

### 3.2.2 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.

### 3.2.3 Response Filing Procedures

Upon notification that ICANN has published the list of all objections filed (refer to subsection 3.2.1), 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.

### 3.2.4 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.

## 3.3 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).

### 3.3.1 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.

### *3.3.2 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.

### *3.3.3 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.

### *3.3.4 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.

### *3.3.5 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.

### *3.3.6 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.

### *3.3.7 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) business 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) 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.

## 3.4 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.

### 3.4.1 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.

### 3.4.2 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.

### *3.4.3 [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;
- 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 their 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.

### *3.4.4 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
- There is a likelihood of material detriment to the community named by the objector, and the broader Internet community, if the gTLD application is approved.

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 its associated community and the broader Internet community. 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:

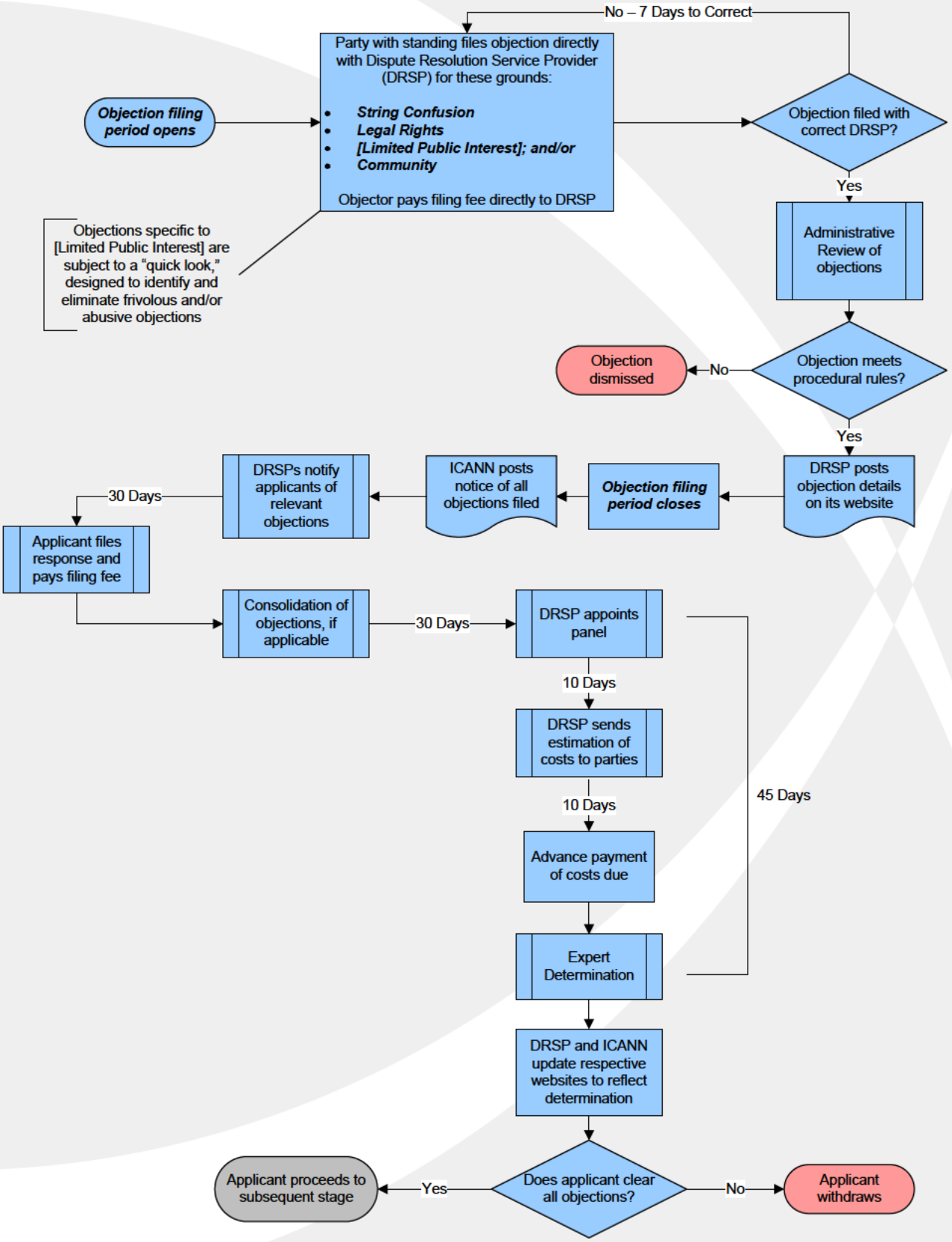
- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users 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, and the broader Internet community 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 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.[7]

[7] After careful consideration of community feedback on this section, the complete defense has been eliminated. However, in order to prevail in a community objection, the objector must prove an elevated level of likely detriment.

# DRAFT - New gTLD Program – Objection and Dispute Resolution




DRAFT – For Discussion Purposes – Nov 10

# *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 [●]. 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 international principles of 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.

(iv) For a Community Objection, Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.

(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 are the following:

(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 and the DRSP with whom the Objection was wrongly filed, 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 its 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 its receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

## Article 8. Content of the Objection

(a) The Objection shall contain, *inter alia*, the following information:

(i) The names and contact information (address, telephone number, email address, etc.) of the Objector;

(ii) A statement of the Objector's basis for standing; and

(iii) A description of the basis for the Objection, including:

(aa) A statement of the ground upon which the Objection is being filed, as stated in Article 2(e) of this Procedure;

(bb) An explanation of the validity of the Objection and why the objection should be upheld.

(b) The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.

(c) At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

## Article 9. Administrative Review of the Objection

(a) The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

(b) If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.

(c) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.

(d) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.

(e) Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (ii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

## Article 10. ICANN's Dispute Announcement

(a) Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.

(b) ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

## Article 11. Response to the Objection

(a) Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).

(b) The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the transmission of the notice by the DRSP pursuant to Article 11(a).

(c) The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.

(d) The Response shall contain, inter alia, the following information:

(i) The names and contact information (address, telephone number, email address, etc.) of the Applicant; and

(ii) A point-by-point response to the statements made in the Objection.

(e) The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.

(f) At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be deemed to be in default, any Response disregarded and the Objection shall be deemed successful.

(g) If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.

(g) If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

## Article 12. Consolidation of Objections

(a) The DRSP is encouraged, whenever possible and practicable, and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.

(b) If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, which decision must be made within 14 days of the notice given by the DRSP pursuant to Article 11(a), the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.

(c) In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. The DRSP's determination on consolidation shall be final and not subject to appeal.

(d) Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

## Article 13. The Panel

(a) The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.

(b) Number and specific qualifications of Expert(s):

(i) There shall be one Expert in proceedings involving a String Confusion Objection.

(ii) There shall be one Expert or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.

(iii) There shall be three Experts recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a [Limited Public Interest Objection].

(iv) There shall be one Expert in proceedings involving a Community Objection.

(c) All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.

(d) The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.

(e) Unless required by a court of law or authorized in writing by the parties, an Expert shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

## Article 14. Costs

(a) Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").

(b) Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Parties shall be credited against the amounts due for this advance payment of Costs.

(c) The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.

(d) Failure to make an advance payment of Costs:

(i) If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.

(ii) If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.

(e) Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

## Article 15. Representation and Assistance

(a) The parties may be represented or assisted by persons of their choice.

(b) Each party or party representative shall communicate the name, contact information and function of such persons to ICANN, 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) The Panel shall apply the standards that have been defined by ICANN for each category of Objection, and identified in Article 2(e).

(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.

# Applicant Guidebook

## Proposed Final Version

## Module 4

Please note that this is a "proposed" version of the Applicant Guidebook that has not been approved as final by the Board of Directors. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

**12 November 2010**

# 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 1 or 2 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.

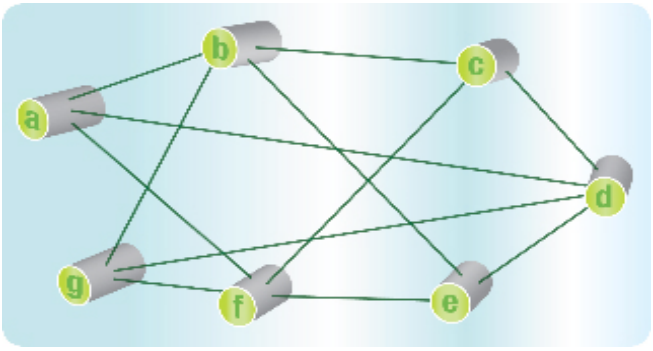



Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

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.

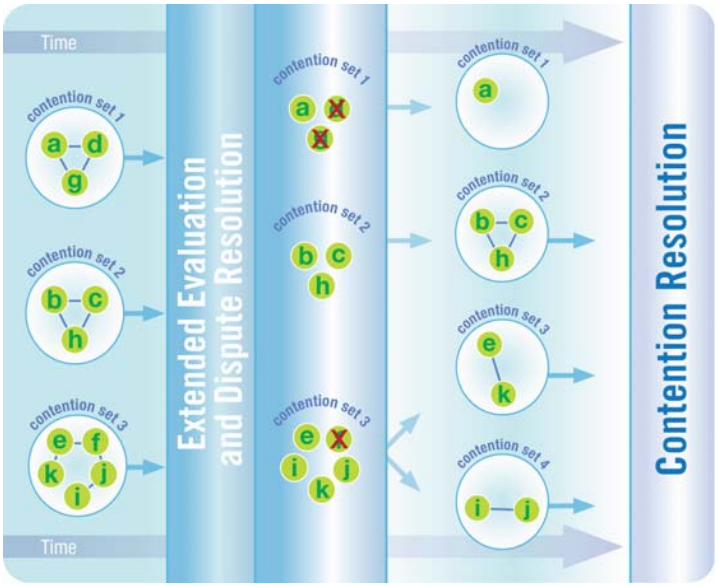



Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

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.

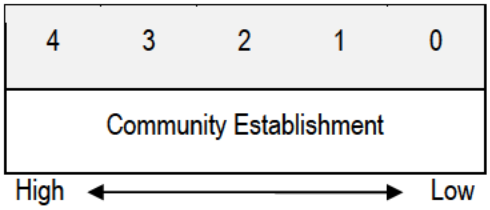
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any "double-counting" - any negative aspect found in assessing an application for one criterion

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***

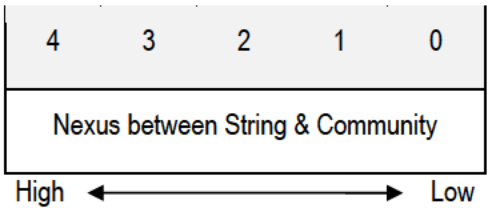
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international 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 | String identifies the community, but does not qualify for a | String nexus does not fulfill the requirements for |

| 3 | 2 | 0 |
|---|---|---|
| is a well known short-form or abbreviation of the community name. | score of 3. | a score of 2. |

B. Uniqueness (1)

| 1 | 0 |
|---|---|
| String has no other significant meaning beyond identifying the community described in the application. | String does not fulfill the requirement for a score of 1. |

This section evaluates the relevance of the string to the specific community that it claims to represent.

***Criterion 2 Definitions***

- "Name" of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.
- "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.

***Criterion 2 Guidelines***

With respect to "Nexus," for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.

With respect to "Nexus," for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for

example, a globally well-known but local tennis club applying for ".TENNIS") then it would not qualify for a 2.

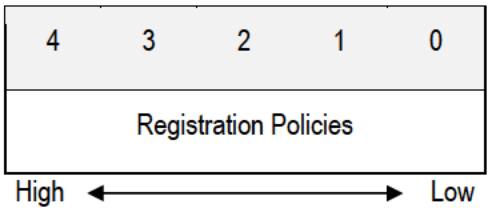
With respect to "Uniqueness," "significant meaning" relates to the public in general, with consideration of the community language context added.

"Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores 2 or 3 for "Nexus", in order to be eligible for a score of 1 for "Uniqueness."

It should be noted that "Uniqueness" is only about the *meaning* of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be "unique" in the sense of "alone."

**Criterion #3: Registration Policies (0-4 points)**

A maximum of 4 points is possible on the Registration Policies criterion:




As measured by:

A. Eligibility (1)

| 1 | 0 |
|---|---|
| Eligibility restricted to community members. | Largely unrestricted approach to eligibility. |

B. Name selection (1)

| 1 | 0 |
|---|---|
| Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD. | Policies do not fulfill the requirements for a score of 1. |

C. Content and use (1)

| 1 | 0 |
|---|---|
| Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD. | Policies do not fulfill the requirements for a score of 1. |

D. Enforcement (1)

| 1 | 0 |
|---|---|
| Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms. | Policies do not fulfill the requirements for a score of 1. |

This section evaluates the applicant's registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective

registrants, i.e. those desiring to register second-level domain names under the registry.

***Criterion 3 Definitions***

- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.
- "Enforcement" means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.

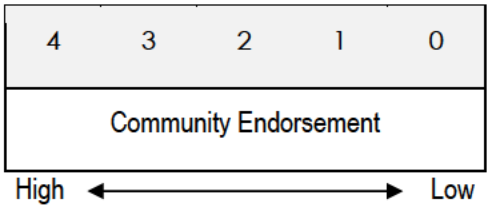
***Criterion 3 Guidelines***

With respect to "Eligibility," the limitation to community "members" can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant's physical address is within the boundaries of the location.

With respect to "Name selection," "Content and use," and "Enforcement," scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and

demonstrate continuing accountability to the community named in the application.

**Criterion #4: Community Endorsement (0-4 points)**




As measured by:

A. Support (2)

| 2 | 1 | 0 |
|---|---|---|
| Applicant is, or has documented support from, the recognized community institution(s)/ member organization(s) or has otherwise documented authority to represent the community. | Documented support from at least one group with relevance, but insufficient support for a score of 2. | Insufficient proof of support for a score of 1. |

B. Opposition (2)

| 2 | 1 | 0 |
|---|---|---|
| No opposition of relevance. | Relevant opposition from one group of non-negligible size. | Relevant opposition from two or more groups of non-negligible size. |

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed as stated in the application, with due regard for the communities implicitly addressed by the string.

***Criterion 4 Definitions***

- "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community.
- "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

***Criterion 4 Guidelines***

With respect to "Support," it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.

Also with respect to "Support," the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.

The applicant will score a 1 for "Support" if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on "Support" if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.

When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead

to any particular score for "Opposition." To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, or filed for the purpose of obstruction will not be considered relevant.

## 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. 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. Proceeds from auctions will be reserved and earmarked until the uses of the proceeds are determined. 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. Therefore, consideration of a last resort contention mechanism should include the uses of funds. Funds must be earmarked separately and used in a manner that supports directly ICANN's Mission and Core Values and also maintains its not for profit status.

Possible uses 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 in the auction rules. The auctions will generally be conducted to conclude quickly, ideally in a single day.

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Further detail on the potential uses of funds will be provided with updated Applicant Guidebook materials.

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.

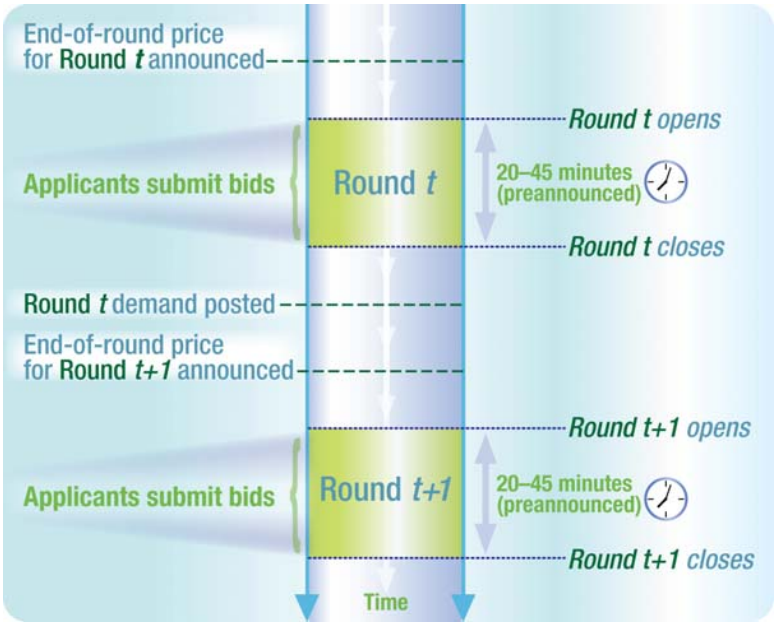



Figure 4-3 – Sequence of events during an ascending-clock auction.

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.

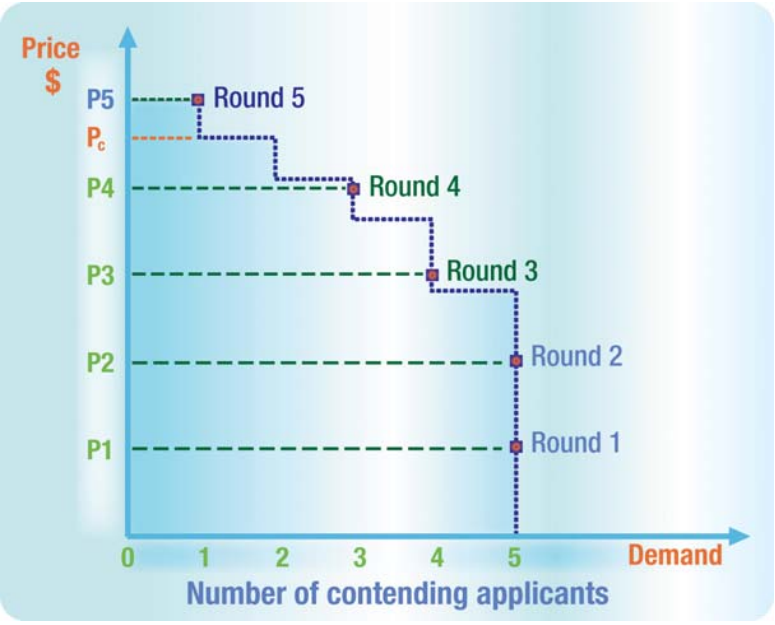


Figure 4-4 – Example of an auction for five mutually-contending applications.

- 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 nondefaulting 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.

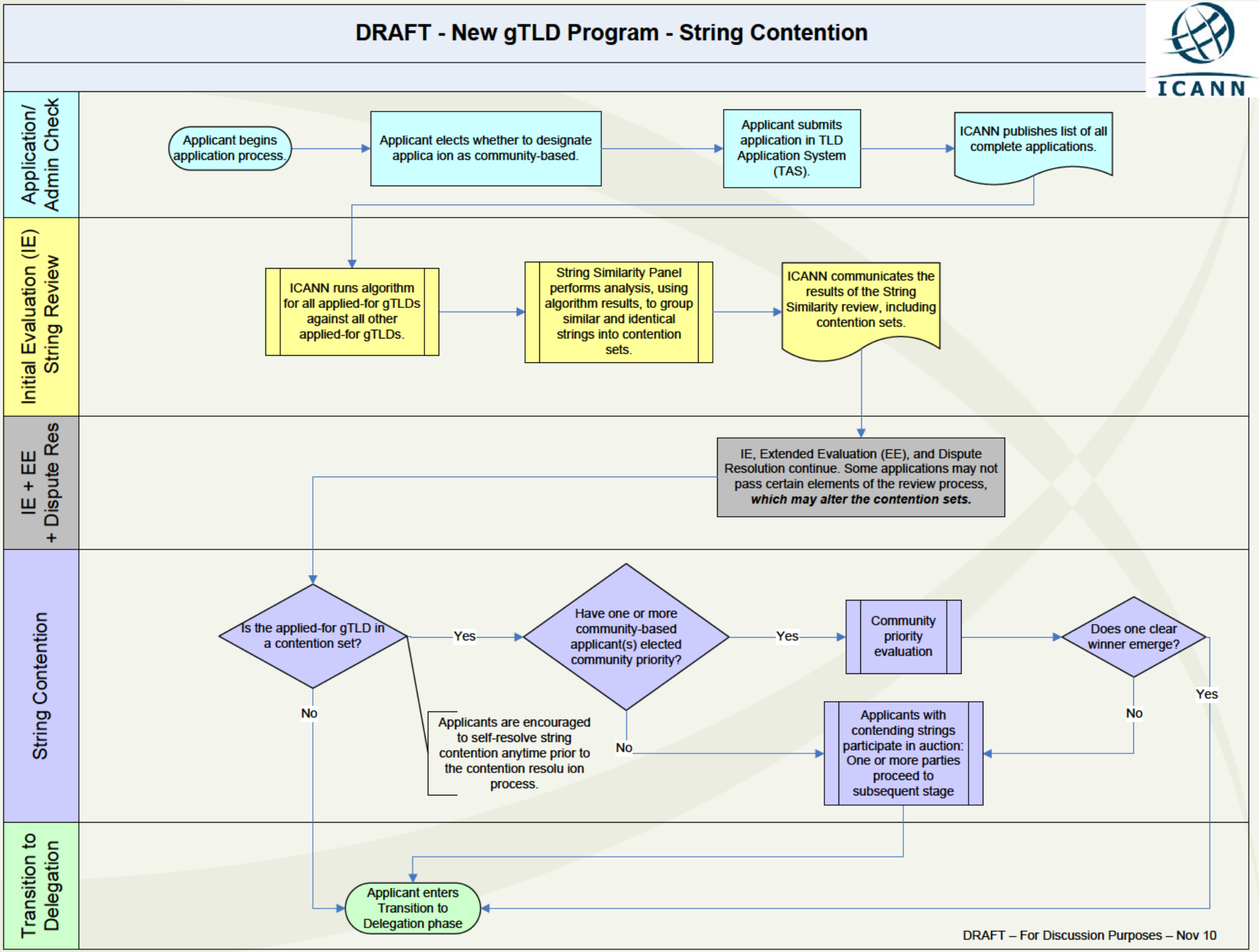
The penalty for defaulting on a winning bid will equal 10% of the defaulting bid.[2] Default penalties will be charged against any defaulting applicant's bidding deposit before the associated bidding deposit is returned.

## 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 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.

[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.


DRAFT - New gTLD Program - String Contention
ICANN
Application/ Admin Check
Applicant begins application process.
Applicant elects whether to designate applica ion as community-based.
Applicant submits application in TLD Application System (TAS).
ICANN publishes list of all complete applications.
Initial Evaluation (IE) String Review
ICANN runs algorithm for all applied-for gTLDs against all other applied-for gTLDs.
String Similarity Panel performs analysis, using algorithm results, to group similar and identical strings into contention sets.
ICANN communicates the results of the String Similarity review, including contention sets.
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
Is the applied-for gTLD in a contention set?
Yes
No
Have one or more community-based applicant(s) elected community priority?
Yes
No
Community priority evaluation
Does one clear winner emerge?
Yes
No
Applicants are encouraged to self-resolve string contention anytime prior to the contention resolu ion process.
Applicants with contending strings participate in auction: One or more parties proceed to subsequent stage
Transition to Delegation
Applicant enters Transition to Delegation phase
DRAFT – For Discussion Purposes – Nov 10

# Applicant Guidebook

## Proposed Final Version

## Module 5

Please note that this is a "proposed" version of the Applicant Guidebook that has not been approved as final by the Board of Directors. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

**12 November 2010**

# 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 financial 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 under exceptional circumstances to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community, for example, as a result 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 6 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 and the registrants' trust anchor material, is also reviewed as part of this step.

***IDN support --*** ICANN will verify the complete IDN table(s) used in the registry system. The table(s) must comply with the guidelines in http://iana.org/procedures/idn-repository.html.

Requirements related to IDN for Whois are being developed. After these requirements are developed, prospective registries will be expected to comply with published IDN-related Whois requirements as part of pre-delegation testing.

***Escrow deposit --*** The applicant-provided samples of data deposit that include both a full and an incremental deposit showing correct type and formatting of content will be reviewed. Special attention will be given to the agreement with the escrow provider to ensure that escrowed data can be released within 24 hours should it be necessary. ICANN may, at its option, ask an independent third party to demonstrate the reconstitutability of the registry from escrowed data. ICANN may elect to test the data release process with the escrow agent.

## 5.3 Delegation Process

Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database.

This will include provision of additional information and completion of additional technical steps required for delegation. Information about the delegation process is available at http://iana.org/domains/root/.

## 5.4 Ongoing Operations

An applicant that is successfully delegated a gTLD will become a "Registry Operator." In being delegated the role of operating part of the Internet's domain name system, the applicant will be assuming a number of significant responsibilities. ICANN will hold all new gTLD operators accountable for the performance of their obligations under the registry agreement, and it is important that all applicants understand these responsibilities.

### 5.4.1 What is Expected of a Registry Operator

The registry agreement defines the obligations of gTLD registry operators. A breach of the registry operator's obligations may result in ICANN compliance actions up to and including termination of the registry agreement. Prospective applicants are encouraged to review the following brief description of some of these responsibilities.

Note that this is a non-exhaustive list provided to potential applicants as an introduction to the responsibilities of a registry operator. For the complete and authoritative text, please refer to the registry agreement.

A registry operator is obligated to:

***Operate the TLD in a stable and secure manner***. The registry operator is responsible for the entire technical operation of the TLD. As noted in RFC 1591[1]:

"The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names,

[1] See http://www.rfc-editor.org/rfc/rfc1591.txt

delegating subdomains and operating nameservers must be done with technical competence. This includes keeping the central IR[2] (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience."

The registry operator is required to comply with relevant technical standards in the form of RFCs and other guidelines. Additionally, the registry operator must meet performance specifications in areas such as system downtime and system response times (see Specification 6 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

[2] IR is a historical reference to "Internet Registry," a function now performed by ICANN.
[3] http://gnso.icann.org
[4] http://www.icann.org/en/general/bylaws.htm#AnnexA

notice of the requirement to implement the new policy and the effective date.

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, either a Sunrise period or a Trademark Claims service during the start-up phases for registration in the TLD. 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. 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, once the TLD has passed a threshold size, 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. (See 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 and the registrants' trust anchor material. (See Specification 6 of the registry agreement.)

### *5.4.2 What is Expected of ICANN*

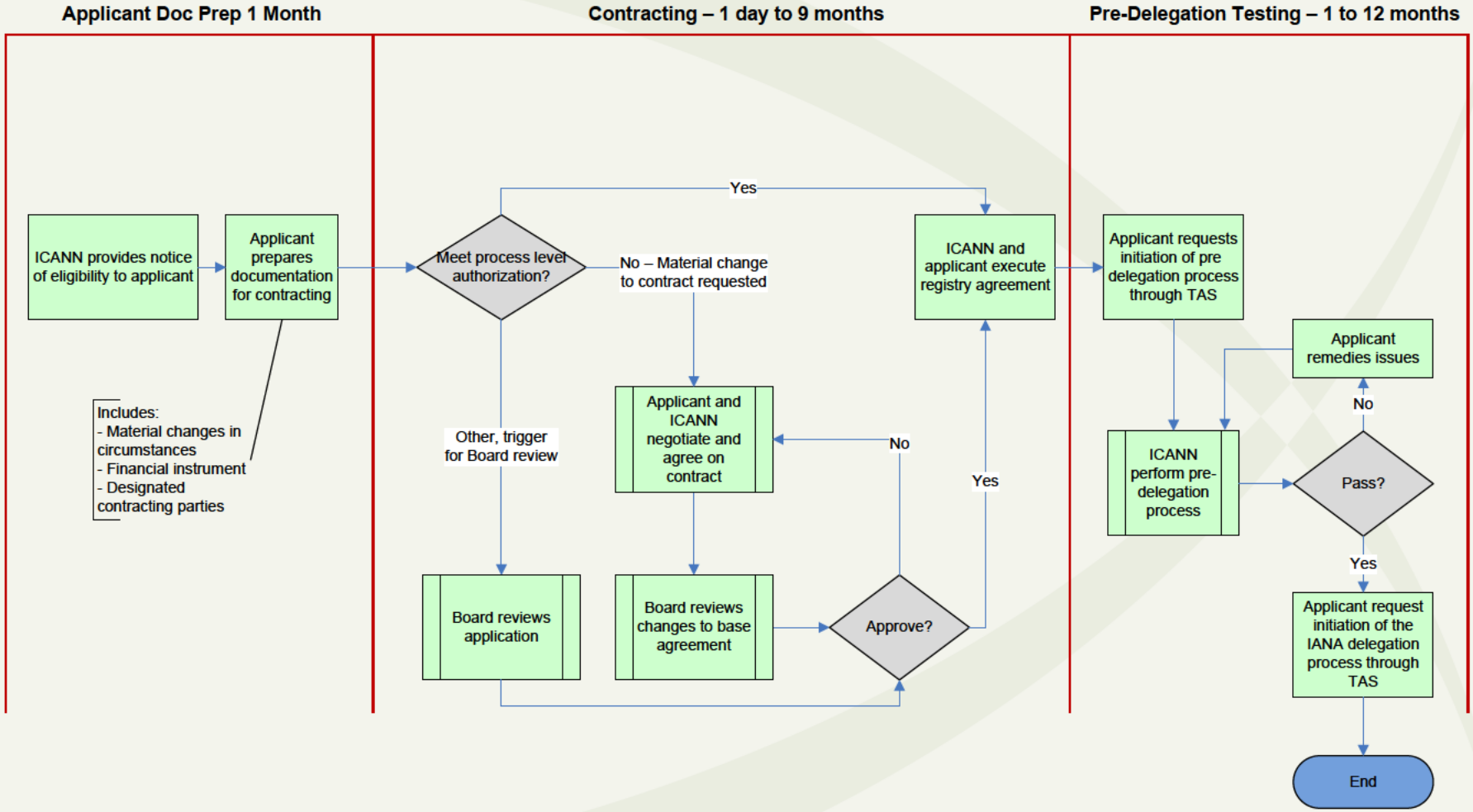
ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

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)




DRAFT – For Discussion Purposes – Nov 10

# *New gTLD Agreement*

## *Proposed Final Version*

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). Background information on how this version of the draft agreement differs from the previous draft is available in the explanatory memorandum *Summary of Changes to Base Agreement.*

It is important to note that this agreement does not constitute a formal position by ICANN, and has not been approved by ICANN's Board of Directors. The agreement is being set out for review and community discussion purposes, and ICANN encourages comments and suggestions for improvement. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

# 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 in the specification at [*see 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. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

**2.2 Compliance with Consensus Policies and Temporary Policies.** Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Polices and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [*see specification 1*]* ("Specification 1").

**2.3 Data Escrow.** Registry Operator shall comply with the registry data escrow procedures posted at [*see specification 2*]*.

**2.4 Monthly Reporting.** Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format posted in the specification at [*see specification 3*]*.

**2.5 Publication of Registration Data.** Registry Operator shall provide public access to registration data in accordance with the specification posted at [*see specification 4*]* ("Specification 4").

**2.6 Reserved Names.** Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the restrictions on registration of character strings set forth at [*see specification 5*]* ("Specification 5"). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

**2.7 Functional and Performance Specifications.** Functional and Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 6*]*. Registry Operator shall comply with such Functional and Performance Specifications and, for a period of

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

at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

**2.8 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 determinations and decisions made by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such determinations as set forth in the applicable procedure.

**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 Registry Operator's registry-registrar agreement for the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD, provided that such agreement may set forth non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of 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. 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 each ICANN accredited registrar that has executed Registry Operator's registry-registrar agreement 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 duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty

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

(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 each ICANN accredited registrar that has executed Registry Operator's registry-registrar agreement 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) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing, 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 price for which Registry Operator provided notice within that past twelve (12) months, 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. Registry Operator must have uniform pricing for registration renewals (i.e. the price for each domain registration renewal must be identical to the price of all other domain name registration renewals, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs), unless the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to a higher renewal price at the time of the initial registration of the domain name following clear and conspicuous disclosure of such renewal price to such registrant.

(c) 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.** 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. Any such audit 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 the audit relates 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 either such case of (i) or (ii) above, Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with such audit, which 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. Notwithstanding the foregoing, 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. 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 5 of Specification 6 fails for a period longer than the emergency threshold for such function set forth in Section 5 of Specification 6, 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, 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***. Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

**2.15 *[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 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 2.15.]

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

## 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.

## 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:

(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)

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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 12 months of the Effective Date. Registry Operator may request an extension for up to additional 12 months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator and not dismissed within thirty (30) 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.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator employs any officer that is convicted of a felony or of a misdemeanor related to financial activities, 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 deems as the substantive equivalent of any of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a felony or of a misdemeanor related to financial activities, 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 deems as the substantive equivalent of any 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 with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. Registry Operator agrees that ICANN may make any changes in 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*:

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

"**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."]

**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 and Article 7, Section 2.12, Section 4.5, and this 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 an additional number of days if agreed upon by the parties. 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 any proceeding, ICANN may request the appointed 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 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. 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 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 an additional number of days if agreed upon by the parties. 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 any proceeding, ICANN may request the appointed 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 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. 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

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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 domain names are registered in the TLD and shall apply thereafter to each Transaction. Registry Operator shall pay the Registry-Level Fees on a quarterly basis comprised of four equal payments by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

**6.2 Cost Recovery for RSTEP.** Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel ("RSTEP") pursuant to that process at http://www.icann.org/en/registries/rsep/. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

**6.3 Variable Registry-Level Fee.**

(a) If the ICANN accredited registrars (as a group) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars who are party to a registry-registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3), provided that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator's ability to seek and obtain reimbursement of such fee from

registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US$0.25 per domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) per year.

**6.4 Adjustments to Fees**. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

**6.5 Additional Fee on Late Payments.** For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

## ARTICLE 7.

## MISCELLANEOUS

**7.1 Indemnification of ICANN.**

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management

of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:

"Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator."]

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator's aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN's total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator's liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN's reasonable satisfaction, such other registry operators' culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [***Note: This Section 7.1(b) is inapplicable to intergovernmental organizations or governmental entities.***]

**7.2 Indemnification Procedures.** If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator's sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN policies 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

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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. [***Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.***]

**7.3 Defined Terms.** For purposes of this Agreement, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on "Security" shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

(b) For purposes of this Agreement, an effect on "Stability" shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments ("RFCs") sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

**7.4 No Offset.** All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

**7.5 Change in Control; Assignment and Subcontracting.** Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this

Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within 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.

**7.6 Amendments and Waivers.**

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable Registry Operators (the "Applicable Registry Agreements") is desirable (each, a "Special Amendment"), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the "Posting Period") and 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. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN's determination, appeal ICANN's decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(d) Except as set forth in this Section 7.6, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 7.6(d) shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(e) For purposes of this Agreement, 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

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first paragraph of Section 2 of Specification 6, or (iv) an amendment to the length of the Term.

(iv) "Working Group" means representatives of the Applicable Registry Operators and other members of the community that ICANN appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).

**7.7 No Third-Party Beneficiaries.** This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

**7.8 General Notices.** Except for notices pursuant to Section 7.6, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. All notices under Section 7.6 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. Other than notices under Section 7.6, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Any notice required by Section 7.6 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina Del Rey, California 90292
Telephone: 1-310-823-9358
Facsimile: 1-310-823-8649
Attention: President and CEO

With a Required Copy to: General Counsel
Email: (As specified from time to time.)

If to Registry Operator, addressed to:
[_____]
[_____]
[_____]
Telephone:
Facsimile:
Attention:

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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.

**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 Government Support**. In the event that the TLD was delegated to Registry Operator pursuant to the consent of a governmental entity to use a geographic name related to the jurisdiction of such governmental entity, the parties agree that, notwithstanding any provision contained in this Agreement, in the event of a dispute between such governmental entity and Registry Operator, ICANN may implement the order of any court sitting in such jurisdiction in favor of such governmental entity related to the TLD.

***[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]***

**7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.**

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the "Applicable Laws"). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator's compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, "ICANN Requirements"), may conflict with or violate Applicable Law (hereinafter, a "Potential Conflict"), Registry Operator shall provide detailed

notice (a "Notice") of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an "ICANN Determination"). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN's complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator's compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration

pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

* * * * *

* 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 Polices or Temporary Policy shall control, but only with respect to subject matter in conflict.

# SPECIFICATION 2
# DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent ("***Escrow Agent***") for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

**PART A – TECHNICAL SPECIFICATIONS**

1. **Deposits**. There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer 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. Pending transactions at that time (i.e., transactions that have not been committed) will not be reflected in the Full Deposit.
   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). Although we expect this to be an exception, it is permissible to have some minimum overlap between Differential Deposits.

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;
   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, it 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 monthly report 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 | Notes |
|---|---|---|
| 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 | etc. |
| 09 | net-adds-5-yr | " " |
| 10 | net-adds-6-yr | " " |
| 11 | net-adds-7-yr | " " |
| 12 | net-adds-8-yr | " " |
| 13 | net-adds-9-yr | " " |
| 14 | net-adds-10-yr | " " |
| 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 | etc. |
| 19 | net-renews-5-yr | " " |
| 20 | net-renews-6-yr | " " |
| 21 | net-renews-7-yr | " " |
| 22 | net-renews-8-yr | " " |
| 23 | net-renews-9-yr | " " |
| 24 | net-renews-10-yr | " " |
| 25 | transfer-gaining-successful | transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically |
| 26 | transfer-gaining-nacked | transfers initiated by this registrar that were n'acked by the other registrar |
| 27 | transfer-losing-successful | transfers initiated by another registrar that this registrar ack'd – either by command or automatically |
| 28 | transfer-losing-nacked | transfers initiated by another registrar that this registrar n'acked |
| 29 | transfer-disputed-won | number of transfer disputes in which this registrar prevailed |
| 30 | transfer-disputed-lost | number of transfer disputes this registrar lost |
| 31 | transfer-disputed-nodecision | number of transfer disputes involving this registrar with a split or no decision |
| 32 | deleted-domains-grace | domains deleted within the add grace period |
| 33 | deleted-domains-nograce | domains deleted outside the add grace period |
| 34 | restored-domains | domain names restored from redemption period |
| 35 | restored-noreport | total number of restored names for which the registrar failed to submit a restore report |
| 36 | agp-exemption-requests | total number of AGP (add grace period) exemption requests |
| 37 | agp-exemptions-granted | total number of AGP (add grace period) exemption requests granted |
| 38 | agp-exempted-domains | total number of names affected by granted AGP (add grace period) exemption requests |

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 should 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. No other lines besides the ones described above shall be included.

**[Drafting note to community on change from v4: The requirement for an SLA report was removed given ICANN's plan to build an SLA monitoring system, as described in Specification 6, that would produce those results directly. ICANN plans to periodically publish results from the SLA monitoring system in order to allow the registrants and other interested parties access to this information.]**

# SPECIFICATION 4

## SPECIFICATION FOR REGISTRATION DATA PUBLICATION SERVICES

1. **WHOIS Service.** Until ICANN specifies a different format and protocol, Registry Operator will operate a registration data publication service available via both port 43 and a website at <whois.nic.TLD> in accordance with RFC 3912 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
Expiration 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.

[**Drafting note to community on change from v4 to v5: The ICANN board of directors has referred the potential requirement to provide searchable Whois (Section 1.8 of Specification 4 in the previous version of the draft Registry Agreement) to its working group on data/consumer protection, which has not completed its review. For the purposes of this draft Specification 4, the requirement has been removed but it may be modified and reintroduced upon direction from the working group, and the ICANN board of directors.**]

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 Zone File Access Service Provider (the "ZFA Provider") pursuant to the Zone File Access Implementation Plan (the "ZFA Plan") dated [_____] available at <LINK>. Registry Operator will cooperate with the ZFA Provider in establishing uniform access to zone file data. Notwithstanding the foregoing, (a) Registry Operator may reject the request for access of any user that Registry Operator reasonably believes will violate the terms of Section 2.1.5 below, and (b) the ZFA Provider may reject the request for access of any user that does not pass all the credentialing requirements established pursuant to the ZFA Plan.

2.1.2. **User Information.** Registry Operator, through the facilitation of the ZFA Provider, will request each user to provide it with information sufficient to identify the user and its designated server. 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.** Registry Operator will grant the User a nonexclusive, non-transferable, limited right to access Registry Operator's Server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files to its Server no more than once per 24 hour period using FTP, HTTP, or other data transport and access protocols that may be prescribed by ICANN.

2.1.4. **File Format Standards**. Registry Operator will provide zone files in 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 using one of the sub-formats defined in the ZFA Plan.

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 ZFA Provider, will provide each user with access to the zone file for a period of not less than three (3) months.

2.1.7. **No Fee for Access.** Registry Operator will provide, and ZFA Provider will facilitate, access to the zone file to user at no cost.

***[Note: This Section 2.1 has been modified following conclusion of the Zone File Access Advisory Group's work and its recommendation to ICANN that a service provider be established to enhance access to zone file information in new TLDs. The implementation of the recommendation is under development and subject to community input before inclusion in the final gTLD Registry Agreement.]***

2.2 **ICANN Access.**

2.2.1. **General Access.** Registry Operator shall provide bulk access to the zone files for the registry for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time.

# 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 shall 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 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;

    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.

# SPECIFICATION 6

## REGISTRY INTEROPERABILITY, CONTINUITY, AND PERFORMANCE SPECIFICATIONS

### 1. Standards Compliance

Registry Operator shall implement and 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 (i) the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, 4472, and 5966; and (ii) provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 3735, 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.

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.

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.

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. 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 the SRS over IPv6.

### 2. Registry Services and Continuity

"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.

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) to ensure continued operation in the case of technical failure (widespread or local), business insolvency or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

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.

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.

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.

Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquires related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

3. **Supported Initial and Renewal 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.

Renewal registrations 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 registrations of registered names may not exceed ten (10) years.

4. **Performance Specifications**

| | 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 | ≤ 400 ms, for at least 95% of the queries |
| | DNS update time | ≤ 60 min, for at least 95% of the updates |
| **RDPS** | RDPS availability | ≤ 432 min of downtime (≈ 99%) |
| | RDPS query RTT | ≤ 1500 ms, for at least 95% of the queries |
| | RDPS update time | ≤ 60 min, for at least 95% of the updates |
| **EPP** | EPP service availability | ≤ 864 min of downtime (≈ 98%) |
| | EPP session-command RTT | ≤ 3000 ms, for at least 90% of the commands |
| | EPP query-command RTT | ≤ 1500 ms, for at least 90% of the commands |
| | EPP transform-command RTT | ≤ 3000 ms, for at least 90% of the commands |

**SLR.** Service Level Requirement is the level of service expected for certain parameter being measured in a Server Level Agreement (SLA).

**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 time will be considered undefined.

**IP address.** Refers to IPv4 or IPv6 address without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is mentioned.

**DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035 and related RFCs.

**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 an Internet user. For the service to be considered available at some point in time, at least, two of the name servers registered in the DNS must have defined results from "**DNS tests**" to each of their public-DNS registered "**IP addresses**" over both (UDP and TCP) transports. If 51% or more of the DNS testing probes see the service as unavailable over any of the transports (UDP or TCP) during a given time, the DNS service will be considered unavailable.

**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 results from "**DNS tests**" to a name server "**IP address**" over any of the transports (UDP or TCP) during a given time, the name server "**IP address**" will be considered unavailable.

**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 or more the corresponding SLR, the **RTT** will be considered undefined.

**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 or more the corresponding SLR, the **RTT** will be considered undefined.

**DNS resolution RTT.** Refers to either "**UDP DNS resolution RTT**" or "**TCP DNS resolution RTT**".

**DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, up until all 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.

**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 query shall be about existing domain names. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. If the answer to a query has the TC bit set, 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.

**Measuring DNS parameters.** Every minute, every DNS probe shall make an UDP and a TCP "**DNS test**" to each of the public-DNS registered "**IP addresses**" of the name servers of the domain named being monitored. If a "**DNS test**" gets unanswered, the tested IP will be considered as unavailable for the corresponding transport (UDP or TCP) from that probe until it is time to make a new test. 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.

**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.

**RDPS.** Registration Data Publication Services refers to the collective of WHOIS and Web based WHOIS services as defined in "SPECIFICATION 4" of this Agreement.

**RDPS availability.** Refers to the ability of all the RDPS services for the TLD, to respond to queries from an Internet user with appropriate data from the Registry System. For the RDPS to be considered available at some point in time, one IPv4 and one IPv6 address for each of the RDPS services must have defined results from "**RDPS tests**". If 51% or more of the RDPS testing probes see any of the RDPS services as unavailable during a given time, the RDPS will be considered unavailable.

**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.

**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.

**RDPS query RTT.** Refers to the collective of "**WHOIS query RTT**" and "**Web-based-WHOIS query RTT**".

**RDPS update time**. Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, up until all the "**IP addresses**" of all the servers of all the RDPS services reflect the changes made.

**RDPS test.** Means one query sent to a particular "**IP address**" for one of the servers of one of the RDPS 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 RDPS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.

**Measuring RDPS parameters.** Every minute, every RDPS probe shall randomly select one IPv4 and one IPv6 addresses from all the public-DNS registered "**IP addresses**" of the servers for each RDPS service of the TLD being monitored and make an "**RDPS test**" to each one. If an "**RDPS test**" gets unanswered, the corresponding RDPS service over IPv4 or IPv6, as the case may be, will be considered as unavailable from that probe until it is time to make a new test. 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.

**Placement of RDPS probes.** Probes for measuring RDPS 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.

**EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.

**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. For the EPP service to be considered available at during a measurement period, at least, one IPv4 and one IPv6 (if EPP is offered over IPv6) address of the set of EPP servers must have defined results from "**EPP tests**". 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.

**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.

**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 nor close of neither the EPP nor 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.

**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 nor close of neither the EPP nor 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.

**EPP command RTT.** Refers to "**EPP session-command RTT**", "**EPP query-command RTT**" or "**EPP transform-command RTT**".

**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.

**Measuring EPP parameters.** Every 5 minutes, every EPP probe shall randomly select one "**IP address**" of the EPP servers of the TLD being monitored and make an "**EPP tests**"; every time it should randomly alternate between the 3 different types of commands and between the commands inside each type for testing. If an "**EPP test**" gets unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test. 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.

**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.

**Listing of probes.** The current list of probes for DNS, RDPS and EPP can be consulted in <reference>. Registry Operator is responsible to take the necessary steps to ensure that the listed probes do not get their tests blocked by its network equipment. The list can be updated from time to time by ICANN provided it gives, at least, a 90-day notice to the Registry Operator before making the change. During that period the Registry Operator will have access to the readings for new probes and ICANN will not consider those measurements for SLA purposes.

**Maintenance windows.** Registry Operators is encouraged to do its maintenance windows 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.

5. **Emergency Thresholds**

| Critical Function | Emergency Thresholds | |
|---|---|---|
| DNS service (all servers) | 4-hour continuous downtime | 4-hour downtime / week |
| DNSSEC proper resolution | 4-hour continuous downtime | 4-hour downtime / week |
| SRS (EPP) | 5-day continuous downtime | 5-day downtime / month |
| WHOIS/Web-based WHOIS | 7-day continuous downtime | 7-day downtime / month |
| Data Escrow | Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6. | |

# 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 at least one of the following RPMs in accordance with requirements established by ICANN for the Trademark Clearinghouse (which may be revised from time to time):

a. A pre-launch claims service provided in association with the Trademark Clearinghouse established by ICANN with respect to registrations in the TLD pursuant to which notices concerning the registration of domain names will be sent to both: (a) potential registrants of domain names that identically match trademarks contained within the Trademark Clearinghouse; and (b) owners of trademarks contained within the Trademark Clearinghouse; or

b. A sunrise registration procedure pursuant to which, during an exclusive period of time prior to the general registration of domain names in the TLD, the owners of trademarks and service marks that have registered with the Trademark Clearinghouse shall have an opportunity to register domain names in the TLD.

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]),

i. Registry Operator agrees to reimburse the PDDRP complainant for any fees that the complainant had to pay to the provider in cases where the panel deems the complainant to be the prevailing party.

ii. Also, 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.

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 basic registry functions related to the TLD set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (b) shall 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 Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

# SPECIFICATION 9*

## Registry Operator Code of Conduct

[**Note: This draft Registry Operator Code of Conduct has been added to the form New gTLD Agreement pursuant to the ICANN Board resolution of 5 November 2010 regarding the question of cross-ownership of gTLD registries and ICANN-accredited registrars. ICANN encourages community input on the types of conduct that should be prohibited and/or mandated given the potential for cross-ownership of domain-name distribution channels.]*

1. Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity (each, a "Registry Related Party") to:

    a. directly or indirectly show any preference or provide any special consideration to any registrar;

    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;

    c. have access to user data or proprietary information of a registrar utilized by or Affiliated with Registry Operator, except as necessary for management and operations of the TLD; or

    d. register names in the TLD or sub-domains of the TLD based upon a search of available names by any consumer (i.e., "front-running").

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, maintain separate books of accounts with respect to its registrar or registrar-reseller operations.

3. Registry Operator will, and will cause each Registry Related Party to, ensure that no user data or proprietary information from any registrar is disclosed to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD.

4. Registry Operator will not 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.

5. 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 that the reports be delivered by other reasonable means.)

6. 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.

**TRADEMARK CLEARINGHOUSE**
**NOVEMBER 2010**

## 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. As such, ICANN will contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks. This entity or these entities will have an "arms-length" relationship with ICANN. ICANN will not perform these tasks.

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 Trademark Clearinghouse Service Provider will be required to maintain a separate Trademark Clearinghouse database, and may not store any data in the Clearinghouse database related to its provision of ancillary services, if any.

1.4 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.

1.5 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.

1.6 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.

1.7. 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 should 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 validate marks that are from jurisdictions that do not conduct substantive review before registration.

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 proposed standards for inclusion in the Clearinghouse are:

3.2.1 Nationally or multi-nationally registered word marks from all jurisdictions (including from countries where there is no substantive review).

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 currently in effect and that was in effect on or before 26 June 2008.

3.3 No common law marks should be included in the Trademark Clearinghouse Database, except for court-validated common law marks or those protected by statute or treaty as set forth herein. This shall not preclude any gTLD registry from entering into a separate agreement, with no ICANN involvement, with the Clearinghouse Service Provider to collect and verify other information for ancillary services, provided that any such information is held separate from the Trademark Clearinghouse Database.

3.4 The type of data supporting an application for a registered word mark might 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.

3.5 Data supporting a judicially validated word mark must include the court documents, properly entered by the court, evidencing the validation of a given word mark.

3.6 Data supporting word marks protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.

3.6 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).

3.6 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.

3.7 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. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways. 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 Trademark Clearinghouse Database (as well as other relevant data obtained by the Trademark Clearinghouse to perform ancillary services) should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms. 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 If the Trademark Clearinghouse Service Provider does provide ancillary services, any information should be stored in a separate database. Access by the 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 AUNTHENTICATION 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 previously validated at registration or protected via a court, statute or treaty, the mark holder shall be required to provide evidence of continuous 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 might be labels, tags, containers, advertising, brochures, screen shots, and something that evidences continued use.

## 6. MANDATORY PRE-LAUNCH SERVICES

6.1 All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch rights protection mechanisms (RPMs) that must, at a minimum, consist of either a Sunrise or Trademark Claims Service. Such services shall meet the minimum standards specified in the IRT Report, which shall be incorporated by reference herein (*see* http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf.) There is no requirement that a registry adopt both of these RPMs.

6.2 The Trademark Claims Notice is intended to provide clear notice to the Registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants. A form that describes the required elements is attached. The specific statement by Registrant warrants that: (i) the Registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the Registrant has received and understood the notice; and (iii) to the best of the 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.

6.3 The Trademark Claims Notice should provide 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 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). Then, if the domain name is registered, the registrar (again through an interface with the Clearinghouse) will notify the mark holders(s) of the registration. This notification should not be before the registration is effectuated so as not to provide an opportunity for a mark holder to inappropriately attempt to block a legitimate registrant from registering a name in which the registrant has legitimate rights.

6.4 The Trademark Clearinghouse Database will be structured to report to registries domain names that are considered an "Identical Match" with the validated marks. "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.

6.5 Notification should be limited to identical marks so as to ensure operational integrity, limitation of overly broad notifications and an unmanageable volume of processing by the Clearinghouse.

**7. PROTECTION FOR MARKS IN CLEARINGHOUSE**

7.1 New gTLD registries must provide Sunrise or Trademark Claims services for marks in the Trademark Clearinghouse. As described below, the scope of registered marks used by the Claims Service is broader than those used for Sunrise periods.

7.1.2 For Trademark Claims services - Registries must recognize all word marks that have been or are: (i) nationally or multi-nationally registered (regardless of whether the country of registration conducts a substantive review); (ii) court-validated; or (iii) specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

7.1.3 For Sunrise services - Registries must recognize all word marks: (i) nationally or multi-nationally registered in a jurisdiction that conducts a substantive evaluation of trademark applications prior to registration; or (ii) that have been court- or Trademark Clearinghouse-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.

7.2 In certain cases, registries shall have discretion whether to include protections for additional marks that do not satisfy these eligibility requirements.

7.3 Definition: Substantive evaluation upon registration has essentially three requirements: (i) evaluation on absolute grounds - to ensure that the applied for mark can in fact serve as a trademark; (ii) evaluation on relative grounds - to determine if previously filed marks preclude the registration; and (iii) evaluation of use - to ensure that the applied for mark is in current use.

The Trademark Clearinghouse or its agent shall develop and publish a list of the countries that conduct substantive review upon trademark registration.

7.4 Substantive evaluation by Trademark Clearinghouse validation service provider shall require: (i) evaluation on absolute grounds; and (ii) evaluation of use.

7.5 Sunrise Registration Process. In cases where the registry opts to provide a Sunrise registration service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and incorporates a Sunrise Dispute Resolution Policy (SDRP).

7.5.1 The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section 7.1 above) on or before the effective date of the registry agreement and was applied for on or before ICANN publishes new gTLD application list that is an identical match (as defined in section 6 above) to the applied for domain name; (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.

7.5.2 The proposed SRDP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not own a registration of national effect; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the registration on which the registrant based its Sunrise registration is not of national effect; and (iv) the 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.

7.5.3 The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

**8. COSTS OF CLEARINGHOUSE**

Costs should be completely borne by the parties utilizing the services. The Clearinghouse should not be expected to pay fees to ICANN.

**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")**
**Draft – November 2010**

**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 5,000 word limit, excluding attachments, for the Complaint. The Complaint must include:

a) Name, email address and other contact information for the Complaining Party (Parties).

b) Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.

c) Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).

d) The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant should 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.

e) 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.

f) A description of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

i. that the registered domain name is identical or confusingly similar to a word mark: (i) in which the Complainant holds a valid registration issued by a jurisdiction that conducts a substantive examination[1] of trademark applications prior to registration; or (ii) that has been validated through court proceedings or the Trademark Clearinghouse; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008; and

ii. that the Registrant has no legitimate right or interest to the domain name; and

iii. that the domain was registered and is being used in bad faith.

g) A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

i. 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

ii. 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

iii. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or

iv. 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] Definition: Substantive evaluation upon registration has essentially three requirements: (i) evaluation on absolute grounds - to ensure that the applied for mark can in fact serve as a trademark; (ii) evaluation on relative grounds - to determine if previously filed marks preclude the registration; and (iii) evaluation of use - to ensure that the applied for mark is in current use.

h) Finally, the Complainant will attest 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

Fees will be charged by the URS Provider. Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider. (The tender offer for potential service providers will indicate that price will be a factor in the award decision.)

A "loser pays" model has not been adopted for the URS.

## 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 three (3) 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 first notify the registry operator (via email) ("Notice of Complaint") within 24 hours 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 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 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 fee for re-examination.

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 5,000 words, excluding attachments, and the content of the Response should include the following:

a) Confirmation of Registrant data.

b) Specific admission or denial of each of the grounds upon which the Complaint is based.

c) Any defense which contradicts the Complainant's claims.

d) 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, the Complaint, Response and supporting materials will 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:

a) 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

b) 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

c) 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:

a) The domain name is generic or descriptive and the Registrant is making fair use of it.

b) 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.

c) 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.

(d) 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:

a) 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 will review each case on its merits.

b) 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:

i. the nature of the domain name;

ii. the nature of the advertising links on any parking page associated with the domain name; and

iii. 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 two years after the date of the Notice of Default. If such a Response is filed, and 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 legal background and shall be trained and certified in URS proceedings. 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:

a) The registered domain name is identical or confusingly similar to a word mark: (i) in which the Complainant holds a valid registration issued by a jurisdiction that

conducts a substantive examination of trademark applications prior to registration; or (ii) that has been validated through court proceedings or the Trademark Clearinghouse; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008; and

b) The Registrant has no legitimate right or interest to the domain name; and

c) 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: (1) evidence was presented to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark; or (2) under the circumstances, and no Response was submitted, a defense would have been possible to show 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, in order to provide notice to the next potential Registrant that the domain was the subject of a URS proceeding.

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 twenty (20) day Response period, 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 14 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 domain name shall be 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.

10.2 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates. 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:

a) it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
b) (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.

12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.

12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor or the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to

**TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)**
**REVISED – NOVEMBER 2010**

**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) unjustifiably impairing the distinctive character or the reputation of the complainant's mark; or*

*(c) creating an impermissible 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) unjustifiably impairs the distinctive character or the reputation of the complainant's mark, or*

*(iii) creates an impermissible likelihood of confusion with the complainant's mark*.

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

**7. Complaint**

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

7.2 Content:

7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.

7.2.3 A statement of the nature of the dispute, which should include:

(a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.

(b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.

(c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.

(d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) it willingness to meet to resolve the issue.

(e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.

(f) Copies of any documents that the Complainant considers to evidence its basis for relief, including web sites and domain name registrations.

(g) A statement that the proceedings are not being brought for any improper purpose.

(h) A statement describing how the registration at issue has harmed the trademark owner.

7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

**8. Administrative Review of the Complaint**

8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.

8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliant and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does 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: (i) issued by a jurisdiction that conducts a substantive examination of trademark applications prior to registration; or (ii) that has been court- or Trademark Clearinghouse-validated; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008;

9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;

9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein
OR
The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and it willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant

attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.

9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.

9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.

9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.

9.6 Provider shall electronically serve the Threshold Determination on all parties.

9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.

9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider to will commence the proceedings on the merits.

**10. Response to the Complaint**

10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.

10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.

10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.

10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

**11. Reply**

11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record,

but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.

11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

**12. Default**

12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.

12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.

12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.

12.4 All Default cases shall proceed to Expert Determination on the merits.

**13. Expert Panel**

13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.

13.2 The Provider shall appoint a one-person Expert Panel, unless any party requests a three-member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.

13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Providers rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.

13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

**14. Costs**

14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.

14.2 The Complainant shall be required to pay the filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the Provider

estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

**15. Discovery**

15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel's own accord, or upon request from the Parties.

15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.

15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

**16. Hearings**

16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.

16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.

16.4 All dispute resolution proceedings will be conducted in English.

**17. Burden of Proof**

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

**18. Remedies**

18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).

18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.

18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:

18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:

(a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or

(b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;

18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;

OR,

18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

18.5 The Expert Panel may also determine whether the Complaint was filed "without merit," and, if so, award the appropriate sanctions on a graduated scale, including:

18.5.1 Temporary bans from filing Complaints;

18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and

18.5.3 Permanent bans from filing Complaints after being banned temporarily.

**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 its decision under 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]**
**REVISED - NOVEMBER 2010**

**1. Parties to the Dispute**

The parties to the dispute will be the harmed organization or individual 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 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 by those claiming to be harmed by the non-compliance of community restricted TLDs might be processed through an online form similar to the Whois Data Problem Report System at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator would receive a copy of the complaint and would be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant would have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Implementation of such an online complaint process is under investigation and consideration.

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 organization or individual as a result of the community-based gTLD registry operator not complying with the restrictions set out in the Registry Agreement.

5.2 Established institutions, an**d** individuals 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 or an individual, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.

5.3 The Panel will determine standing and the Expert Determination will include a statement of the Complainant's standing.

**6. Standards**

6.1 For an 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;

6.1.3 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 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 restrictions has caused harm to the complainant.

7.2.4 A statement that the proceedings are not being brought for any improper purpose.

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-compliant and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.

8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

**9. Response to the Complaint**

9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.

9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.

9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.

9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in it Response the specific grounds for the claim.

9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

**10 Reply**

10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.

10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

**11. Default**

11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.

11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.

11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.

11.4 All Default cases shall proceed to Expert Determination on the merits.

**12. Expert Panel**

12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed .

12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.

12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.

12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

**13. Costs**

13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the administrative fees of the Provider and for the Expert Panel, 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 Provider estimated administrative 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.

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. Failure to do shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

**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. 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 of liability or recommended remedy based on the existing record within the RRDRP proceeding for a reasonable fee to cover the costs of the appeal.

19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.

19.4 The fees for an appeal in the first instance shall be borne by the appellant.

19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.

19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant..

19.7 The prevailing party shall be entitled to an award of costs of appeal.

19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

**20. Challenge of a Remedy**

20.1 ICANN shall not implement a remedy for violation of the RRDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.

20.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.

20.3 If ICANN decides to implement a remedy for violation of the RRDRP, 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 its decision under the RRDRP 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.

20.4 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 RRDRP, 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.

20.5 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.

**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.

# Applicant Guidebook

## Proposed Final Version

## Module 6

Please note that this is a "proposed" version of the Applicant Guidebook that has not been approved as final by the Board of Directors. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

**12 November 2010**

# 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 and consider an application to establish one or more gTLDs 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 consideration of the application, and any approval or rejection of the application; and/or (b) ICANN'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 review of this application, investigation or verification, any characterization or description of applicant or the information in this application, or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FOR A ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD.

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.

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.

# Glossary

## Terms Applicable to this Guidebook and to the New gTLD Application Process

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| A-Label | The ASCII form of an IDN label. All operations defined in the DNS use A-labels exclusively. |
| Applicant | An entity that has applied to ICANN for a new gTLD by submitting its application form through the online application system. |
| Application | An application for a new gTLD lodged in connection with the terms and conditions of this guidebook. An application includes the completed Application Form, any supporting documents, and any other information that may be submitted by the applicant at ICANN's request. |
| Application form | The set of questions to which applicants provide responses, included as an attachment to Module 2. |
| Application interface | The web-based application interface operated by ICANN, available at [URL to be inserted in final version of guidebook] |
| Application round | The complete succession of stages for processing the applications received during one application submission period for gTLDs. The terms and conditions of this guidebook are for one application round. Any subsequent application rounds will be the subject of updated guidebook information. |
| Application submission period | The period during which applicants may submit applications through the application interface. |
| Applied-for gTLD string | A gTLD string that is subject of an application. |
| American Standard Code for Information Interchange (ASCII) | A character encoding based on the English alphabet. |
| Auction | A method for allocating property or goods to the highest |

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| | bidder. |
| Auction round | Within an auction, the period of time commencing with the announcement of a start-of-round price and concluding with the announcement of an end-of-round price. |
| AXFR | Asynchronous full transfer, a DNS protocol mechanism through which a DNS zone can be replicated to a remote DNS server. |
| Bidder | An applicant who participates in an auction. |
| Business ID | A number such as a federal tax ID number or employer information number. |
| ccTLD | A class of top-level domain only assignable to represent countries and territories listed in the ISO 3166-1 standard. See http://iana.org/domains/root/db/. |
| Community-based TLD | A community-based gTLD is a gTLD that is operated for the benefit of a clearly delineated community. An applicant designating its application as community-based must be prepared to substantiate its status as representative of the community it names in the application. |
| Community objection | An objection based on the grounds that there is substantial opposition to a gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted. |
| Community Priority evaluation | A process to resolve string contention, which may be elected by a community-based applicant. |
| Consensus policy | A policy created through the GNSO policy development process listed in Annex A of the ICANN Bylaws. See http://www.icann.org/en/general/bylaws.htm#AnnexA. A list of current consensus policies is available at http://www.icann.org/en/general/consensus-policies.htm. |
| Contention sets | A group of applications containing identical or similar applied-for gTLD strings. |

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| Country-code TLD | See ccTLD. |
| Declared Variants List | A list recording variant TLD strings listed by applicants in gTLD applications. |
| Delegation | The process through which the root zone is edited to include a new TLD, and the management of domain name registrations under such TLD is turned over to the registry operator. |
| Digit | Any digit between "0" and "9" (Unicode code points U+0030 to U+0039). |
| Dispute Resolution Service Provider (DRSP) | An entity engaged by ICANN to adjudicate dispute resolution proceedings in response to formally filed objections. |
| Domain name | A name consisting of two or more (for example, john.smith.name) levels, maintained in a registry database. |
| Domain Name System (DNS) | The global hierarchical system of domain names. |
| Domain Name System Security Extensions (DNSSEC) | DNSSEC secures domain name lookups on the Internet by incorporating a chain of digital signatures into the DNS hierarchy. |
| EPP | See Extensible Provisioning Protocol. |
| Existing TLD | A string included on the list at http://iana.org/domains/root/db. |
| Extended Evaluation | The second stage of evaluation applicable for applications that do not pass Initial Evaluation, but are eligible for further review. |
| Extended Evaluation period | The period that may follow the Initial Evaluation period, for eligible applications which do not pass the Initial Evaluation. |
| Extensible Provisioning Protocol | A protocol used for electronic communication between a registrar and a registry for provisioning domain names. |

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| Evaluator | The individuals or organization(s) appointed by ICANN to perform review tasks within Initial Evaluation, Extended Evaluation, and Community Priority Evaluation under ICANN direction. |
| Evaluation fee | The fee due from each applicant to obtain consideration of its application. The evaluation fee consists of a deposit and final payment per application. A deposit allows the applicant access to the secure online application system. |
| Geographic Names Panel (GNP) | A panel of experts charged by ICANN with reviewing applied-for TLD strings to identify and confirm required documentation for geographic names. |
| Generic Names Supporting Organization (GNSO) | ICANN's policy-development body for generic TLDs and the lead in developing the policy recommendations for the introduction of new gTLDs. |
| Generic top-level domain | See gTLD. |
| Glue record | An explicit notation of the IP address of a name server, placed in a zone outside of the zone that would ordinarily contain that information. |
| gTLD | A TLD that does not correspond to any country code. |
| Hyphen | The hyphen "-" (Unicode code point U+0029). |
| Internet Assigned Numbers Authority (IANA) | IANA is the authority originally responsible for overseeing IP address allocation, coordinating the assignment of protocol parameters provided for in Internet technical standards, and managing the DNS, including delegating top-level domains and overseeing the root name server system. Under ICANN, IANA distributes addresses to the Regional Internet Registries, coordinates with the IETF and other technical bodies to assign protocol parameters, and oversees DNS operation. |
| ICANN | Internet Corporation for Assigned Names and Numbers |
| ICANN-accredited registrar | An entity that has entered into a Registrar Accreditation Agreement with ICANN. The registrar has access to make changes to a registry by adding, deleting, or updating domain name records. |

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| Internationalized Domain Name (IDN) | A domain name 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 (-). |
| Internationalizing Domain Names in Applications (IDNA) | The technical protocol used for processing domain names containing non-ASCII characters in the DNS. |
| IDN ccTLD Fast Track | The process for introducing a limited number of IDN ccTLDs associated with the ISO-3166 two-letter codes. See http://www.icann.org/en/topics/idn/fast-track/. |
| IDN table | A table listing all those characters that a particular TLD registry supports. If some of these characters are considered variant characters, this is indicated next to those characters. The IDN tables usually hold characters representing a specific language, or they can be characters from a specific script. Therefore the IDN table is sometimes referred to as "language variant table", "language table", "script table" or something similar. |
| IGO | Inter-governmental organization. |
| Internet Engineering Task Force (IETF) | The IETF is a large, open international community of network designers, operators, vendors, and researchers concerned with the evolution of the Internet architecture and the smooth operation of the Internet. |
| Initial Evaluation period | The period during which ICANN will review an applied-for gTLD string, an applicant's technical and financial capabilities, and an applicant's proposed registry services. |
| International Phonetic Alphabet | A notational standard for phonetic representation in multiple languages. See http://www.langsci.ucl.ac.uk/ipa/. |
| IP address | A unique identifier for a device on the Internet, used to accurately route traffic to that device. |
| IPv4 | Internet Protocol version 4. Refers to the version of the Internet protocol that supports 32-bit IP addresses. |

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| IPv6 | Internet Protocol version 6. Refers to the version of the Internet protocol that supports 128-bit IP addresses. |
| IXFR | Incremental Zone Transfer, a DNS protocol mechanism through which a partial copy of a DNS zone can be replicated to a remote DNS server. |
| LDH (Letter Digit Hyphen) | The hostname convention defined in RFC 952, as modified by RFC 1123. |
| Legal Rights objection | An objection on the grounds that the applied-for gTLD string infringes existing legal rights of the objector. |
| Letter | Any character between "a" and "z"(Unicode code points U+0061 to U+007A or U+0041 to U+005A). |
| LLC | Limited liability corporation. |
| Morality and public order objection | An objection made on the grounds that the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law. |
| NS record | A type of record in a DNS zone that signifies that part of that zone is delegated to a different set of authoritative name servers. |
| Objection | A formal objection filed with a Dispute Resolution Service Provider in accordance with that provider's procedures. |
| Objection filing period | The period during which formal objections may be filed concerning a gTLD application submitted to ICANN. |
| Objector | One or more persons or entities that have filed a formal objection against a new gTLD application with the appropriate DRSP. |
| Pre-delegation test | A technical test required of applicants before delegation of the applied-for gTLD string into the root zone. |
| Primary contact | The person named by the applicant as the main contact for the application, and having authority to execute decisions concerning the application. |

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| Principal place of business | The location of the head office of a business or organization. |
| Registrant | An entity that has registered a domain name. |
| Registrar | See ICANN-accredited registrar. |
| Registry | The authoritative, master database of all domain names registered in each top-level domain. The registry operator keeps the master database and also generates the zone file that allows computers to route Internet traffic to and from top-level domains anywhere in the world. |
| Registry Agreement | The agreement executed between ICANN and successful gTLD applicants, which appears as an attachment to Module 5. |
| Registry operator | The entity entering into the Registry Agreement with ICANN, responsible for setting up and maintaining the operation of the registry. |
| Registry services | (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; 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. See http://icann.org/en/registries/rsep/rsep.html for a full definition of Registry Services. |
| Registry Services Technical Evaluation Panel (RSTEP) | The Registry Services Technical Evaluation Panel is a group of experts in the design, management, and implementation of the complex systems and standards-protocols used in the Internet infrastructure and DNS. RSTEP members are selected by its chair. All RSTEP members and the chair have executed an agreement requiring that they consider the issues before the panel |

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| | neutrally and according to the specified definitions of security and stability. |
| Reserved Name | A string included on the Top-Level Reserved Names List (Refer to subsection 2.2.1.2 of Module 2). |
| Request for Comments (RFC) | The RFC document series is the official publication channel for Internet standards documents and other publications of the IESG, IAB, and Internet community. |
| Rightsholder | The person or entity that maintains a set of rights to a certain piece of property. |
| Root Zone | The root zone database represents the delegation details of top-level domains, including gTLDs and country-code TLDs. As manager of the DNS root zone, IANA is responsible for coordinating these delegations in accordance with its policies and procedures. |
| Round | See application round. |
| Script | A collection of symbols used for writing a language. There are three basic kinds of script. One is the alphabetic (e.g. Arabic, Cyrillic, Latin), with individual elements termed "letters." A second is ideographic (e.g. Chinese), the elements of which are "ideographs". The third is termed a syllabary (e.g. Hangul), with its individual elements representing syllables. The writing systems of most languages use only one script but there are exceptions such as for example, Japanese, which uses four different scripts, representing all three of the categories listed here.<br><br>It is important to note that scripts which do not appear in the Unicode Code Chart are completely unavailable for inclusion in IDNs. |
| Second level name | A domain name that has been registered in a given top-level domain. For example, <icann.org> is a second-level name. "ICANN" is the second-level label. |
| Security | In relation to a proposed registry service, an effect on security by the proposed Registry Service means (1) unauthorized disclosure, alteration, insertion, or destruction of registry data, or (2) unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable |

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| | standards. |
| Shared Registry System (SRS) | A system that allows multiple registrars to make changes to a registry simultaneously. |
| Slot request | A step within the application submission period in which the applicant submits a deposit for each requested slot in the online application system. One slot is designated per application. |
| Stability | In relation to a proposed registry service, 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. |
| Standard application | An application that has not been designated by the applicant as community-based. |
| String | The string of characters comprising an applied-for gTLD. |
| String confusion objection | An objection filed on the grounds that the applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD. |
| String Similarity Algorithm | An algorithmic tool used to help identify applied-for gTLD strings that may result in string confusion. |
| String Similarity Panel | A panel charged with identifying applied-for gTLD strings that may result in string confusion. |
| String contention | The scenario in which there is more than one qualified applicant for the same gTLD or for gTLDs that are so similar that detrimental user confusion would be the probable result if more than one were to be delegated |

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| | to the root zone. |
| TLD Application System (TAS) | The online interface for submission of applications to ICANN. |
| Top-level domain (TLD) | TLDs are the names at the top of the DNS naming hierarchy. They appear in domain names as the string of letters following the last (right-most) dot, such as “net” in www.example.net. The TLD administrator controls what second-level names are recognized in that TLD. The administrators of the root domain or root zone control what TLDs are recognized by the DNS. |
| U-Label | The Unicode form of an IDN label, i.e., the string which a user expects to see displayed in applications. |
| Unicode | A standard describing a repertoire of characters used to represent most of the world’s languages in written form.<br>The Unicode standard contains tables that list the "code points" (unique numbers) for each local character identified. The collection of scripts used to do this is maintained by the Unicode Consortium.<br>Unicode supports more than a million code points, which are written with a "U" followed by a plus sign and the unique number in hexadecimal notation; for example, the word "Hello" is written U+0048 U+0065 U+006C U+006C U+006F. |
| Uniform Domain Name Dispute Resolution Policy (UDRP) | A policy for resolving disputes arising from alleged abusive registrations of domain names (for example, cybersquatting), allowing expedited administrative proceedings that a trademark rights holder initiates by filing a complaint with an approved dispute resolution service provider. |
| Variant characters | Variant characters occur where two or more characters can be used interchangeably. |
| Variant TLDs | TLD strings resulting from the substitution of one or more characters in a string with variant characters from an IDN table. |
| Whois | Records containing registration information about |

registered domain names.

# R-61

RESPONDENT'S EXHIBIT

eLAC2015

Building inclusive and innovative digital societies

DS1-I

5 April 2013

ENGLISH
ORIGINAL: SPANISH

Fourth Ministerial Conference on the Information Society in Latin America and the Caribbean

Montevideo, 3–5 April 2013

# MONTEVIDEO DECLARATION

We, the representatives of the countries of Latin America and the Caribbean meeting in the city of Montevideo from 3 to 5 April 2013 at the fourth Ministerial Conference on the Information Society in Latin America and the Caribbean,

*Reiterating* the principles and objectives agreed upon during the first and second phases of the World Summit on the Information Society, held in Geneva in December 2003 and in Tunis in November 2005, with a view to channelling the potential of information and communications technologies to promote the Millennium Development Goals,

*Recalling* the Bávaro Declaration adopted in the Dominican Republic in January 2003, the Rio de Janeiro Commitment and Plan of Action for the Information Society in Latin America and the Caribbean (eLAC2007) adopted in Brazil in June 2005, the San Salvador Commitment and Plan of Action for the Information Society in Latin America and the Caribbean (eLAC2010) adopted in San Salvador in February 2008, and the Lima Declaration and the Plan of Action for the Information and Knowledge Society in Latin America and the Caribbean (eLAC2015) adopted in Lima in November 2010,

*Recognizing* that the global objectives of the Geneva Plan of Action are to be met by 2015 and that implementation of the Plan of Action for the Information and Knowledge Society in Latin America and the Caribbean (eLAC2015) represents an important contribution to the fulfilment of the Millennium Development Goals,

*Reaffirming* our common desire and commitment to build a people-centred, inclusive and development-oriented information society based on human rights and on the principles of peace, solidarity, inclusion, freedom, democracy, sustainable development and cooperation,

*Renewing* our commitment to involve civil society, the private sector and the scientific and technical communities in an open, participatory and multisectoral dialogue in accordance with the principles laid down at the World Summit on the Information Society,

*Mindful* that, pursuant to resolution 60/252, the General Assembly of the United Nations decided to conduct an overall review in 2015 of the implementation of the outcomes of the World Summit on the Information Society,

*Mindful also* that 2013 marks a major milestone in the follow-up to and evaluation of the Plan of Action for the Information and Knowledge Society in Latin America and the Caribbean (eLAC2015), and thus to reviewing the progress made towards meeting the targets of the World Summit on the Information Society for 2015,

*Mindful further* that information and communications technologies are a useful tool for promoting human development, social inclusion and economic growth,

*Recognizing* the important contribution that information and communications technologies can make to improving the coverage and quality of social services in connection with education, health and safety, and to promoting respect for gender equity, diversity and fundamental rights in the digital environment,

*Emphasizing* the importance of fast-tracking growth of the digital economy as the key to changing production patterns, generating quality employment, creating value added at the local level and enhancing the region's competitiveness and integration into global markets, and the need for further policies on structural change that foster more knowledge- and innovation-intensive production activities and that promote sustainable growth with social equality,

*Recognizing* that the use of information and communications technologies can contribute to the protection of the environment, efforts to combat climate change, the sustainable use of natural resources and the prevention and mitigation of natural disasters,

*Stressing* the importance of regional participation in the various forums for discussion on Internet governance, with a view to fostering the sustainability, robustness, security, stability and development of the Internet as a fundamental part of the infrastructure of the information society,

*Aware* that requests have been submitted to the Internet Corporation for Assigned Names and Numbers (ICANN) to register the generic top-level domain (gTLD) names ".amazon" and ".patagonia" in several languages,

*Recognizing* that, with a view to defending sovereignty and human rights, it is necessary to protect the present and future rights of the countries and peoples of Latin America and the Caribbean in the information society and to prevent circumstances from arising that would limit their opportunities for legitimate advancement and development in the digital environment,

*Recognizing also* the positive trends and opportunities arising from technological convergence and global connectivity, and in particular the development of high-speed networks, the use of cloud computing, big data analytics, open government and the development of digital content and applications,

*Recognizing further* that several countries in the region face conditions and limitations which place them on an unequal footing in relation to the pursuit of development and the enjoyment of the benefits of the information society,

*Renewing* our commitment to design and implement policies and regulation on the information society which are based on respect for and compliance with the Declaration of Human Rights,

*Declare*

Our commitment to continue making progress towards meeting the goals identified in the Plan of Action for the Information and Knowledge Society in Latin America and the Caribbean (eLAC2015) and carrying out the activities of the various working groups,

Our firm determination to enhance regional collaboration on the information society, undertaking joint efforts to highlight the progress made in Latin America and the Caribbean in the overall review of the implementation of the World Summit on the Information Society outcomes and to participate actively and in a coordinated manner in the discussions that will guide the agenda beyond 2015,

Our resolve to reject any unilateral measure at variance with international law and the Charter of the United Nations that impedes the full achievement of economic and social development by the countries of the region and runs contrary to the well-being of its citizens,

Our commitment to promote access to telecommunications services by means of initiatives that help to expand infrastructure, reduce the costs and improve the quality of service access, promote international connectivity, and encourage the efficient use of networks,

Our determination to promote research, technological development and innovation in information and communications technologies, as the basis for the information and knowledge society.

*We resolve to*

1. *Adopt* the plan of work 2013-2015 to enhance progress towards the commitments established in the Plan of Action for the Information and Knowledge Society in Latin America and the Caribbean (eLAC2015);

2. *Endorse* the new composition of the eLAC2015 follow-up mechanism;

3. *Work* to find financial mechanisms to support all stakeholders in the region in the forging of synergies for the activities envisaged in the plan of work 2013-2015 for the implementation of the Plan of Action for the Information and Knowledge Society in Latin America and the Caribbean (eLAC2015);

4. *Continue* to strengthen existing cooperation with stakeholders outside the region and seek out new opportunities for collaboration;

5. *Recognize* the work of governmental and non-governmental entities and agencies in the region, invite them to play an active part in the implementation of Plan of Action for the Information and Knowledge Society in Latin America and the Caribbean (eLAC2015), and request the technical secretariat to coordinate with these stakeholders in order to avoid the duplication of efforts, maximize resources and pool experience;

6. *Reaffirm* the commitment of the countries of the region with respect to the implementation of the World Summit on the Information Society outcomes (WSIS+10), scheduled for review at high-level meetings in 2014 and 2015, at which the future agenda will also be defined;

7. *Strengthen* the coordination of the countries of the region and other relevant stakeholders and their participation in forums on Internet governance;

8. *Recognize* the work carried out by the Economic Commission for Latin America and the Caribbean in its role as technical secretariat of eLAC and the vital importance of those efforts for the continuity of the process;

9. *Recognize also* the importance of the support provided by the European Commission to eLAC since its inception, foster the consolidation of achievements and the operation of successful regional organizations, including the Latin American Telecommunications Regulators Forum (REGULATEL) and RedCLARA, and invite the European Commission to continue cooperating at the policy and strategic levels, given that emerging trends raise common challenges on which cooperation would benefit both regions;

10. *Reject* any attempt to appropriate, without the consent of the respective countries of Latin America and the Caribbean, the denominations "amazon" and "patagonia" in any language, or any other generic top-level domain (gTLD) names referring to geographical areas or historical, cultural or natural features, which should be preserved as part of the heritage and cultural identity of the countries of the region;

11. *Express our gratitude* to the people and the Government of Uruguay for the outstanding organization of the fourth Ministerial Conference on the Information Society in Latin America and the Caribbean;

12. *Thank* the Governments of Costa Rica and Mexico for their kind offer to provide continuity to the eLAC process by hosting the forthcoming ministerial meetings on the information society in Latin America and the Caribbean in 2014 and 2015, respectively, and accept with gratitude.

# R-62

RESPONDENT'S EXHIBIT

BRAZILIAN EMBASSY
WASHINGTON, D.C.

Washington, October 4th, 2013

Fadi Chehadé
President and CEO
Internet Corporation for Assigned Names and Numbers (ICANN)

Dear Mr. Chehadé,

I write to you in order to convey that the Committee on Foreign Affairs and National Defense of the Brazilian Senate has approved on August 8th, 2013 a resolution requiring the Brazilian Government to express to ICANN the Committee's formal opposition to the registration of the gTLD ".amazon"without the proper consent of the countries in whose territory the Amazon region is located, among which Brazil. A copy of the said resolution as well as its unofficial translation are attached.

Sincerely,

Ernesto H. F. Araújo
(Chargé D'Affaires, a.i.)



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APROVADO EM 06.08.2013

Requerimento nº , de 2013.

*72047.19191*

SENADO FEDERAL
Gabinete da Senadora VANESSA GRAZZIOTIN

# REQUERIMENTO Nº 73 DE 2013

Requeiro, nos termos regimentais, que a Comissão de Relações Exteriores e Defesa Nacional do Senado Federal encaminhe manifestação formal contrária a pretensão da empresa Norte-Americana Amazon Inc de registrar o nome de domínio do primeiro nível de "*.amazon*", sem o devido consentimento dos Países Amazônicos, a ser encaminhada à ICANN.

## JUSTIFICAÇÃO

A empresa Amazon.com Incorporação, fundada em 1994, com sede em Seatle, Washington, solicitou à ICANN, empresa responsável por identificação global do sistema de uso de identificação exclusivo na internet, 76 Gtlds, que significa domínio de topo genérico (domínios que precisam de autorização prévia não só da própria ICANN, como em alguns casos, da anuência do país a que se faz referência).

A referida empresa pretende formalizar o domínio AMAZON, que passaria a ser usada somente pela norte-americana e suas subsidiárias, para atender aos objetivos estratégicos da corporação, ou seja, a empresa quer manter um domínio exclusivo de palavras genéricas e subjetivas que afeta diretamente outros comércios da internet.

Diante desse contexto, no dia 15 de novembro de 2012, Brasil e Peru registraram, junto ao GAC/ICANN "early warning" (*um alerta*) ao gTLD ".amazon", com apoio de Bolívia, Equador, Guiana e Argentina, por entenderem que eventual registro desse domínio da Internet que remete a um patrimônio natural e público dos países amazônicos, além do que, acarretaria cerceamento definitivo de domínios que façam qualquer alusão à Amazônia e costumes dos povos daquela região.

Recebido em 15/08/2013
Hora 14:12:25
Myriam Machado - Mat 38262
SGLSF-SGM

Também foi incluída manifestação de alerta na IV Conferência Ministerial da América Latina e do Caribe sobre Sociedade da Informação, realizada em Montevidéu, entre os dias 03 a 05 de maio de 2013.

Diante das ações que vêm sendo desenvolvidas, por parte dos países membros da OTCA, em defesa dos interesses da Região Amazônica, é que proponho que esta Comissão encaminhe formalmente a ICANN, manifestação contrária à pretensão da referida empresas, a fim de subsidiar o representante brasileiro e os representantes dos países amazônicos nas discussões sobre o tema.

Sala das Sessões, 8 de Agosto de 2013.

**Senadora VANESSA GRAZZIOTIN**
**PCdoB/Amazonas**

# SENADO FEDERAL
## Comissão de Relações Exteriores e Defesa Nacional - CRE
**Requerimento 13 , de 2013**

ASSINAM O PARECER, NA 31ª REUNIÃO, DE 08/08/2013, OS(AS) SENHORES(AS) SENADORES(AS)

**PRESIDENTE:** _____

**RELATOR:** _____

| | |
|---|---|
| **Bloco de Apoio ao Governo(PSOL, PT, PDT, PSB, PCdoB)** | |
| Jorge Viana (PT) | 1. Delcídio do Amaral (PT) |
| Eduardo Suplicy (PT) | 2. Randolfe Rodrigues (PSOL) |
| Vanessa Grazziotin (PCdoB) | 3. Lindbergh Farias (PT) |
| Anibal Diniz (PT) | 4. Eduardo Lopes (PRB) |
| Cristovam Buarque (PDT) | 5. Pedro Taques (PDT) |
| Lídice da Mata (PSB) | 6. João Capiberibe (PSB) |
| **Bloco Parlamentar da Maioria(PV, PSD, PMDB, PP)** | |
| Ricardo Ferraço (PMDB) | 1. Sérgio Souza (PMDB) |
| Jarbas Vasconcelos (PMDB) | 2. Jeão Alberto Souza (PMDB) |
| Pedro Simon (PMDB) | 3. Roberto Requião (PMDB) |
| Eunício Oliveira (PMDB) | 4. Romero Jucá (PMDB) |
| Luiz Henrique (PMDB) | 5. Ana Amélia (PP) |
| Francisco Dornelles (PP) | 6. Sérgio Petecão (PSD) |
| **Bloco Parlamentar Minoria(PSDB, DEM)** | |
| Alvaro Dias (PSDB) | 1. Aloysio Nunes Ferreira (PSDB) |
| Paulo Bauer (PSDB) | 2. Flexa Ribeiro (PSDB) |
| José Agripino (DEM) | 3. Jayme Campos (DEM) |
| Cyro Miranda (PSDB) | 4. Cícero Lucena (PSDB) |
| **Bloco Parlamentar União e Força(PTB, PRB, PSC, PR)** | |
| Mozarildo Cavalcanti (PTB) | 1. Gim (PTB) |
| Fernando Collor (PTB) | 2. Eduardo Amorim (PSC) |
| Magno Malta (PR) | 3. Armando Monteiro (PTB) |

**O SR. PRESIDENTE** (Ricardo Ferraço. Bloco da Maioria/PMDB – ES) – Nós estamos aprovando um requerimento "guarda-chuva"m para depois trazermos especialistas, não apenas do Governo, mas especialistas do mercado. A ideia é a de que nós possamos ir para além desse problema conjuntural de espionagem.

**O SR. ALOYSIO NUNES FERREIRA** (Bloco Minoria/PSDB – SP) – Sim. Aí, o tema do satélite geoestacionário é da maior importância.

**O SR. PRESIDENTE** (Ricardo Ferraço. Bloco da Maioria/PMDB – ES) – É isso. A ideia é fazer uma discussão acerca do conhecimento que precisamos ter do real estágio de fragilização do Estado brasileiro em relação a essas questões.

**O SR. ALOYSIO NUNES FERREIRA** (Bloco Minoria/PSDB – SP) – É porque a espionagem é do tempo dos faraós egípcios, pois os Estados espionam-se uns aos outros.

**O SR. PRESIDENTE** (Ricardo Ferraço. Bloco Maioria/PMDB – ES) – Item 16:

**ITEM 16**
**REQUERIMENTO DA COMISSÃO DE RELAÇÕES EXTERIORES E DEFESA NACIONAL Nº 71, de 2013**

Requeiro, nos termos do Inciso II, do art. 93, do Regimento Interno do Senado Federal, a realização de audiência pública com representantes do Parlamento haitiano, sobre os seguintes temas:

• negociações entre empresas brasileiras e haitianas;

• entrada do Haiti no Parlamento Latino – Americano (Diplomacia);

• criação de representação diplomática do Haiti no Brasil para tratar de assuntos relevantes como imigração no Norte do Brasil (MRE);

• formação de universitários haitianos no Brasil.

**Autoria:** Senadora Vanessa Grazziotin e do Senador Inácio Arruda.

Em discussão o requerimento. (*Pausa.*)

Não havendo quem queira discutir, em votação.

As Srªs e os Srs. Senadores que votam favoravelmente permaneçam como se encontram. (*Pausa.*)

Aprovado.

**A SRª VANESSA GRAZZIOTIN** (Bloco Apoio Governo/PC do B – AM) – Sr. Presidente...

**O SR. PRESIDENTE** (Ricardo Ferraço. Bloco Maioria/PMDB – ES) – Pois não, Senadora Vanessa Grazziotin.

**A SRª VANESSA GRAZZIOTIN** (Bloco Apoio Governo/PCdoB – AM) – Os próximos requerimentos – Requerimentos nºs 17, 18, 19 e 20 – tratam daquela questão da Amazon, do pedido que ainda tramita na ICANN, da empresa

Amazon, para ter a exclusividade da utilização e o registro genérico, portanto, desse termo Amazon na Internet. E todos os requerimentos tratam desse assunto.

V. Exª solicitou, durante uma audiência pública, que eu apresentasse sugestões de forma a que esta Comissão pudesse agir de forma mais incisiva. Então, as sugestões que eu estou apresentando estão contidas nesses requerimento. Um deles diz respeito ao encaminhamento de um pedido, uma manifestação desta Comissão perante ICANN, a empresa, para que não se conceda o registro.

Há outro, que seria para o Conselho de Assessoramento Governamental (GAC), não há mais necessidade, porque a notícia boa é que, na última reunião que tiveram na África do Sul, eles aprovaram, por unanimidade, o pedido dos governos brasileiro e peruano para que não fosse concedida a licença exclusiva. Então, não há mais necessidade de ir mais ao GAC.

Um dos requerimentos é, portanto – repito –, para a ICANN; o outro é uma solicitação para que o Presidente do Senado se dirija ao Presidente dos outros Senados de países amazônicos, para que também se manifestem de uma forma mais contundente; o terceiro é a designação de três pessoas para que pudessem acompanhar essa questão junto à ICANN.

Sr. Presidente, então seriam esses os conteúdos dos requerimentos.

**O SR. PRESIDENTE** (Ricardo Ferraço. Bloco da Maioria/PMDB – ES) – V. Exª requer, portanto, votação em bloco.

Há algum Senador ou Senadora que manifeste alguma objeção? (*Pausa.*)

Se não há, vamos passar à fase de votação.

As Srªs e os Srs. Senadores que votam favoravelmente permaneçam como se encontram. (*Pausa.*)

Aprovados.

(São os seguintes os itens aprovados:

**ITEM 17**
**REQUERIMENTO DA COMISSÃO DE RELAÇÕES EXTERIORES E DEFESA NACIONAL Nº 72, de 2013**

*Requeiro, nos termos regimentais, que a Comissão de Relações Exteriores e Defesa Nacional crie um Grupo de Trabalho composto por 3 (três) Senhores Senadores, destinado a acompanhar e propor ações em relação ao desenvolvimento das negociações envolvendo a pretensão da empresa norte-americana Amazon Inc de deter a exclusividade do nome .amazon na Internet.*

**Autoria:** Senadora Vanessa Grazziotin

**ITEM 18**
**REQUERIMENTO DA COMISSÃO DE RELAÇÕES EXTERIORES E DEFESA**

**NACIONAL Nº 73, de 2013**

*Requeiro, nos termos regimentais, que a Comissão de Relações Exteriores e Defesa Nacional do Senado Federal encaminhe manifestação formal contrária a pretensão da empresa Norte-Americana Amazon Inc de registrar o nome de domínio do primeiro nível de ".amazon", sem o devido consentimento dos Países Amazônicos, a ser encaminhada ao Comitê Assessor Governamental da ICANN, por ocasião de reunião a ser realizada em Durban, na África do Sul, entre os dias 14 e 18 de julho de 2013.*

Autoria: Senadora Vanessa Grazziotin

**ITEM 19**
**REQUERIMENTO DA COMISSÃO DE RELAÇÕES EXTERIORES E DEFESA NACIONAL Nº 74, de 2013**

*Requeiro, nos termos regimentais, que a Comissão de Relações Exteriores e Defesa Nacional, após a aquiescência do Colegiado, solicite à Presidência do Senado Federal a colocação de Banner na página institucional da Casa para a divulgação da campanha Nossa Amazônia – Diga NÃO à privatização do nome da Amazônia!.*

**Autoria:** Senadora Vanessa Grazziotin

**ITEM 20**
**REQUERIMENTO DA COMISSÃO DE RELAÇÕES EXTERIORES E DEFESA NACIONAL Nº 75, de 2013**

*Requeiro, nos termos regimentais, que a Comissão de Relações Exteriores e Defesa Nacional, após a aquiescência do Colegiado, solicite à Presidência do Senado Federal que encaminhe manifestação do Senado Federal Brasileiro aos Parlamentos dos Países integrantes da Organização do Tratado de Cooperação Amazônica, conclamando-os a realizarem campanha com o fito de proteger o nome da Amazônia da pretensão da empresa norte-americana Amazon Inc de deter a exclusividade do nome .amazon na Internet.*

**Autoria:** Senadora Vanessa Grazziotin.)

**ITEM 23**
**REQUERIMENTO Nº 76 , DE 2013**

*Requeiro, nos termos regimentais, a realização de Audiência Pública perante esta Comissão de Relações Exteriores e Defesa Nacional, com o objetivo de discutir as propostas de mudanças na organização da Agência Brasileira de Cooperação, órgão que atualmente integra a estrutura do Ministério das Relações Exteriores. Em visita oficial à África, em maio passado, a Presidente Dilma Rousseff anunciou a criação de uma nova agência de cooperação técnica e*

Unofficial Translation

**FEDERAL SENATE OF BRAZIL**

**RESOLUTION (REQUEST) NO. 73 OF 2013**

Pursuant to internal regulations, I hereby request that the Federal Senate's Committee on Foreign Relations and National Defense forward to ICANN a formal statement in opposition to Amazon Inc.'s plan to register the top-level domain name ".amazon" without the proper consent of Amazon countries.

**JUSTIFICATION**

Amazon Inc., founded in 1994 and headquartered in Seattle, WA, requested ICANN (company responsible for IP address allocation, protocol assignment and domain name for the Internet) 76 gTLDs, which means a generic top-level domain that requires not only prior authorization from ICANN but also, in some cases, consent from the countries to which it refers.

The aforementioned company intends to formally obtain the AMAZON domain, which would only be used by the company and its subsidiaries for the purpose of achieving its strategic corporate goals. This is to say that the company wishes to maintain exclusive domain over generic and subjective words that directly affect commerce elsewhere on the Internet.

In view of the foregoing, on November 15, 2012, Brazil and Peru filed an early warning with GAC/ICANN regarding the gTLD ".amazon", with support from Bolivia, Ecuador, Guyana, and Argentina. This was done because the registration of such an Internet domain that refers to the natural resources and the public heritage of Amazon countries would also impose a permanent restriction on domains that refer to the Amazon and the customs of peoples in that region.

The statement also included a warning at the Fourth Ministerial Conference on the Information Society in Latin America and the Caribbean, which was held in Montevideo, May 3-5, 2013.

In view of the actions that have been carried out by member countries of the Amazon Cooperation Treaty Organization (ACTO) in support of the Amazon region, I request that this Committee formally forward to ICANN a statement in opposition to Amazon Inc.'s intention, for the purpose of assisting the representatives of Brazil and the other Amazon countries in the discussions on this topic.

August 8, 2013

Senator VANESSA GRAZZIOTIN
PCdoB/Amazonas



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# R-63

RESPONDENT'S EXHIBIT

International Chamber of Commerce
*The world business organization*

International Centre for Expertise  Centre international d'expertise

# NEW GENERIC TOP-LEVEL DOMAIN NAMES ("gTLD")
# DISPUTE RESOLUTION PROCEDURE

## RESPONSE FORM TO BE COMPLETED BY THE APPLICANT

- *Applicant responding to several Objections or Objections based on separate grounds must file separate Responses*
- *Response Form must be filed in English and submitted by email to expertise@iccwbo.org*
- *The substantive part is limited to 5000 words or 20 pages, whichever is less*

***Disclaimer**: This form is the template to be used by Applicants who wish to file a Response. Applicants must review carefully the Procedural Documents listed below. This form may not be published or used for any purpose other than the proceedings pursuant to the New GTLD Dispute Resolution Procedure from ICANN administered by the ICC International Centre for Expertise ("**Centre**").*

**References to use for the Procedural Documents**

| Name | Abbreviation |
|---|---|
| Rules for Expertise of the ICC | "**Rules**" |
| Appendix III to the ICC Expertise Rules, Schedule of expertise costs for proceedings under the new gTLD dispute resolution procedure | "**Appendix III**" |
| ICC Practice Note on the Administration of Cases | "**ICC Practice Note**" |
| Attachment to Module 3 - New gTLD Dispute Resolution Procedure | "**Procedure**" |
| Module 3 of the gTLD Applicant Guidebook | "**Guidebook**" |

ICC International Centre for ADR  Centre international d'ADR de la CCI
38 Cours Albert 1er, 75008 Paris, France
Tel +33 (0)1 49 53 30 52  Fax +33 (0)1 49 53 30 49
E-mail expertise@iccwbo.org  Website www.iccexpertise.org

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**Identification of the Parties and their Representatives**

**Applicant**

| | |
|---|---|
| Name | Amazon EU S.à.r.l. |
| Contact person | Ms. Lorna Jean Gradden |
| Address | Contact Information Redacted |
| City, Country | |
| Telephone | |
| Email | |

**Objector**

| | |
|---|---|
| Name | Prof. Alain Pellet, Independent Objector |
| Contact person | |
| Address | Contact Information Redacted |
| City, Country | |
| Telephone | |
| Email | |

*Copy the information provided by the Objector.*

**Applicant's Representative(s)**

| | |
|---|---|
| Name | Edwards Wildman Palmer UK LLP |
| Contact person | Nick Bolter |
| Address | Contact Information Redacted |
| City, Country | |
| Telephone | |
| Email | |

| | |
|---|---|
| Name | Edwards Wildman Palmer UK LLP |
| Contact person | Gareth Dickson |
| Address | Contact Information Redacted |
| City, Country | |
| Telephone | |
| Email | |

*Add separate tables for any additional representative (for example external counsel or in-house counsel).*

**Applicant's Contact Address**

| | |
|---|---|
| Name | Edwards Wildman Palmer UK LLP |
| Contact person | Nick Bolter |
| Address | Contact Information Redacted |
| City, Country | |
| Telephone | |
| Email | |

*This address shall be used for all communication and notifications in the present proceedings. Accordingly, notification to this address shall be deemed as notification to the Applicant. The Contact Address can be the Applicant's address, the Applicant's Representative's address or any other address used for correspondence in these proceedings.*

**Other Related Entities**

| | |
|---|---|
| Name | - |
| Address | - |
| City, Country | - |
| Telephone | - |
| Email | - |

*Add separate tables for any additional other related entity.*

**Disputed gTLD**

**gTLD Applicant has applied to and Objector objects to [.example]**

| | |
|---|---|
| Name | .amazon [Application ID: 1-1315-58086] |

**Objection**

**The Objector filed its Objection on the following Ground (Article 3.2.1 of the Guidebook and Article 2 of the Procedure)**

☐ **Limited Public Interest Objection**: the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

or

☒ **Community Objection**: there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

*Copy the information provided by the Objector.*

**Point-by-Point Response to the claims made by the Objector (Article 3.3.3 of the Guidebook and Article 11 of the Procedure)**

*(Provide an answer for each point raised by the Objector.)*

## Summary

The Panel should deny the objection because the "Independent Objector" ("IO"): has conflicts in his representation; lacks standing to file this objection; and has failed to prove all four of the tests set forth in subsection 3.5.4 of the Guidebook.

Module 3's "limited grounds" for rejecting applications are practical: they must be capable of being demonstrated clearly and on the basis of evidence. Where two interpretations of a test exist, the Panel should adopt the one that is more clear and reject the one that is ambiguous.

ICANN's presumption is that applications meeting its technical requirements should proceed unless they "misappropriate" community labels in which the applicant has no legitimate interest. The applicant has a legitimate interest in its globally-recognized brand "AMAZON" and Amazon-formative marks (the "Amazon marks"). Since the launch of the original gTLDs, Amazon has been trusted to use its name at the highest level of the DNS and there is no reason why it should be prevented from doing so in the new DNS. The limited modification to the applicant's web address described in its application is "targeted" at its globally-recognised AMAZON marks and will have no materially detrimental impact on the various communities in and around the Amazonas River nor on the public who use the global Internet. The fact that neither the Organização do Tratado de Cooperação Amazônica ("OTCA") nor any government, IGO or other representative body filed objections indicates that there is no substantial opposition from within any relevant community.

Having regard to all the circumstances, the objection must be rejected.

## I. Introduction

After six years of consultations, ICANN's final Guidebook prescribes only "limited grounds"[1] on which a 5,000 word objection can require the extreme consequence of irrevocably terminating an application. According to ICANN:

> *"There is a presumption generally in favor of granting new gTLDs to applicants who can satisfy the requirements of obtaining a gTLD."*[2]

According to ICANN, the "ultimate goal" of the community objection process consists of two related aims: "to ensure that an objector cannot keep an applicant with a legitimate interest in the TLD from succeeding"; and to prevent an applicant lacking a legitimate interest in a string from using the gTLD process to "misappropriate" community labels[3].

---

[1] §1.1.2.3.
[2] Comments, v3, p79. Links to cited documents appear in Annex 1.
[3] Comments, v5, p104.

The burden lies with the objector "to meet all four tests in the standard". Tests cannot be offset against one another, and are designed to be practical, requiring evidence and not hypotheses:

> *"If evidence is not available, then it seems appropriate that the applicant should not be required to defend against it"*[4].

The Guidebook must be clear, predictable and certain: where two opposing interpretations of the Guidebook are before the Panel, it should adopt the one that provides the clearest and most tangible or practical means by which disputes can be determined.

## II. The IO's Separate Representation of the Government of Peru is a Bar to Standing in this Instance

The Independent Objector is a unique participant in the gTLD process, granted authority to file objections to achieve "a public interest goal" insofar as he acts "*solely* in the best interests of the public who use the global Internet": he cannot act "on behalf of any particular persons or entities"[5]. "The public who use the global Internet" is the only community the Guidebook gives the IO standing to represent. He has no standing to represent any other group.

The IO's purported representation of the particular persons and entities with "specific and strong links" to the Amazonia region directly conflicts with the Guidebook. Amazon notes[6] that the IO currently represents the Government of Peru before the International Court of Justice and, per his own admission, has "special links" with the Amazonia region. Amazon also notes the inconsistency between how the IO expressly declined to object to applications involving Africa, the Persian Gulf and the Gulf Cooperation Council, and his vigorous pursuit of the interests of his client Peru, despite the same issues arising in each application.

For these reasons alone, the Panel should reject this objection for lack of standing under the Guidebook.

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[4] Comments, v5, p103. Objectors have had nine months to prepare their evidence.
[5] §3.2.5. Emphasis added. This prohibition applies more widely than to acting on behalf of just a single person or a single entity.
[6] See correspondence and documents provided and identified in Annex 2 including: the IO's live, publicly-available CV; his statements that he has "special links" to Latin America and that Brazil is "particularly dear" to him; and his contrasting treatment of all quasi-geographical strings outside Latin America.

## III. Point-by-Point Response

### 1. The Objection fails to "prove that the community expressing opposition can be regarded as a clearly delineated community"

The IO's determination of "community" is in fact the "commonality of interests" test that has been rejected by the multi-stakeholder process since version 3 of the Guidebook. His open-ended, subjective definitions also fail to "clearly delineate" a community.

#### a) Guidebook's Standard

In its Analysis on version 1 of the Guidebook, ICANN is asked: "Will the definition of 'community' be clarified?" ICANN responds: "The 'working definition' of community, and requirements for a community-based gTLD, and objections thereto, are summarized in the draft Applicant Guidebook, Section 1.2.2.1 [now 1.2.3.1]."[7]

Section 1.2.3.1 ("Definitions"), introduces the concept of the "clearly delineated community" and refers applicants to section 4.2 for "additional information" on the criteria for "community" and "delineation".

***Community***

Section 4.2.3 explains that the criteria for a "clearly delineated community" are "very stringent" requirements. It also states that "community" implies:

> *"more of cohesion than a mere commonality of interest".*

Furthermore, ICANN expressly rejected the GAC's recommendation that "community-based strings" be *expanded* to include "a particular group of people or interests based on historical, cultural or social components of identity", instead requiring a bright line around the "community" definition:

[7] Comments, v1, p88.

*"Community definitions have been narrowly drawn in the Guidebook to prevent abuses… [E]ven the [GAC's] expanded definition might leave some genuine area of sensitivity unaddressed."*[8]

***Delineation***

Section 4.2.3 states: "'Delineation' relates to the membership of a community": a "clear and straight-forward" determination of membership is indicative of delineation, whereas unclear, disbursed or unbound definitions are not. Community objections require "clear" delineation.

**b) Objection**

***Community***

The IO states that "The Guidebook does not provide a clear definition of the term 'community'" and argues that "living in the same place" or "having a particular characteristic in common"[9] including (undefined) "specific and strong" links to a region are two tests that meet the Oxford English Dictionary's, and therefore the Guidebook's, definition of "community".

***Clear delineation***

The IO argues that the existence of (unlimited) "specific and strong links" to a region "clearly delineates" a community.

**c) Response**

If the Panel accepts that the IO may only represent "the public who use the global Internet", then the applicant must accept that that class meets the requirements of this part of Module 3.

If the Panel believes that, contrary to the language of the Guidebook, the IO may act on behalf of "particular persons and entities" other than "the public who use the global Internet" as he contends, then the test is not met because the IO has not proved that those persons

[8] Revised ICANN Notes, 15/04/11, at §2.2.1-§2.2.2.
[9] Objection, §15.

and entities form the requisite "cohesive" body with "clear and straight-forward" membership criteria.

***"Community"***

Neither ICANN nor the Guidebook adopts a dictionary definition of "community" over the requirements of §4.2.3. The Panel should likewise reject it.

The IO's description of the asserted community refers to eight separate and sovereign countries, each of which has its own geography, economy, history, populations and biodiversity. He notes that in this "vast region"[10] of 370 million citizens[11], 30 million people comprise over 350 indigenous and ethnic groups. The unique diversity of this area refutes the contention that it is "cohesive".

Even if "common interests", "common ties" and "commonality of *certain characteristics*" could be proved factually, they do not establish a "community" under the Guidebook since they are no more "cohesive" than the "commonality of *interest*" test it expressly rejects.

***"Clear delineation"***

The IO's reliance on the 2007 GNSO[12] Final Report is misplaced: the Guidebook dictates the Standards. Furthermore, Implementation Guideline P was removed from the draft Guidebook when version 3 introduced the elevated requirement that the community be "delineated", and "clearly" so. ICANN, responding to public dissatisfaction with the former tests, considered "delineation" to be "a key factor in the assessment"[13]: version 2's tests ("well-defined" and "distinct") were "too vague or unclearly stated"[14].

The argument that a community is "clearly delineated" by virtue of its "specific and strong link" with a region cannot be sustained. The Guidebook requires a "clear and straight-forward" boundary: one of the key factors for the Panel is "the level of formal boundaries around the community and what persons or entities are considered to form the community". That such delineation must be "clear" indicates the necessity of an objective, unambiguous bright-line test.

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[10] Objection, §18.
[11] In 2011: http://data.worldbank.org/country/
[12] This is a policy document prepared by the Generic Names Supporting Organization, not ICANN.
[13] Comments, v3, p64.
[14] "Updates to Module 3: Dispute Resolution Procedures", 30/05/09, p2.

By contrast, "living in the geographical region and having strong links" to a region is vague and subjective, while "sharing common interests and ties, *including*" X, Y or Z, is open-ended and does not clearly demarcate what persons are considered to form the community.

**d) Conclusion**

The IO fails to prove the existence of a "cohesive" body, delineated by "clear and straight-forward membership" criteria. The objection fails this test.

## 2. Even if there was "some" opposition within an appropriate community, it was not "substantial"

The IO invites the Panel to speculate as to why his evidence has not proved more than "some" opposition, and fails to explain why major representatives of the asserted community, including OTCA, the body with the specific mandate of protecting the interests of the Amazonia region, did not file objections or submit a single public comment. The Guidebook does not permit such speculation and expressly provides that "some' opposition is insufficient.

**a) Guidebook's Standard**

The Guidebook requires the IO to prove "substantial opposition" within the asserted community.

Section 4.2 of the Guidebook states that to count as opposition to applications involving "community" designation, "objections or comments must be of a reasoned nature. Sources of opposition that are ... unsubstantiated ... will not be considered relevant". It is logical and appropriate to apply these criteria to community "opposition" under Module 3.

The Guidebook ascribes no special meaning to "substantial opposition". The test involves a qualitative and quantitative assessment of all factors: therefore what has *not* been said, and who has *not* voiced opposition, is as important as what has been said, by whom, and when. The Panel must assess the evidence as at the date of the objection.

**b) Objection**

The IO argues that "substantial opposition" requires a broad meaning since he would not file an objection "if a single established institution is better placed to represent the community concerned"[15].

He also argues that the Panel should not be concerned about his lack of evidence of public opposition because some explanation for its absence can be alleged.

Finally, the IO concludes that a single, four-sentence public comment and the summary statements in an early warning that was followed by no objection are, considering the nature of the asserted community and its representative OTCA, in the context of this important matter, "substantial".

**c) Response**

***Community***

The IO does not prove "substantial" opposition within his asserted community or the much larger "public who use the global Internet".

The Amazonia region is represented by a single, established institution, OTCA, which was created by treaty between its eight governments to better represent their interests in international and supranational matters. OTCA operates through its Permanent Secretariat. The IO identifies a ninth country, France, as interested in the asserted community.

Four of these governments have representatives on the Governmental Advisory Committee[16], and the Brazilian representative was GAC Vice-Chair from 2008-2009.

There are also the millions of people who live and conduct business in the Amazonia region, environmental groups working to preserve the Amazonia region's environment, and representatives of the area's indigenous peoples.

There are, therefore, many, significant voices who would be expected to speak out in the event of genuine community opposition to gTLDs before any opposition could be said to be "substantial".

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[15] Objection, §25.
[16] Brazil, Columbia, France and Peru.

***"Substantial" opposition***

The IO's "restraint" where "better-placed" institutions exist is not part of the Guidebook so cannot affect its interpretation. It is also incompatible with the facts: OTCA, which Brazil and Peru's early warning lauds as "an international organization which coordinates initiatives in the framework of the Amazon Cooperation Treaty ... and expedites the execution of its decisions through its Permanent Secretariat", whose "main purpose" is "to promote the harmonious development" of the Amazonia region, is clearly "a single established institution better placed to represent the community concerned". By the IO's own argument, OTCA's existence and knowledge of the process means he has no standing to file this Objection[17].

Among the channels available to demonstrate opposition were:

- the free, online Application Comments Forum;
- ICANN's At-Large Advisory Committee ("ALAC"), including the Regional At-Large Organization ("RALO") for Latin America and the Caribbean Islands;
- early warnings; and
- community objections.

***Application Comments Forum***[18]

Neither OTCA, despite being actively involved in discussions with Amazon about its applications, nor any of the nine relevant governments, 370 million relevant citizens, indigenous rights or environmental organizations, filed a public comment in the Application Comments Forum. In other words, the asserted community, despite having knowledge of the process and the means to object, did not feel any need to comment and register concern regarding the applications.

***ALAC and Latin America and Caribbean Islands RALO***

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[17] His argument also suggests that he considers the government of Argentina (a GAC member), to have insufficient standing to represent the community he believes is targeted by the *.patagonia* application: both he and the Argentinean government have filed community objections to that application.

[18] https://gtldcomment.icann.org/

One individual submitted a public comment[19] to the ALAC, who considered it before reaching a positive decision not to file an objection[20]. At four sentences long, it is neither "reasoned" nor "substantial".

The Latin American and Caribbean Islands RALO expressed no opposition and filed no objection.

***Early Warnings***

Of four possible early warnings, only one was filed yet none of OTCA, Columbia, Suriname (nationality of OTCA's current Secretary General), Venezuela, or France is cited as supporting it. Although the Bolivian, Ecuadorean and Guyanese governments are said to support it, none filed comments in their own name to substantiate that claim[21].

The early warning of November 2012 requested only that Amazon's application "be included in the GAC early warning process". That process is not an objection. It is "an indication" that, four months before the objection period closed, "the application is seen as sensitive or problematic" and prompts applicants to consider their next steps, but section 1.1.2.4 of the Guidebook makes clear that it is up to governments to file objections if they remain opposed to an application.

In response to the early warning and before the objection period closed, Amazon wrote to the GAC representatives, participated in a video conference with the governments, and travelled to Brasilia to negotiate with member nations of OTCA. That OTCA and its governments have preferred to continue negotiations with Amazon rather than file objections demonstrates that they believe this objection does not have to succeed to protect their interests.[22]

***Community objections***

Only the IO followed Brazil and Peru's early warning with an objection. His conflict regarding these countries has already been noted.[23] Neither OTCA, any Latin American government or

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[19] The other public comment noted by the Objector, which is not reasoned or substantial either, is not from a member of the asserted community. This complete absence of public comment suggests that the early warning was not in response to any mandate from the constituents of the Amazonia region.
[20] https://community.icann.org/display/newgtldrg/.amazon_OG
[21] The position of Argentina is unsubstantiated, and irrelevant: no part of Amazonia is in Argentina; there is evidently no single "point of view" to adopt; and the application is a standard, and not a community, application. See also Annex 3.
[22] Argentina, on the other hand, **did** object to *.patagonia* in addition to filing its early warning.
[23] Footnote 6.

governmental agency or IGO, ALAC, nor any indigenous, citizens, or heritage group, or any wildlife or environmental group filed objections.

#### d) Conclusion

The IO does not "prove substantial opposition" by suggesting hypothetical explanations for its absence and the argument that the Panel should not give "substantial opposition" its ordinary meaning must be rejected.

The lack of comment from the vast populations with "common interests" in the Amazonia region, and the decision by every government, OTCA and the ALAC, not to file objections means that there was no substantial opposition within either the asserted community or the public who use the global Internet when the objection was filed.

The Guidebook prescribes the consequence: "If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail".

## 3. Amazon has clearly "targeted" its gTLD at its globally-recognized brand and not at the loosely-defined persons and entities the IO claims to represent

Under the Guidebook only one community is "targeted" by an application. The IO's argument that "implicit" targeting: can ignore how the gTLD will be used by the public who use the global Internet; and takes precedence in Module 3 over explicit targeting, finds no support in the Guidebook.

#### a) Guidebook Standard

In the Guidebook, "targeting" requires more than a mere "nexus"[24] between the applied-for string and the asserted community: it requires a "strong association" between these criteria. The substance of "targeting" therefore is: Does the string point the application towards a particular community, whether an applicant admits it or not?

[24] I.e. the name of the corresponding test in Module 4.

**b) Objection**

The IO does not identify which community he is representing, but acknowledges he does not represent the community explicitly targeted by the string. He notes that AMAZON "pays homage", in English, to the status of the Amazonas River as the world's longest but argues that this *retrospective* inspiration, *prospectively* shackles the applicant to "target" its e-commerce platform at the Amazonas River and Amazonia region into perpetuity.

The IO argues that a "strong" association exists where a string is "or could be" clearly linked to the relevant community, and that "targeting" is primarily an effects-based test.

**c) Response**

***"Community "***

If the Panel accepts that the IO may only represent "the public who use the global Internet", then the IO has failed to show how the .amazon string targets that community: not all strings preceded by a dot necessarily target Internet users.[25]

If the Panel believes that, contrary to the language of the Guidebook, the IO may act on behalf of particular persons and entities other than the public who use the global Internet as he contends, then the IO fails this test because Amazon explicitly targets its application at its brand, company and customers globally and he has not proven "targeting" of any other community.

***"Targeting"***

It is not possible to accidentally "target' someone. "Targeting" implies precision and looks toward the intent of the party alleged to be doing the targeting: "the activity must be intended to have effects" but is "something more than effects"[26]. Amazon's application makes no mention whatsoever of the IO's asserted community.

The IO disputes that the Guidebook's 'targeting" test is straightforward because the GNSO Report refers to explicit and implicit targeting. This is irrelevant: the Guidebook dictates the

[25] By contrast, strings clearly aimed at Internet users, such as .email or .webdoctor, could arguably be targeted at the public who use the global internet.
[26] Schultz, EJIL 2008 19 (779).

Standards. Furthermore, Implementation Guideline P, which was never incorporated into the Guidebook, is merely an expansion on Recommendation 20, in which the GNSO acknowledged the two means by which "the community" (not "the communities" or "a community"[27]) could be shown to be targeted: explicitly "*or*" implicitly.

The IO's argument has also been rejected by ICANN and is too simplistic. It is too simplistic because it ignores Amazon's strong brand recognition in its AMAZON marks in the eyes of "the public who use the global Internet", whom alone the IO is supposed to represent, and holds that the applicant will forevermore "target" Amazonia with every one of its present and future services, whatever and wherever they are. This contradicts the ordinary meaning of "targeting".

The argument that the Guidebook's "targeting" test is based on whether there "could be" a certain "link" with a place, or whether there are "*possible* '[a]ssociations by the public'"[28] based on string similarity with a place name, has also been expressly rejected by ICANN, who acknowledges that brand names and other strings:

> *"that happen to relate to some city, town, village, or hamlet somewhere might also have other legitimate uses that are not related to that city, town, village or hamlet".*[29]
>
> and
>
> *"Strings may have many meanings, not all of which might implicate a community. Reducing the context for how strings may be used is contrary to an important goal of the new gTLD program, which is to help encourage competition, innovation and consumer choice".*[30]

Amazon, one of the world's pre-eminent online retailers and most trusted companies, clearly has "legitimate uses" for its "AMAZON" marks, global brand, and company name as a gTLD string.[31]

Finally, the ALAC has clearly stated that even the identical naming of a gTLD string (*.patagonia*) after a place (Patagonia), even in relation to purposes closely aligned to public

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[27] A targeted community may have many constituents or few; but only one community is envisaged.
[28] Contrary to the objection, the Guidebook does not refer to "possible" associations.
[29] Comments, v6, p95.
[30] ICANN Board Notes, 04/03/11, p4.
[31] See Annex 4 for examples of the public's awareness and trust in the AMAZON brand.

perceptions of that place (outdoor pursuits), is insufficient to find that the string "targets" that location's community: "there will be **no** drafting of an objection on community grounds for the application for *.patagonia* given that the 'targeting' and 'detriment' tests for community objection grounds were not passed".[32] Unlike *.patagonia*, the IO's objection to *.amazon* relies on non-identity of strings ("Amazonas" or "Amazonia" vs "AMAZON") and there is complete separation of intended use from the place that in part inspired the name. This is further, persuasive evidence that the IO has not proved "targeting" under the Guidebook.

### d) Conclusion

The applicant has "legitimate uses" for the applied-for string, which is and has since 1994 been its globally-recognized and highly-respected brand name. This single-registrant string is neither explicitly nor implicitly targeted at any part of Latin America: it is, however, explicitly targeted at the applicant's globally-recognised brand. One of these mutually exclusive alternatives must determine which community is "targeted". Since the explicit targeting is not a sham, it must prevail. The IO fails this test.

## 4. As demonstrated by the applicant's use of its AMAZON marks since 1994, including online, there is no "likelihood of material detriment" to the asserted community

### a) Guidebook requirements

The Guidebook requires the IO to prove all four tests to succeed in a community objection and requires each to be assessed independently:

> *"ICANN does not consider that the satisfaction of other elements of the community objection … should create a presumption of detriment. … If the objector cannot prove the likelihood of detriment, there does not appear to be any reason why the objector should be entitled to block the applicant's application."*[33]

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[32] https://community.icann.org/display/newgtldrg/.patagonia_OG. Emphasis in original. The ALAC did not discuss *.amazon* in detail, but expressly determined not to object since there was no "material detriment": https://community.icann.org/display/newgtldrg/.amazon_OG

[33] Comments, v4, p110.

Other Guidebook amendments emphasise the need for practical, evidence-based assessment: at the request of the GAC, ICANN removed the "impractical" requirement of material detriment "to the broader Internet community"[34]; and stated that if evidence is not available, "it seems appropriate that the applicant should not be required to defend against it."[35]

ICANN also significantly "elevated"[36] the threshold for this test in version 5 of the Guidebook, when "detriment" became "material detriment" and the "nature and extent of concrete or economic damage to the community ... that would result from the applicant's operation of the applied-for gTLD string" became expressly relevant.

A commenter complained that this change made it "doubtful that anyone could possibly win such a proceeding".[37] ICANN, who has stated, "There is a presumption generally in favor of granting new gTLDs to applicants who can satisfy the requirements of obtaining a gTLD", did not dispute that assessment, but reaffirmed the need for elevated detriment: "Reverting back to simple detriment to the objector alone is not acceptable."[38]

At the same time, ICANN inserted into the Guidebook:

> *"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"*

Finally, the IO must show that Amazon's application creates a "likelihood" of material detriment.

**b) Objection**

The IO appears to suggest that his asserted community is "the Amazon community and ... the public more generally".

He then argues that there are two categories of detriment. First, that if Amazon succeeds in the application, "the people and entities being part of the Amazon community and owning its cultural heritage [will be unable] to obtain a .Amazon domain name". Second, "the still

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[34] "GAC comments", 26/05/11, p3.
[35] Comments, v5, p103.
[36] Comments, v4, p110.
[37] Comments, v5, p103.
[38] Comments, v5, p104.

existing link between the term 'Amazon' and the region it refers to will progressively disappear ... The awareness of the global Internet user of the very existence of the region and its utmost importance for the international community are likely to suffer, and cause harm to the core issues concerning the Amazon region".

**c) Response**

Even if the IO had shown "targeting" of the asserted community, which he has not, his first argument cannot succeed: the Guidebook expressly provides that someone else being delegated a string is not "material detriment". If denial of entire strings is insufficient, denial of lower-level names under a string must be also. Secondly, there is no causal connection between this "detriment" and the application: if Amazon's application is blocked, the asserted community will still experience the same "detriment" since neither it, nor anyone other than Amazon, applied for ".*amazon*". The ALAC also concluded that there was no material detriment to the asserted community[39].

The second argument fails because there is not the remotest possibility that removing ".com" from the applicant's primary domain name will somehow create a barrier in people's minds between the "Amazon" name and the Amazonas River, rainforest and basin. Amazon has used AMAZON, without the ".com", as a trademark in many countries, including in the various countries of the Amazonia Region, for many years without evidence of reduced awareness of, or confusion with, the Amazonia Region. Indeed, the same countries that the IO claims it is acting on behalf of have granted Amazon trademark registrations and/or lower-level domain names under their ccTLDs for AMAZON: Annex 5.

Furthermore, there is no "likelihood" that the string will cause any loss of awareness of the region: its "utmost importance for the international community"[40] means many charities, institutes and international initiatives are dedicated to keeping it at the forefront of ecology and part of school curricula around the globe.

If there is any doubt about this, the Panel may consider the absence of negative impact Amazon, one of the world's most recognised and trusted brands, has had on the Amazonia region since 1994. Since 1994, only the applicant and its group of companies have used its amazon.com and other AMAZON domain names (and their lower levels) and its trademarks,

[39] https://community.icann.org/display/newgtldrg/.amazon_OG
[40] Objection, §37.

including those registered in Latin America. Yet, the IO is unable to present even a single piece of evidence that the Amazonia Region has suffered material detriment as a result of the applicant's 18 years of conducting business under its AMAZON name, nor has he demonstrated how the loss of the inconsequential "*.com*" from the applicant's web address will change the perception of users of the global Internet in such a way that: Amazonia will be removed from the public's consciousness; governments, conservationists and teachers will no longer consider it important; and the region and the world will suffer the dire consequences he presents.

**d) Conclusion**

The hypothetical scenarios envisaged by the IO are based solely on conjecture and are contradicted by Amazon's coexistence with the Amazonia region since 1994. There is no reason to believe that they will be caused by Amazon removing ".com" from its web address. The objection must fail.

## IV. Conclusion

The Objection fails to prove:

1. A cohesive "community" whose membership is "clearly delineated";

2. "Substantial" rather than "some" opposition, at the relevant time;

3. That Amazon will use the .amazon gTLD to target the Amazonia region instead of the globally-recognised brand it explicitly says it is targeting; and

4. That 18 years of coexistence will be reversed, and the various peoples of the Amazonas region are likely to suffer material detriment, if Amazon removes ".com" from its primary web address, despite years of use of AMAZON as a mark and in ccTLDs globally.

Since the IO has failed to prove all four of the Guidebook's Standards as required to succeed, the Panel must reject this objection.

**Communication (Article 6(a) of the Procedure and Article 1 of the ICC Practice Note)**

A copy of this Response is/~~was~~ transmitted to the Objector on: 24 May 2013 by email to the following address: contact@independent-objector-newgtlds.org and courriel@alainpellet.eu

A copy of this Response is/~~was~~ transmitted to ICANN on: 24 May 2013 by email to the following address: drfiling@icann.org

**Filing Fee (Article 1 Appendix III to the Rules and Article 11(f) of the Procedure)**

As required, Euros 5 000 were paid to ICC on 23 May 2013.

[X] Evidence of the payment is attached for information.

**Description of the Annexes filed with the Response (Article 11(e) of the Procedure)**

*List and Provide description of any annex filed.*

**Annex 1**

Links to and full titles of documents cited in this Response.

**Annex 2**

Correspondence, documents and links relating to the IO's conflict of interest, including: his live, publicly-available CV; his statements that he has "special links" to Latin America and that Brazil is "particularly dear" to him; and his contrasting treatment of all quasi-geographical strings outside Latin America.

**Annex 3**

Details of comments regarding the real rationale behind Argentina having lent its name to the early warning of November 2012.

**Annex 4**

Examples of the public's awareness and trust in the AMAZON brand.

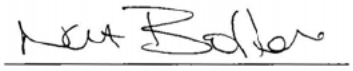
**Annex 5**

Pursuant to Article 18 of the Procedure, this annex contains evidence of only a selection of the many thousands of trademarks and domain names registered to the applicant and/or its group companies demonstrating use of its globally-recognised AMAZON trademark, including in those countries found within the IO's asserted community. Amazon will be happy to provide further details or documents upon request. Please treat this annex as confidential.

**Annex 6**

Proof of payment to ICC of the €5,000 filing fee.

Date: 24 May 2013

Signature: 

# R-64

RESPONDENT'S EXHIBIT

International Chamber of Commerce
*The world business organization*

International Centre for Expertise  Centre international d'expertise

# NEW GENERIC TOP-LEVEL DOMAIN NAMES ("gTLD")
# DISPUTE RESOLUTION PROCEDURE

## RESPONSE FORM TO BE COMPLETED BY THE APPLICANT

- *Applicant responding to several Objections or Objections based on separate grounds must file separate Responses*
- *Response Form must be filed in English and submitted by email to expertise@iccwbo.org*
- *The substantive part is limited to 5000 words or 20 pages, whichever is less*

***Disclaimer**: This form is the template to be used by Applicants who wish to file a Response. Applicants must review carefully the Procedural Documents listed below. This form may not be published or used for any purpose other than the proceedings pursuant to the New GTLD Dispute Resolution Procedure from ICANN administered by the ICC International Centre for Expertise ("**Centre**").*

**References to use for the Procedural Documents**

| Name | Abbreviation |
|---|---|
| Rules for Expertise of the ICC | "**Rules**" |
| Appendix III to the ICC Expertise Rules, Schedule of expertise costs for proceedings under the new gTLD dispute resolution procedure | "**Appendix III**" |
| ICC Practice Note on the Administration of Cases | "**ICC Practice Note**" |
| Attachment to Module 3 - New gTLD Dispute Resolution Procedure | "**Procedure**" |
| Module 3 of the gTLD Applicant Guidebook | "**Guidebook**" |

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EUR 15523176.2

**Identification of the Parties and their Representatives**

**Applicant**

| | |
|---|---|
| Name | Amazon EU S.à.r.l. |
| Contact person | Ms. Lorna Jean Gradden |
| Address | Contact Information Redacted |
| City, Country | |
| Telephone | |
| Email | |

**Objector**

| | |
|---|---|
| Name | Prof. Alain Pellet, Independent Objector |
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*Copy the information provided by the Objector.*

**Applicant's Representative(s)**

| | |
|---|---|
| Name | Edwards Wildman Palmer UK LLP |
| Contact person | Nick Bolter |
| Address | Contact Information Redacted |
| City, Country | |
| Telephone | |
| Email | |

| | |
|---|---|
| Name | Edwards Wildman Palmer UK LLP |
| Contact person | Gareth Dickson |
| Address | Contact Information Redacted |
| City, Country | |
| Telephone | |
| Email | |

*Add separate tables for any additional representative (for example external counsel or in-house counsel).*

**Applicant's Contact Address**

| | |
|---|---|
| Name | Edwards Wildman Palmer UK LLP |
| Contact person | Nick Bolter |
| Address | Contact Information Redacted |
| City, Country | |
| Telephone | |
| Email | |

*This address shall be used for all communication and notifications in the present proceedings. Accordingly, notification to this address shall be deemed as notification to the Applicant. The Contact Address can be the Applicant's address, the Applicant's Representative's address or any other address used for correspondence in these proceedings.*

**Other Related Entities**

| | |
|---|---|
| Name | - |
| Address | - |
| City, Country | - |
| Telephone | - |
| Email | - |

*Add separate tables for any additional other related entity.*

**Disputed gTLD**

**gTLD Applicant has applied to and Objector objects to [.example]**

| | |
|---|---|
| Name | .アマゾン [Application ID: 1-1318-83995] |

**Objection**

**The Objector filed its Objection on the following Ground (Article 3.2.1 of the Guidebook and Article 2 of the Procedure)**

☐ **Limited Public Interest Objection**: the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

or

☒ **Community Objection**: there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

*Copy the information provided by the Objector.*

**Point-by-Point Response to the claims made by the Objector (Article 3.3.3 of the Guidebook and Article 11 of the Procedure)**

*(Provide an answer for each point raised by the Objector.)*

## Summary

The Panel should deny the objection because the "Independent Objector" ("IO"): has conflicts in his representation; lacks standing to file this objection; and has failed to prove all four of the tests set forth in subsection 3.5.4 of the Guidebook.

Module 3's "limited grounds" for rejecting applications are practical: they must be capable of being demonstrated clearly and on the basis of evidence. Where two interpretations of a test exist, the Panel should adopt the one that is more clear and reject the one that is ambiguous.

ICANN's presumption is that applications meeting its technical requirements should proceed unless they "misappropriate" community labels in which the applicant has no legitimate interest. The applicant has a legitimate interest in its globally-recognized brand "AMAZON" and Amazon-formative marks (the "Amazon marks"). Since the launch of the original gTLDs, Amazon has been trusted to use its name at the highest level of the DNS and there is no reason why it should be prevented from doing so in the new DNS. The limited modification to the applicant's web address described in its application is "targeted" at its globally-recognised AMAZON marks and will have no materially detrimental impact on the various communities in and around the Amazonas River nor on the public who use the global Internet. The fact that neither the Organização do Tratado de Cooperação Amazônica ("OTCA") nor any government, IGO or other representative body filed objections indicates that there is no substantial opposition from within any relevant community.

Having regard to all the circumstances, the objection must be rejected.

## I. Introduction

After six years of consultations, ICANN's final Guidebook prescribes only "limited grounds"[1] on which a 5,000 word objection can require the extreme consequence of irrevocably terminating an application. According to ICANN:

> *"There is a presumption generally in favor of granting new gTLDs to applicants who can satisfy the requirements of obtaining a gTLD."*[2]

According to ICANN, the "ultimate goal" of the community objection process consists of two related aims: "to ensure that an objector cannot keep an applicant with a legitimate interest in the TLD from succeeding"; and to prevent an applicant lacking a legitimate interest in a string from using the gTLD process to "misappropriate" community labels[3].

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[1] §1.1.2.3.
[2] Comments, v3, p79. Links to cited documents appear in Annex 1.
[3] Comments, v5, p104.

The burden lies with the objector "to meet all four tests in the standard". Tests cannot be offset against one another, and are designed to be practical, requiring evidence and not hypotheses:

> *"If evidence is not available, then it seems appropriate that the applicant should not be required to defend against it"*[4].

The Guidebook must be clear, predictable and certain: where two opposing interpretations of the Guidebook are before the Panel, it should adopt the one that provides the clearest and most tangible or practical means by which disputes can be determined.

## II. The IO's Separate Representation of the Government of Peru is a Bar to Standing in this Instance

The Independent Objector is a unique participant in the gTLD process, granted authority to file objections to achieve "a public interest goal" insofar as he acts "*solely* in the best interests of the public who use the global Internet": he cannot act "on behalf of any particular persons or entities"[5]. "The public who use the global Internet" is the only community the Guidebook gives the IO standing to represent. He has no standing to represent any other group.

The IO's purported representation of the particular persons and entities with "specific and strong links" to the Amazonia region directly conflicts with the Guidebook. Amazon notes[6] that the IO currently represents the Government of Peru before the International Court of Justice and, per his own admission, has "special links" with the Amazonia region. Amazon also notes the inconsistency between how the IO expressly declined to object to applications involving Africa, the Persian Gulf and the Gulf Cooperation Council, and his vigorous pursuit of the interests of his client Peru, despite the same issues arising in each application.

For these reasons alone, the Panel should reject this objection for lack of standing under the Guidebook.

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[4] Comments, v5, p103. Objectors have had nine months to prepare their evidence.
[5] §3.2.5. Emphasis added. This prohibition applies more widely than to acting on behalf of just a single person or a single entity.
[6] See correspondence and documents provided and identified in Annex 2 including: the IO's live, publicly-available CV; his statements that he has "special links" to Latin America and that Brazil is "particularly dear" to him; and his contrasting treatment of all quasi-geographical strings outside Latin America.

# III. Point-by-Point Response

## 1. The Objection fails to "prove that the community expressing opposition can be regarded as a clearly delineated community"

The IO's determination of "community" is in fact the "commonality of interests" test that has been rejected by the multi-stakeholder process since version 3 of the Guidebook. His open-ended, subjective definitions also fail to "clearly delineate" a community.

### a) Guidebook's Standard

In its Analysis on version 1 of the Guidebook, ICANN is asked: "Will the definition of 'community' be clarified?" ICANN responds: "The 'working definition' of community, and requirements for a community-based gTLD, and objections thereto, are summarized in the draft Applicant Guidebook, Section 1.2.2.1 [now 1.2.3.1]."[7]

Section 1.2.3.1 ("Definitions"), introduces the concept of the "clearly delineated community" and refers applicants to section 4.2 for "additional information" on the criteria for "community" and "delineation".

***Community***

Section 4.2.3 explains that the criteria for a "clearly delineated community" are "very stringent" requirements. It also states that "community" implies:

> *"more of cohesion than a mere commonality of interest".*

Furthermore, ICANN expressly rejected the GAC's recommendation that "community-based strings" be *expanded* to include "a particular group of people or interests based on historical, cultural or social components of identity", instead requiring a bright line around the "community" definition:

[7] Comments, v1, p88.

*"Community definitions have been narrowly drawn in the Guidebook to prevent abuses… [E]ven the [GAC's] expanded definition might leave some genuine area of sensitivity unaddressed."*[8]

***Delineation***

Section 4.2.3 states: "'Delineation' relates to the membership of a community": a "clear and straight-forward" determination of membership is indicative of delineation, whereas unclear, disbursed or unbound definitions are not. Community objections require "clear" delineation.

**b) Objection**

***Community***

The IO states that "The Guidebook does not provide a clear definition of the term 'community'" and argues that "living in the same place" or "having a particular characteristic in common"[9] including (undefined) "specific and strong" links to a region are two tests that meet the Oxford English Dictionary's, and therefore the Guidebook's, definition of "community".

***Clear delineation***

The IO argues that the existence of (unlimited) "specific and strong links" to a region "clearly delineates" a community.

**c) Response**

If the Panel accepts that the IO may only represent "the public who use the global Internet", then the applicant must accept that that class meets the requirements of this part of Module 3.

If the Panel believes that, contrary to the language of the Guidebook, the IO may act on behalf of "particular persons and entities" other than "the public who use the global Internet" as he contends, then the test is not met because the IO has not proved that those persons

[8] Revised ICANN Notes, 15/04/11, at §2.2.1-§2.2.2.
[9] Objection, §15.

and entities form the requisite "cohesive" body with "clear and straight-forward" membership criteria.

***"Community"***

Neither ICANN nor the Guidebook adopts a dictionary definition of "community" over the requirements of §4.2.3. The Panel should likewise reject it.

The IO's description of the asserted community refers to eight separate and sovereign countries, each of which has its own geography, economy, history, populations and biodiversity. He notes that in this "vast region"[10] of 370 million citizens[11], 30 million people comprise over 350 indigenous and ethnic groups. The unique diversity of this area refutes the contention that it is "cohesive".

Even if "common interests", "common ties" and "commonality of *certain characteristics*" could be proved factually, they do not establish a "community" under the Guidebook since they are no more "cohesive" than the "commonality of *interest*" test it expressly rejects.

***"Clear delineation"***

The IO's reliance on the 2007 GNSO[12] Final Report is misplaced: the Guidebook dictates the Standards. Furthermore, Implementation Guideline P was removed from the draft Guidebook when version 3 introduced the elevated requirement that the community be "delineated", and "clearly" so. ICANN, responding to public dissatisfaction with the former tests, considered "delineation" to be "a key factor in the assessment"[13]: version 2's tests ("well-defined" and "distinct") were "too vague or unclearly stated"[14].

The argument that a community is "clearly delineated" by virtue of its "specific and strong link" with a region cannot be sustained. The Guidebook requires a "clear and straight-forward" boundary: one of the key factors for the Panel is "the level of formal boundaries around the community and what persons or entities are considered to form the community". That such delineation must be "clear" indicates the necessity of an objective, unambiguous bright-line test.

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[10] Objection, §18.
[11] In 2011: http://data.worldbank.org/country/
[12] This is a policy document prepared by the Generic Names Supporting Organization, not ICANN.
[13] Comments, v3, p64.
[14] "Updates to Module 3: Dispute Resolution Procedures", 30/05/09, p2.

By contrast, "living in the geographical region and having strong links" to a region is vague and subjective, while "sharing common interests and ties, *including*" X, Y or Z, is open-ended and does not clearly demarcate what persons are considered to form the community.

#### d) Conclusion

The IO fails to prove the existence of a "cohesive" body, delineated by "clear and straight-forward membership" criteria. The objection fails this test.

## 2. Even if there was "some" opposition within an appropriate community, it was not "substantial"

The IO invites the Panel to speculate as to why his evidence has not proved more than "some" opposition, and fails to explain why major representatives of the asserted community, including OTCA, the body with the specific mandate of protecting the interests of the Amazonia region, did not file objections or submit a single public comment. The Guidebook does not permit such speculation and expressly provides that "some" opposition is insufficient.

#### a) Guidebook's Standard

The Guidebook requires the IO to prove "substantial opposition" within the asserted community.

Section 4.2 of the Guidebook states that to count as opposition to applications involving "community" designation, "objections or comments must be of a reasoned nature. Sources of opposition that are ... unsubstantiated ... will not be considered relevant". It is logical and appropriate to apply these criteria to community "opposition" under Module 3.

The Guidebook ascribes no special meaning to "substantial opposition". The test involves a qualitative and quantitative assessment of all factors: therefore what has *not* been said, and who has *not* voiced opposition, is as important as what has been said, by whom, and when. The Panel must assess the evidence as at the date of the objection.

#### b) Objection

The IO argues that "substantial opposition" requires a broad meaning since he would not file an objection "if a single established institution is better placed to represent the community concerned"[15].

He also argues that the Panel should not be concerned about his lack of evidence of public opposition because some explanation for its absence can be alleged.

Finally, the IO acknowledges that the application "triggered no direct comments" by the asserted community. He concludes that three words at the end of an early warning that was followed by no objection are, considering the nature of the asserted community and its representative OTCA, in the context of this important matter, "substantial".

**c) Response**

***Community***

The IO does not prove "substantial" opposition within his asserted community or the much larger "public who use the global Internet".

The Amazonia region is represented by a single, established institution, OTCA, which was created by treaty between its eight governments to better represent their interests in international and supranational matters. OTCA operates through its Permanent Secretariat. The IO identifies a ninth country, France, as interested in the asserted community.

Four of these governments have representatives on the Governmental Advisory Committee[16], and the Brazilian representative was GAC Vice-Chair from 2008-2009.

There are also the millions of people who live and conduct business in the Amazonia region, environmental groups working to preserve the Amazonia region's environment, and representatives of the area's indigenous peoples.

There are, therefore, many, significant voices who would be expected to speak out in the event of genuine community opposition to gTLDs before any opposition could be said to be "substantial".

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[15] Objection, §25.
[16] Brazil, Columbia, France and Peru.

***"Substantial" opposition***

The IO's "restraint" where "better-placed" institutions exist is not part of the Guidebook so cannot affect its interpretation. It is also incompatible with the facts: OTCA, which Brazil and Peru's early warning lauds as "an international organization which coordinates initiatives in the framework of the Amazon Cooperation Treaty … and expedites the execution of its decisions through its Permanent Secretariat", whose "main purpose" is "to promote the harmonious development" of the Amazonia region, is clearly "a single established institution better placed to represent the community concerned". By the IO's own argument, OTCA's existence and knowledge of the process means he has no standing to file this Objection[17].

Among the channels available to demonstrate opposition were:

- the free, online Application Comments Forum;
- ICANN's At-Large Advisory Committee ("ALAC"), including the Regional At-Large Organization ("RALO") for Latin America and the Caribbean Islands;
- early warnings; and
- community objections.

***Application Comments Forum***[18]

Neither OTCA, despite being actively involved in discussions with Amazon about its applications, nor any of the nine relevant governments, 370 million relevant citizens, indigenous rights or environmental organizations, nor the Japanese government, filed a public comment in the Application Comments Forum. In other words, the asserted community, despite having knowledge of the process and the means to object, did not feel any need to comment and register concern regarding the applications.

***ALAC and Latin America and Caribbean Islands RALO***

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[17] His argument also suggests that he considers the government of Argentina (a GAC member), to have insufficient standing to represent the community he believes is targeted by the *.patagonia* application: both he and the Argentinean government have filed community objections to that application.

[18] https://gtldcomment.icann.org/

No-one submitted a public comment opposing the application to the ALAC.

The Latin American and Caribbean Islands RALO expressed no opposition and filed no objection.

***Early Warnings***

Of five possible early warnings, including Japan, none was filed in relation to the application: the early warning relied on by the IO is aimed at a separate application. In any event, none of OTCA, Columbia, Suriname (nationality of OTCA's current Secretary General), Venezuela, or France, is cited as supporting the relied-upon warning. Although the Bolivian, Ecuadorean and Guyanese governments are said to support it, none filed comments in their own name to substantiate that claim[19].

The early warning of November 2012 requested only that that application (which is not the current application), "be included in the GAC early warning process". That process is not an objection. It is only "an indication" that, four months before the objection period closed, "the application is seen as sensitive or problematic" and prompts applicants to consider their next steps, but section 1.1.2.4 of the Guidebook makes clear that it is up to governments to file objections if they remain opposed to an application.

In response to the early warning and before the objection period closed, Amazon wrote to the GAC representatives, participated in a video conference with the governments, and travelled to Brasilia to negotiate with member nations of OTCA. That OTCA and its governments have preferred to continue negotiations with Amazon rather than file objections demonstrates that they believe this objection does not have to succeed to protect their interests.[20]

***Community objections***

Only the IO filed an objection against the application. His conflict regarding Brazil and Peru has already been noted.[21] Neither OTCA, any Latin American government or governmental agency or IGO, ALAC, nor any indigenous, citizens, or heritage group, or any wildlife or environmental group nor the Japanese government filed objections.

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[19] The position of Argentina is unsubstantiated, and irrelevant: no part of Amazonia is in Argentina; there is evidently no single "point of view" to adopt; and the application is a standard, and not a community, application. See also Annex 2.
[20] Argentina, on the other hand, **did** object to *.patagonia* in addition to filing its early warning.
[21] Footnote 6.

#### d) Conclusion

The IO does not "prove substantial opposition" by suggesting hypothetical explanations for its absence and the argument that the Panel should not give "substantial opposition" its ordinary meaning must be rejected.

The absence of a single comment from the vast populations with "common interests" in the Amazonia region, and the decision by every government, OTCA and the ALAC, not to file objections means that there was no substantial opposition within either the asserted community or the public who use the global Internet when the objection was filed.

The Guidebook prescribes the consequence: "If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail".

## 3. Amazon has clearly "targeted" its gTLD at its globally-recognized brand and not at the loosely-defined persons and entities the IO claims to represent

Under the Guidebook only one community is "targeted" by an application. The IO's argument that "implicit" targeting: can ignore how the gTLD will be used by the public who use the global Internet; and takes precedence in Module 3 over explicit targeting, finds no support in the Guidebook.

#### a) Guidebook Standard

In the Guidebook, "targeting" requires more than a mere "nexus"[22] between the applied-for string and the asserted community: it requires a "strong association" between these criteria. The substance of "targeting" therefore is: Does the string point the application towards a particular community, whether an applicant admits it or not?

#### b) Objection

[22] I.e. the name of the corresponding test in Module 4.

The IO does not identify which community he is representing, but acknowledges he does not represent the community explicitly targeted by the string. He notes that AMAZON "pays homage", in English, to the status of the Amazonas River as the world's longest but argues that this *retrospective* inspiration, *prospectively* shackles the applicant to "target" its e-commerce platform at the Amazonas River and Amazonia region into perpetuity in every language.

The IO argues that a "strong" association exists where a string is "or could be" clearly linked to the relevant community, and that "targeting" is primarily an effects-based test.

**c) Response**

***"Community "***

If the Panel accepts that the IO may only represent "the public who use the global Internet", then the IO has failed to show how the .アマゾン string targets that community: not all strings preceded by a dot necessarily target Internet users[23] and the string will only be understood by Japanese speakers.

If the Panel believes that, contrary to the language of the Guidebook, the IO may act on behalf of particular persons and entities other than the public who use the global Internet as he contends, then the IO fails this test because Amazon explicitly targets its application at its brand, company and customers globally and he has not proven "targeting" of any other community.

***"Targeting"***

It is not possible to accidentally "target" someone. "Targeting" implies precision and looks toward the intent of the party alleged to be doing the targeting: "the activity must be intended to have effects" but is "something more than effects"[24]. Amazon's application makes no mention whatsoever of the IO's asserted community.

The IO disputes that the Guidebook's "targeting" test is straightforward because the GNSO Report refers to explicit and implicit targeting. This is irrelevant: the Guidebook dictates the

[23] By contrast, strings clearly aimed at Internet users, such as .email or .webdoctor, could arguably be targeted at the public who use the global internet.
[24] Schultz, EJIL 2008 19 (779).

Standards. Furthermore, Implementation Guideline P, which was never incorporated into the Guidebook, is merely an expansion on Recommendation 20, in which the GNSO acknowledged the two means by which "the community" (not "the communities" or "a community"[25]) could be shown to be targeted: explicitly "*or*" implicitly.

The IO's argument has also been rejected by ICANN and is too simplistic. It is too simplistic because it ignores Amazon's strong brand recognition in its AMAZON marks in the eyes of "the public who use the global Internet", whom alone the IO is supposed to represent, and holds that the applicant will forevermore "target" Amazonia with every one of its present and future services, whatever and wherever they are and in whatever language. This contradicts the ordinary meaning of "targeting" and fails to account for the absence of Japanese among any of the asserted community's official languages.

The argument that the Guidebook's "targeting" test is based on whether there "could be" a certain "link" with a place, or whether there are "*possible* '[a]ssociations by the public'"[26] based on string similarity with a place name, has also been expressly rejected by ICANN, who acknowledges that brand names and other strings:

> *"that happen to relate to some city, town, village, or hamlet somewhere might also have other legitimate uses that are not related to that city, town, village or hamlet".*[27]
>
> and
>
> *"Strings may have many meanings, not all of which might implicate a community. Reducing the context for how strings may be used is contrary to an important goal of the new gTLD program, which is to help encourage competition, innovation and consumer choice".*[28]

Amazon, one of the world's pre-eminent online retailers and most trusted companies, clearly has "legitimate uses" for its "AMAZON" marks, global brand, and company name as a gTLD string including in local languages.[29]

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[25] A targeted community may have many constituents or few; but only one community is envisaged.
[26] Contrary to the objection, the Guidebook does not refer to "possible" associations.
[27] Comments, v6, p95.
[28] ICANN Board Notes, 04/03/11, p4.
[29] See Annex 3 for examples of the public's awareness and trust in the AMAZON brand.

Finally, the ALAC has clearly stated that even the identical naming of a gTLD string (*.patagonia*) after a place (Patagonia), even in relation to purposes closely aligned to public perceptions of that place (outdoor pursuits), is insufficient to find that the string "targets" that location's community: "there will be **no** drafting of an objection on community grounds for the application for *.patagonia* given that the 'targeting' and 'detriment' tests for community objection grounds were not passed".[30] Unlike *.patagonia*, the IO's objection to .アマゾン relies on non-identity of strings (a Japanese translation of an English translation of "Amazonas" or "Amazonia") and there is complete separation of intended use from the place that in part inspired the name. This is further, persuasive evidence that the IO has not proved "targeting" under the Guidebook.

### d) Conclusion

The applicant has "legitimate uses" for the applied-for string, which is and has since 1994 been its globally-recognized and highly-respected brand name. This single-registrant string is neither explicitly nor implicitly targeted at any part of Latin America: it is, however, explicitly targeted at the applicant's globally-recognised brand. One of these mutually exclusive alternatives must determine which community is "targeted". Since the explicit targeting is not a sham, it must prevail. The IO fails this test.

## 4. As demonstrated by the applicant's use of its AMAZON marks since 1994, including online, there is no "likelihood of material detriment" to the asserted community

### a) Guidebook requirements

The Guidebook requires the IO to prove all four tests to succeed in a community objection and requires each to be assessed independently:

> *"ICANN does not consider that the satisfaction of other elements of the community objection … should create a presumption of detriment. … If the objector cannot*

[30] https://community.icann.org/display/newgtldrg/.patagonia_OG. Emphasis in original. The ALAC did not discuss .アマゾン (since no-one filed any comment in relation to it), but expressly determined not to object to *.amazon* since there was no "material detriment": https://community.icann.org/display/newgtldrg/.amazon_OG.

> *prove the likelihood of detriment, there does not appear to be any reason why the objector should be entitled to block the applicant's application."*[31]

Other Guidebook amendments emphasise the need for practical, evidence-based assessment: at the request of the GAC, ICANN removed the "impractical" requirement of material detriment "to the broader Internet community"[32]; and stated that if evidence is not available, "it seems appropriate that the applicant should not be required to defend against it."[33]

ICANN also significantly "elevated"[34] the threshold for this test in version 5 of the Guidebook, when "detriment" became "material detriment" and the "nature and extent of concrete or economic damage to the community ... that would result from the applicant's operation of the applied-for gTLD string" became expressly relevant.

A commenter complained that this change made it "doubtful that anyone could possibly win such a proceeding".[35] ICANN, who has stated, "There is a presumption generally in favor of granting new gTLDs to applicants who can satisfy the requirements of obtaining a gTLD", did not dispute that assessment, but reaffirmed the need for elevated detriment: "Reverting back to simple detriment to the objector alone is not acceptable."[36]

At the same time, ICANN inserted into the Guidebook:

> *"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"*

Finally, the IO must show that Amazon's application creates a "likelihood" of material detriment.

**b) Objection**

The IO appears to suggest that his asserted community is "the Amazon community and ... the public more generally".

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[31] Comments, v4, p110.
[32] "GAC comments", 26/05/11, p3.
[33] Comments, v5, p103.
[34] Comments, v4, p110.
[35] Comments, v5, p103.
[36] Comments, v5, p104.

He then argues that there are two categories of detriment. First, that if Amazon succeeds in the application, "the people and entities being part of the Amazon community and owning its cultural heritage [will be unable] to obtain a .アマゾン domain name". Second, "the still existing link between the term 'Amazon' and the region it refers to will progressively disappear ... The awareness of the global Internet user of the very existence of the region and its utmost importance for the international community are likely to suffer, and cause harm to the core issues concerning the Amazon region".

**c) Response**

Even if the IO had shown "targeting" of the asserted community, which he has not, his first argument cannot succeed: the Guidebook expressly provides that someone else being delegated a string is not "material detriment". If denial of entire strings is insufficient, denial of lower-level names under a string must be also. Secondly, there is no causal connection between this "detriment" and the application: if Amazon's application is blocked, the asserted community will still experience the same "detriment" since neither it, nor anyone other than Amazon, applied for ".アマゾン". The IO fails to establish that the asserted community would want a Japanese domain name.

The second argument fails because there is not the remotest possibility that removing ".com" from a Japanese translation of the applicant's primary domain name will somehow create a barrier in people's minds between the "Amazon" name and the Amazonas River, rainforest and basin. Amazon has used the English translation AMAZON, without the ".com", as a trademark in many countries, including in the various countries of the Amazonia Region, for many years without evidence of reduced awareness of, or confusion with, the Amazonia Region. Indeed, the same countries that the IO claims it is acting on behalf of have granted Amazon trademark registrations and/or lower-level domain names under their ccTLDs for AMAZON: Annex 4.

Furthermore, there is no "likelihood" that this Japanese string will cause any loss of awareness of the region: its "utmost importance for the international community"[37] means many charities, institutes and international initiatives are dedicated to keeping it at the forefront of ecology and part of school curricula around the globe.

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[37] Objection, §37.

If there is any doubt about this, the Panel may consider the absence of negative impact Amazon, one of the world's most recognised and trusted brands, has had on the Amazonia region since 1994. Since 1994, only the applicant and its group of companies have used its amazon.com and other AMAZON domain names (and their lower levels) and its trademarks, including those registered in Latin America. Yet, the IO is unable to present even a single piece of evidence that the Amazonia Region has suffered material detriment as a result of the applicant's 18 years of conducting business under its AMAZON name, nor has he demonstrated how the loss of the inconsequential "*.com*" from a Japanese translation of the applicant's web address will change the perception of users of the global Internet in such a way that: Amazonia will be removed from the public's consciousness; governments, conservationists and teachers will no longer consider it important; and the region and the world will suffer the dire consequences he presents.

**d) Conclusion**

The hypothetical scenarios envisaged by the IO are based solely on conjecture and are contradicted by Amazon's coexistence with the Amazonia region since 1994. There is no reason to believe that they will be caused by Amazon removing ".com" from a Japanese translation of its web address. The objection must fail.

## IV. Conclusion

The Objection fails to prove:

1. A cohesive "community" whose membership is "clearly delineated";

2. "Substantial" rather than "some" opposition, at the relevant time;

3. That Amazon will use the .アマゾン gTLD to target the Amazonia region instead of the globally-recognised brand it explicitly says it is targeting; and

4. That 18 years of coexistence will be reversed, and the various peoples of the Amazonas region are likely to suffer material detriment, if Amazon removes ".com" from a Japanese translation of its primary web address, despite years of use of AMAZON as a mark and in ccTLDs globally.

Since the IO has failed to prove all four of the Guidebook's Standards as required to succeed, the Panel must reject this objection.

**Communication (Article 6(a) of the Procedure and Article 1 of the ICC Practice Note)**

A copy of this Response is/~~was~~ transmitted to the Objector on: 24 May 2013 by email to the following address: contact@independent-objector-newgtlds.org and courriel@alainpellet.eu

A copy of this Response is/~~was~~ transmitted to ICANN on: 24 May 2013 by email to the following address: drfiling@icann.org

**Filing Fee (Article 1 Appendix III to the Rules and Article 11(f) of the Procedure)**

As required, Euros 5 000 were paid to ICC on 23 May 2013.

[X] Evidence of the payment is attached for information.

**Description of the Annexes filed with the Response (Article 11(e) of the Procedure)**

*List and Provide description of any annex filed.*

**Annex 1**

Links to and full titles of documents cited in this Response.

**Annex 2**

Correspondence, documents and links relating to the IO's conflict of interest, including: his live, publicly-available CV; his statements that he has "special links" to Latin America and that Brazil is "particularly dear" to him; and his contrasting treatment of all quasi-geographical strings outside Latin America.

**Annex 3**

Details of comments regarding the real rationale behind Argentina having lent its name to the early warning of November 2012.

**Annex 4**

Examples of the public's awareness and trust in the AMAZON brand.

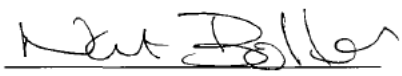
**Annex 5**

Pursuant to Article 18 of the Procedure, this annex contains evidence of only a selection of the many thousands of trademarks and domain names registered to the applicant and/or its group companies demonstrating use of its globally-recognised AMAZON trademark, including in those countries found within the IO's asserted community. Amazon will be happy to provide further details or documents upon request. Please treat this annex as confidential.

**Annex 6**

Proof of payment to ICC of the €5,000 filing fee.

Date: 24 May 2013

Signature: 

**Links and full titles of documents cited in the Response.**

| Abbreviation | Where cited | Full Title | Link |
|---|---|---|---|
| Comments, v3 | Footnotes 2, 13 | New gTLD Draft Applicant Guidebook version 3 Public Comments Summary and Analysis, 15 February 2010 | http://archive.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf |
| Comments, v5 | Footnotes 3, 4, 35, 37, 38 | New gTLDs Proposed Final Applicant Guidebook Public Comment Summary, 21 February 2011 | http://archive.icann.org/en/topics/new-gtlds/summary-analysis-proposed-final-guidebook-21feb11-en.pdf |
| Comments, v1 | Footnote 7 | New gTLD Draft Applicant Guidebook: Analysis of Public Comment, 18 February 2009 | http://archive.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf |
| Revised ICANN Notes, 15/04/11 | Footnote 8 | Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response, 15 April 2011 | http://archive.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf |
| GNSO Final Report | Footnote 12 | Final Report, Introduction of New Generic Top-Level Domains, 8 August 2007 | http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm |
| "Updates to Module 3: Dispute Resolution Procedures", 30/05/09 | Footnote 14 | Updates to Module 3: Dispute Resolution Procedures, 30 May 2009 | http://archive.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-30may09-en.pdf |
| Schultz, EJIL 2008 19 (779) | Footnote 26 | Schultz, "Carving up the Internet: Jurisdiction, Legal Orders, and the Private/Public International Law Interface", The European Journal of International Law (2008), Vol. 19 No. 4, 799–839 | http://www.ejil.org/pdfs/19/4/1662.pdf |
| Comments, v6 | Footnote 29 | New gTLDs Applicant Guidebook April 2011 Discussion Draft Public Comment Summary and Analysis, 30 May 2011 | http://archive.icann.org/en/topics/new-gtlds/summary-analysis-agv6- |

| | | | |
|---|---|---|---|
| | | | 30may11-en.pdf |
| ICANN Board Notes, 04/03/11 | Footnote 30 | ICANN Board Notes on the GAC New gTLDs Scorecard, 4 March 2011 | http://archive.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-04mar11-en.pdf |
| Comments, v4 | Footnote 33, 36 | New gTLD Draft Applicant Guidebook Version 4 Public Comment Summary And Analysis, 12 November 2010 | http://archive.icann.org/en/topics/new-gtlds/summary-analysis-agv4-12nov10-en.pdf |
| "GAC comments", 26/05/11 | Footnote 34 | GAC comments on the Applicant Guidebook (April 15th, 2011 version), 26 May 2011 | http://archive.icann.org/en/topics/new-gtlds/gac-comments-new-gtlds-26may11-en.pdf |

# R-65

RESPONDENT'S EXHIBIT

International Chamber of Commerce
*The world business organization*

International Centre for Expertise  Centre international d'expertise

# NEW GENERIC TOP-LEVEL DOMAIN NAMES ("gTLD")
# DISPUTE RESOLUTION PROCEDURE

## RESPONSE FORM TO BE COMPLETED BY THE APPLICANT

- *Applicant responding to several Objections or Objections based on separate grounds must file separate Responses*
- *Response Form must be filed in English and submitted by email to expertise@iccwbo.org*
- *The substantive part is limited to 5000 words or 20 pages, whichever is less*

***Disclaimer**: This form is the template to be used by Applicants who wish to file a Response. Applicants must review carefully the Procedural Documents listed below. This form may not be published or used for any purpose other than the proceedings pursuant to the New GTLD Dispute Resolution Procedure from ICANN administered by the ICC International Centre for Expertise ("**Centre**").*

**References to use for the Procedural Documents**

| Name | Abbreviation |
|---|---|
| Rules for Expertise of the ICC | "**Rules**" |
| Appendix III to the ICC Expertise Rules, Schedule of expertise costs for proceedings under the new gTLD dispute resolution procedure | "**Appendix III**" |
| ICC Practice Note on the Administration of Cases | "**ICC Practice Note**" |
| Attachment to Module 3 - New gTLD Dispute Resolution Procedure | "**Procedure**" |
| Module 3 of the gTLD Applicant Guidebook | "**Guidebook**" |

ICC International Centre for ADR  Centre international d'ADR de la CCI
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E-mail expertise@ccwbo.org  Website www.iccexpertise.org

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EUR 15523910.1

**Identification of the Parties and their Representatives**

**Applicant**

| | |
|---|---|
| Name | Amazon EU S.à.r.l. |
| Contact person | Ms. Lorna Jean Gradden |
| Address | Contact Information Redacted |
| City, Country | |
| Telephone | |
| Email | |

**Objector**

| | |
|---|---|
| Name | Prof. Alain Pellet, Independent Objector |
| Contact person | |
| Address | Contact Information Redacted |
| City, Country | |
| Telephone | |
| Email | |

*Copy the information provided by the Objector.*

**Applicant's Representative(s)**

| | |
|---|---|
| Name | Edwards Wildman Palmer UK LLP |
| Contact person | Nick Bolter |
| Address | **Contact Information Redacted** |
| City, Country | |
| Telephone | |
| Email | |

| | |
|---|---|
| Name | Edwards Wildman Palmer UK LLP |
| Contact person | Gareth Dickson |
| Address | Contact Information Redacted |
| City, Country | |
| Telephone | |
| Email | |

*Add separate tables for any additional representative (for example external counsel or in-house counsel).*

**Applicant's Contact Address**

| | |
|---|---|
| Name | Edwards Wildman Palmer UK LLP |
| Contact person | Nick Bolter |
| Address | **Contact Information Redacted** |
| City, Country | |
| Telephone | |
| Email | |

*This address shall be used for all communication and notifications in the present proceedings. Accordingly, notification to this address shall be deemed as notification to the Applicant. The Contact Address can be the Applicant's address, the Applicant's Representative's address or any other address used for correspondence in these proceedings.*

**Other Related Entities**

| | |
|---|---|
| Name | - |
| Address | - |
| City, Country | - |
| Telephone | - |
| Email | - |

*Add separate tables for any additional other related entity.*

**Disputed gTLD**

**gTLD Applicant has applied to and Objector objects to [.example]**

| | |
|---|---|
| Name | . 亚马逊 [Application ID: 1-1318-5591] |

**Objection**

**The Objector filed its Objection on the following Ground (Article 3.2.1 of the Guidebook and Article 2 of the Procedure)**

☐ **Limited Public Interest Objection**: the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

or

☒ **Community Objection**: there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

*Copy the information provided by the Objector.*

**Point-by-Point Response to the claims made by the Objector (Article 3.3.3 of the Guidebook and Article 11 of the Procedure)**

*(Provide an answer for each point raised by the Objector.)*

## Summary

The Panel should deny the objection because the "Independent Objector" ("IO"): has conflicts in his representation; lacks standing to file this objection; and has failed to prove all four of the tests set forth in subsection 3.5.4 of the Guidebook.

Module 3's "limited grounds" for rejecting applications are practical: they must be capable of being demonstrated clearly and on the basis of evidence. Where two interpretations of a test exist, the Panel should adopt the one that is more clear and reject the one that is ambiguous.

ICANN's presumption is that applications meeting its technical requirements should proceed unless they "misappropriate" community labels in which the applicant has no legitimate interest. The applicant has a legitimate interest in its globally-recognized brand "AMAZON" and Amazon-formative marks (the "Amazon marks"). Since the launch of the original gTLDs, Amazon has been trusted to use its name at the highest level of the DNS and there is no reason why it should be prevented from doing so in the new DNS. The limited modification to the applicant's web address described in its application is "targeted" at its globally-recognised AMAZON marks and will have no materially detrimental impact on the various communities in and around the Amazonas River nor on the public who use the global Internet. The fact that neither the Organização do Tratado de Cooperação Amazônica ("OTCA") nor any government, IGO or other representative body filed objections indicates that there is no substantial opposition from within any relevant community.

Having regard to all the circumstances, the objection must be rejected.

## I. Introduction

After six years of consultations, ICANN's final Guidebook prescribes only "limited grounds"[1] on which a 5,000 word objection can require the extreme consequence of irrevocably terminating an application. According to ICANN:

> *"There is a presumption generally in favor of granting new gTLDs to applicants who can satisfy the requirements of obtaining a gTLD."*[2]

According to ICANN, the "ultimate goal" of the community objection process consists of two related aims: "to ensure that an objector cannot keep an applicant with a legitimate interest in the TLD from succeeding"; and to prevent an applicant lacking a legitimate interest in a string from using the gTLD process to "misappropriate" community labels[3].

[1] §1.1.2.3.
[2] Comments, v3, p79. Links to cited documents appear in Annex 1.
[3] Comments, v5, p104.

The burden lies with the objector "to meet all four tests in the standard". Tests cannot be offset against one another, and are designed to be practical, requiring evidence and not hypotheses:

> *"If evidence is not available, then it seems appropriate that the applicant should not be required to defend against it"*[4].

The Guidebook must be clear, predictable and certain: where two opposing interpretations of the Guidebook are before the Panel, it should adopt the one that provides the clearest and most tangible or practical means by which disputes can be determined.

## II. The IO's Separate Representation of the Government of Peru is a Bar to Standing in this Instance

The Independent Objector is a unique participant in the gTLD process, granted authority to file objections to achieve "a public interest goal" insofar as he acts "*solely* in the best interests of the public who use the global Internet": he cannot act "on behalf of any particular persons or entities"[5]. "The public who use the global Internet" is the only community the Guidebook gives the IO standing to represent. He has no standing to represent any other group.

The IO's purported representation of the particular persons and entities with "specific and strong links" to the Amazonia region directly conflicts with the Guidebook. Amazon notes[6] that the IO currently represents the Government of Peru before the International Court of Justice and, per his own admission, has "special links" with the Amazonia region. Amazon also notes the inconsistency between how the IO expressly declined to object to applications involving Africa, the Persian Gulf and the Gulf Cooperation Council, and his vigorous pursuit of the interests of his client Peru, despite the same issues arising in each application.

For these reasons alone, the Panel should reject this objection for lack of standing under the Guidebook.

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[4] Comments, v5, p103. Objectors have had nine months to prepare their evidence.
[5] §3.2.5. Emphasis added. This prohibition applies more widely than to acting on behalf of just a single person or a single entity.
[6] See correspondence and documents provided and identified in Annex 2 including: the IO's live, publicly-available CV; his statements that he has "special links" to Latin America and that Brazil is "particularly dear" to him; and his contrasting treatment of all quasi-geographical strings outside Latin America.

## III. Point-by-Point Response

### 1. The Objection fails to "prove that the community expressing opposition can be regarded as a clearly delineated community"

The IO's determination of "community" is in fact the "commonality of interests" test that has been rejected by the multi-stakeholder process since version 3 of the Guidebook. His open-ended, subjective definitions also fail to "clearly delineate" a community.

#### a) Guidebook's Standard

In its Analysis on version 1 of the Guidebook, ICANN is asked: "Will the definition of 'community' be clarified?" ICANN responds: "The 'working definition' of community, and requirements for a community-based gTLD, and objections thereto, are summarized in the draft Applicant Guidebook, Section 1.2.2.1 [now 1.2.3.1]."[7]

Section 1.2.3.1 ("Definitions"), introduces the concept of the "clearly delineated community" and refers applicants to section 4.2 for "additional information" on the criteria for "community" and "delineation".

***Community***

Section 4.2.3 explains that the criteria for a "clearly delineated community" are "very stringent" requirements. It also states that "community" implies:

> *"more of cohesion than a mere commonality of interest".*

Furthermore, ICANN expressly rejected the GAC's recommendation that "community-based strings" be *expanded* to include "a particular group of people or interests based on historical, cultural or social components of identity", instead requiring a bright line around the "community" definition:

[7] Comments, v1, p88.

*"Community definitions have been narrowly drawn in the Guidebook to prevent abuses… [E]ven the [GAC's] expanded definition might leave some genuine area of sensitivity unaddressed."*[8]

***Delineation***

Section 4.2.3 states: "'Delineation' relates to the membership of a community": a "clear and straight-forward" determination of membership is indicative of delineation, whereas unclear, disbursed or unbound definitions are not. Community objections require "clear" delineation.

**b) Objection**

***Community***

The IO states that "The Guidebook does not provide a clear definition of the term 'community'" and argues that "living in the same place" or "having a particular characteristic in common"[9] including (undefined) "specific and strong" links to a region are two tests that meet the Oxford English Dictionary's, and therefore the Guidebook's, definition of "community".

***Clear delineation***

The IO argues that the existence of (unlimited) "specific and strong links" to a region "clearly delineates" a community.

**c) Response**

If the Panel accepts that the IO may only represent "the public who use the global Internet", then the applicant must accept that that class meets the requirements of this part of Module 3.

If the Panel believes that, contrary to the language of the Guidebook, the IO may act on behalf of "particular persons and entities" other than "the public who use the global Internet" as he contends, then the test is not met because the IO has not proved that those persons

[8] Revised ICANN Notes, 15/04/11, at §2.2.1-§2.2.2.
[9] Objection, §15.

and entities form the requisite "cohesive" body with "clear and straight-forward" membership criteria.

***"Community"***

Neither ICANN nor the Guidebook adopts a dictionary definition of "community" over the requirements of §4.2.3. The Panel should likewise reject it.

The IO's description of the asserted community refers to eight separate and sovereign countries, each of which has its own geography, economy, history, populations and biodiversity. He notes that in this "vast region"[10] of 370 million citizens[11], 30 million people comprise over 350 indigenous and ethnic groups. The unique diversity of this area refutes the contention that it is "cohesive".

Even if "common interests", "common ties" and "commonality of *certain characteristics*" could be proved factually, they do not establish a "community" under the Guidebook since they are no more "cohesive" than the "commonality of *interest*" test it expressly rejects.

***"Clear delineation"***

The IO's reliance on the 2007 GNSO[12] Final Report is misplaced: the Guidebook dictates the Standards. Furthermore, Implementation Guideline P was removed from the draft Guidebook when version 3 introduced the elevated requirement that the community be "delineated", and "clearly" so. ICANN, responding to public dissatisfaction with the former tests, considered "delineation" to be "a key factor in the assessment"[13]: version 2's tests ("well-defined" and "distinct") were "too vague or unclearly stated"[14].

The argument that a community is "clearly delineated" by virtue of its "specific and strong link" with a region cannot be sustained. The Guidebook requires a "clear and straight-forward" boundary: one of the key factors for the Panel is "the level of formal boundaries around the community and what persons or entities are considered to form the community". That such delineation must be "clear" indicates the necessity of an objective, unambiguous bright-line test.

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[10] Objection, §18.
[11] In 2011: http://data.worldbank.org/country/
[12] This is a policy document prepared by the Generic Names Supporting Organization, not ICANN.
[13] Comments, v3, p64.
[14] "Updates to Module 3: Dispute Resolution Procedures", 30/05/09, p2.

By contrast, "living in the geographical region and having strong links" to a region is vague and subjective, while "sharing common interests and ties, *including*" X, Y or Z, is open-ended and does not clearly demarcate what persons are considered to form the community.

**d) Conclusion**

The IO fails to prove the existence of a "cohesive" body, delineated by "clear and straight-forward membership" criteria. The objection fails this test.

## 2. Even if there was "some" opposition within an appropriate community, it was not "substantial"

The IO invites the Panel to speculate as to why his evidence has not proved more than "some" opposition, and fails to explain why major representatives of the asserted community, including OTCA, the body with the specific mandate of protecting the interests of the Amazonia region, did not file objections or submit a single public comment. The Guidebook does not permit such speculation and expressly provides that "some" opposition is insufficient.

**a) Guidebook's Standard**

The Guidebook requires the IO to prove "substantial opposition" within the asserted community.

Section 4.2 of the Guidebook states that to count as opposition to applications involving "community" designation, "objections or comments must be of a reasoned nature. Sources of opposition that are ... unsubstantiated ... will not be considered relevant". It is logical and appropriate to apply these criteria to community "opposition" under Module 3.

The Guidebook ascribes no special meaning to "substantial opposition". The test involves a qualitative and quantitative assessment of all factors: therefore what has *not* been said, and who has *not* voiced opposition, is as important as what has been said, by whom, and when. The Panel must assess the evidence as at the date of the objection.

**b) Objection**

The IO argues that "substantial opposition" requires a broad meaning since he would not file an objection "if a single established institution is better placed to represent the community concerned"[15].

He also argues that the Panel should not be concerned about his lack of evidence of public opposition because some explanation for its absence can be alleged.

Finally, the IO acknowledges that the application "triggered no direct comments" by the asserted community. He concludes that three words at the end of an early warning that was followed by no objection are, considering the nature of the asserted community and its representative OTCA, in the context of this important matter, "substantial".

**c) Response**

***Community***

The IO does not prove "substantial" opposition within his asserted community or the much larger "public who use the global Internet".

The Amazonia region is represented by a single, established institution, OTCA, which was created by treaty between its eight governments to better represent their interests in international and supranational matters. OTCA operates through its Permanent Secretariat. The IO identifies a ninth country, France, as interested in the asserted community.

Four of these governments have representatives on the Governmental Advisory Committee[16], and the Brazilian representative was GAC Vice-Chair from 2008-2009.

There are also the millions of people who live and conduct business in the Amazonia region, environmental groups working to preserve the Amazonia region's environment, and representatives of the area's indigenous peoples.

There are, therefore, many, significant voices who would be expected to speak out in the event of genuine community opposition to gTLDs before any opposition could be said to be "substantial".

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[15] Objection, §25.
[16] Brazil, Columbia, France and Peru.

***"Substantial" opposition***

The IO's "restraint" where "better-placed" institutions exist is not part of the Guidebook so cannot affect its interpretation. It is also incompatible with the facts: OTCA, which Brazil and Peru's early warning lauds as "an international organization which coordinates initiatives in the framework of the Amazon Cooperation Treaty ... and expedites the execution of its decisions through its Permanent Secretariat", whose "main purpose" is "to promote the harmonious development" of the Amazonia region, is clearly "a single established institution better placed to represent the community concerned". By the IO's own argument, OTCA's existence and knowledge of the process means he has no standing to file this Objection[17].

Among the channels available to demonstrate opposition were:

- the free, online Application Comments Forum;
- ICANN's At-Large Advisory Committee ("ALAC"), including the Regional At-Large Organization ("RALO") for Latin America and the Caribbean Islands;
- early warnings; and
- community objections.

***Application Comments Forum***[18]

Neither OTCA, despite being actively involved in discussions with Amazon about its applications, nor any of the nine relevant governments, 370 million relevant citizens, indigenous rights or environmental organizations, nor the Chinese government, filed a public comment in the Application Comments Forum. In other words, the asserted community, despite having knowledge of the process and the means to object, did not feel any need to comment and register concern regarding the applications.

***ALAC and Latin America and Caribbean Islands RALO***

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[17] His argument also suggests that he considers the government of Argentina (a GAC member), to have insufficient standing to represent the community he believes is targeted by the *.patagonia* application: both he and the Argentinean government have filed community objections to that application.

[18] https://gtldcomment.icann.org/

No-one submitted a public comment opposing the application to the ALAC.

The Latin American and Caribbean Islands RALO expressed no opposition and filed no objection.

***Early Warnings***

Of five possible early warnings, including China, none was filed in relation to the application: the early warning relied on by the IO is aimed at a separate application. In any event, none of OTCA, Columbia, Suriname (nationality of OTCA's current Secretary General), Venezuela, or France, is cited as supporting the relied-upon warning. Although the Bolivian, Ecuadorean and Guyanese governments are said to support it, none filed comments in their own name to substantiate that claim[19].

The early warning of November 2012 requested only that that application (which is not the current application), "be included in the GAC early warning process". That process is not an objection. It is only "an indication" that, four months before the objection period closed, "the application is seen as sensitive or problematic" and prompts applicants to consider their next steps, but section 1.1.2.4 of the Guidebook makes clear that it is up to governments to file objections if they remain opposed to an application.

In response to the early warning and before the objection period closed, Amazon wrote to the GAC representatives, participated in a video conference with the governments, and travelled to Brasilia to negotiate with member nations of OTCA. That OTCA and its governments have preferred to continue negotiations with Amazon rather than file objections demonstrates that they believe this objection does not have to succeed to protect their interests.[20]

***Community objections***

Only the IO filed an objection against the application. His conflict regarding Brazil and Peru has already been noted.[21] Neither OTCA, any Latin American government or governmental agency or IGO, ALAC, nor any indigenous, citizens, or heritage group, or any wildlife or environmental group nor the Chinese government filed objections.

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[19] The position of Argentina is unsubstantiated, and irrelevant: no part of Amazonia is in Argentina; there is evidently no single "point of view" to adopt; and the application is a standard, and not a community, application. See also Annex 2.
[20] Argentina, on the other hand, **did** object to *.patagonia* in addition to filing its early warning.
[21] Footnote 6.

**d) Conclusion**

The IO does not "prove substantial opposition" by suggesting hypothetical explanations for its absence and the argument that the Panel should not give "substantial opposition" its ordinary meaning must be rejected.

The absence of a single comment from the vast populations with "common interests" in the Amazonia region, and the decision by every government, OTCA and the ALAC, not to file objections means that there was no substantial opposition within either the asserted community or the public who use the global Internet when the objection was filed.

The Guidebook prescribes the consequence: "If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail".

## 3. Amazon has clearly "targeted" its gTLD at its globally-recognized brand and not at the loosely-defined persons and entities the IO claims to represent

Under the Guidebook only one community is "targeted" by an application. The IO's argument that "implicit" targeting: can ignore how the gTLD will be used by the public who use the global Internet; and takes precedence in Module 3 over explicit targeting, finds no support in the Guidebook.

**a) Guidebook Standard**

In the Guidebook, "targeting" requires more than a mere "nexus"[22] between the applied-for string and the asserted community: it requires a "strong association" between these criteria. The substance of "targeting" therefore is: Does the string point the application towards a particular community, whether an applicant admits it or not?

**b) Objection**

[22] I.e. the name of the corresponding test in Module 4.

The IO does not identify which community he is representing, but acknowledges he does not represent the community explicitly targeted by the string. He notes that AMAZON "pays homage", in English, to the status of the Amazonas River as the world's longest but argues that this *retrospective* inspiration, *prospectively* shackles the applicant to "target" its e-commerce platform at the Amazonas River and Amazonia region into perpetuity in every language.

The IO argues that a "strong" association exists where a string is "or could be" clearly linked to the relevant community, and that "targeting" is primarily an effects-based test.

**c) Response**

***"Community "***

If the Panel accepts that the IO may only represent "the public who use the global Internet", then the IO has failed to show how the .亚马逊 string targets that community: not all strings preceded by a dot necessarily target Internet users[23] and the string will only be understood by Chinese speakers.

If the Panel believes that, contrary to the language of the Guidebook, the IO may act on behalf of particular persons and entities other than the public who use the global Internet as he contends, then the IO fails this test because Amazon explicitly targets its application at its brand, company and customers globally and he has not proven "targeting" of any other community.

***"Targeting"***

It is not possible to accidentally "target" someone. "Targeting" implies precision and looks toward the intent of the party alleged to be doing the targeting: "the activity must be intended to have effects" but is "something more than effects"[24]. Amazon's application makes no mention whatsoever of the IO's asserted community.

The IO disputes that the Guidebook's "targeting" test is straightforward because the GNSO Report refers to explicit and implicit targeting. This is irrelevant: the Guidebook dictates the

[23] By contrast, strings clearly aimed at Internet users, such as .email or .webdoctor, could arguably be targeted at the public who use the global internet.
[24] Schultz, EJIL 2008 19 (779).

Standards. Furthermore, Implementation Guideline P, which was never incorporated into the Guidebook, is merely an expansion on Recommendation 20, in which the GNSO acknowledged the two means by which "the community" (not "the communities" or "a community"[25]) could be shown to be targeted: explicitly "*or*" implicitly.

The IO's argument has also been rejected by ICANN and is too simplistic. It is too simplistic because it ignores Amazon's strong brand recognition in its AMAZON marks in the eyes of "the public who use the global Internet", whom alone the IO is supposed to represent, and holds that the applicant will forevermore "target" Amazonia with every one of its present and future services, whatever and wherever they are and in whatever language. This contradicts the ordinary meaning of "targeting" and fails to account for the absence of Chinese among any of the asserted community's official languages.

The argument that the Guidebook's "targeting" test is based on whether there "could be" a certain "link" with a place, or whether there are "*possible* '[a]ssociations by the public'"[26] based on string similarity with a place name, has also been expressly rejected by ICANN, who acknowledges that brand names and other strings:

> *"that happen to relate to some city, town, village, or hamlet somewhere might also have other legitimate uses that are not related to that city, town, village or hamlet".*[27]
>
> and
>
> *"Strings may have many meanings, not all of which might implicate a community. Reducing the context for how strings may be used is contrary to an important goal of the new gTLD program, which is to help encourage competition, innovation and consumer choice".*[28]

Amazon, one of the world's pre-eminent online retailers and most trusted companies, clearly has "legitimate uses" for its "AMAZON" marks, global brand, and company name as a gTLD string including in local languages.[29]

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[25] A targeted community may have many constituents or few; but only one community is envisaged.
[26] Contrary to the objection, the Guidebook does not refer to "possible" associations.
[27] Comments, v6, p95.
[28] ICANN Board Notes, 04/03/11, p4.
[29] See Annex 3 for examples of the public's awareness and trust in the AMAZON brand.

Finally, the ALAC has clearly stated that even the identical naming of a gTLD string (*.patagonia*) after a place (Patagonia), even in relation to purposes closely aligned to public perceptions of that place (outdoor pursuits), is insufficient to find that the string "targets" that location's community: "there will be **no** drafting of an objection on community grounds for the application for *.patagonia* given that the 'targeting' and 'detriment' tests for community objection grounds were not passed".[30] Unlike *.patagonia*, the IO's objection to .亚马逊 relies on non-identity of strings (a Chinese translation of an English translation of "Amazonas" or "Amazonia") and there is complete separation of intended use from the place that in part inspired the name. This is further, persuasive evidence that the IO has not proved "targeting" under the Guidebook.

#### d) Conclusion

The applicant has "legitimate uses" for the applied-for string, which is and has since 1994 been its globally-recognized and highly-respected brand name. This single-registrant string is neither explicitly nor implicitly targeted at any part of Latin America: it is, however, explicitly targeted at the applicant's globally-recognised brand. One of these mutually exclusive alternatives must determine which community is "targeted". Since the explicit targeting is not a sham, it must prevail. The IO fails this test.

## 4. As demonstrated by the applicant's use of its AMAZON marks since 1994, including online, there is no "likelihood of material detriment" to the asserted community

#### a) Guidebook requirements

The Guidebook requires the IO to prove all four tests to succeed in a community objection and requires each to be assessed independently:

> *"ICANN does not consider that the satisfaction of other elements of the community objection … should create a presumption of detriment. … If the objector cannot*

[30] https://community.icann.org/display/newgtldrg/.patagonia_OG. Emphasis in original. The ALAC did not discuss .亚马逊 (since no-one filed any comment in relation to it), but expressly determined not to object to *.amazon* since there was no "material detriment": https://community.icann.org/display/newgtldrg/.amazon_OG.

> *prove the likelihood of detriment, there does not appear to be any reason why the objector should be entitled to block the applicant's application."*[31]

Other Guidebook amendments emphasise the need for practical, evidence-based assessment: at the request of the GAC, ICANN removed the "impractical" requirement of material detriment "to the broader Internet community"[32]; and stated that if evidence is not available, "it seems appropriate that the applicant should not be required to defend against it."[33]

ICANN also significantly "elevated"[34] the threshold for this test in version 5 of the Guidebook, when "detriment" became "material detriment" and the "nature and extent of concrete or economic damage to the community ... that would result from the applicant's operation of the applied-for gTLD string" became expressly relevant.

A commenter complained that this change made it "doubtful that anyone could possibly win such a proceeding".[35] ICANN, who has stated, "There is a presumption generally in favor of granting new gTLDs to applicants who can satisfy the requirements of obtaining a gTLD", did not dispute that assessment, but reaffirmed the need for elevated detriment: "Reverting back to simple detriment to the objector alone is not acceptable."[36]

At the same time, ICANN inserted into the Guidebook:

> *"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"*

Finally, the IO must show that Amazon's application creates a "likelihood" of material detriment.

**b) Objection**

The IO appears to suggest that his asserted community is "the Amazon community and ... the public more generally".

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[31] Comments, v4, p110.
[32] "GAC comments", 26/05/11, p3.
[33] Comments, v5, p103.
[34] Comments, v4, p110.
[35] Comments, v5, p103.
[36] Comments, v5, p104.

He then argues that there are two categories of detriment. First, that if Amazon succeeds in the application, "the people and entities being part of the Amazon community and owning its cultural heritage [will be unable] to obtain a .亚马逊 domain name". Second, "the still existing link between the term 'Amazon' and the region it refers to will progressively disappear ... The awareness of the global Internet user of the very existence of the region and its utmost importance for the international community are likely to suffer, and cause harm to the core issues concerning the Amazon region".

**c) Response**

Even if the IO had shown "targeting" of the asserted community, which he has not, his first argument cannot succeed: the Guidebook expressly provides that someone else being delegated a string is not "material detriment". If denial of entire strings is insufficient, denial of lower-level names under a string must be also. Secondly, there is no causal connection between this "detriment" and the application: if Amazon's application is blocked, the asserted community will still experience the same "detriment" since neither it, nor anyone other than Amazon, applied for ".亚马逊". The IO fails to establish that the asserted community would want a Chinese domain name.

The second argument fails because there is not the remotest possibility that removing ".com" from a Chinese translation of the applicant's primary domain name will somehow create a barrier in people's minds between the "Amazon" name and the Amazonas River, rainforest and basin. Amazon has used the English translation AMAZON, without the ".com", as a trademark in many countries, including in the various countries of the Amazonia Region, for many years without evidence of reduced awareness of, or confusion with, the Amazonia Region. Indeed, the same countries that the IO claims it is acting on behalf of have granted Amazon trademark registrations and/or lower-level domain names under their ccTLDs for AMAZON: Annex 4.

Furthermore, there is no "likelihood" that this Chinese string will cause any loss of awareness of the region: its "utmost importance for the international community"[37] means many charities, institutes and international initiatives are dedicated to keeping it at the forefront of ecology and part of school curricula around the globe.

[37] Objection, §37.

If there is any doubt about this, the Panel may consider the absence of negative impact Amazon, one of the world's most recognised and trusted brands, has had on the Amazonia region since 1994. Since 1994, only the applicant and its group of companies have used its amazon.com and other AMAZON domain names (and their lower levels) and its trademarks, including those registered in Latin America. Yet, the IO is unable to present even a single piece of evidence that the Amazonia Region has suffered material detriment as a result of the applicant's 18 years of conducting business under its AMAZON name, nor has he demonstrated how the loss of the inconsequential "*.com*" from a Chinese translation of the applicant's web address will change the perception of users of the global Internet in such a way that: Amazonia will be removed from the public's consciousness; governments, conservationists and teachers will no longer consider it important; and the region and the world will suffer the dire consequences he presents.

**d) Conclusion**

The hypothetical scenarios envisaged by the IO are based solely on conjecture and are contradicted by Amazon's coexistence with the Amazonia region since 1994. There is no reason to believe that they will be caused by Amazon removing ".com" from a Chinese translation of its web address. The objection must fail.

## IV. Conclusion

The Objection fails to prove:

1. A cohesive "community" whose membership is "clearly delineated";

2. "Substantial" rather than "some" opposition, at the relevant time;

3. That Amazon will use the .亚马逊 gTLD to target the Amazonia region instead of the globally-recognised brand it explicitly says it is targeting; and

4. That 18 years of coexistence will be reversed, and the various peoples of the Amazonas region are likely to suffer material detriment, if Amazon removes ".com" from a Chinese translation of its primary web address, despite years of use of AMAZON as a mark and in ccTLDs globally.

Since the IO has failed to prove all four of the Guidebook's Standards as required to succeed, the Panel must reject this objection.

**Communication (Article 6(a) of the Procedure and Article 1 of the ICC Practice Note)**

A copy of this Response is/~~was~~ transmitted to the Objector on: 24 May 2013 by email to the following address: contact@independent-objector-newgtlds.org and courriel@alainpellet.eu

A copy of this Response is/~~was~~ transmitted to ICANN on: 24 May 2013 by email to the following address: drfiling@icann.org

**Filing Fee (Article 1 Appendix III to the Rules and Article 11(f) of the Procedure)**

As required, Euros 5 000 were paid to ICC on 23 May 2013.

[X] Evidence of the payment is attached for information.

**Description of the Annexes filed with the Response (Article 11(e) of the Procedure)**

*List and Provide description of any annex filed.*

**Annex 1**

Links to and full titles of documents cited in this Response.

**Annex 2**

Correspondence, documents and links relating to the IO's conflict of interest, including: his live, publicly-available CV; his statements that he has "special links" to Latin America and that Brazil is "particularly dear" to him; and his contrasting treatment of all quasi-geographical strings outside Latin America.

**Annex 3**

Details of comments regarding the real rationale behind Argentina having lent its name to the early warning of November 2012.

**Annex 4**

Examples of the public's awareness and trust in the AMAZON brand.

**Annex 5**

Pursuant to Article 18 of the Procedure, this annex contains evidence of only a selection of the many thousands of trademarks and domain names registered to the applicant and/or its group companies demonstrating use of its globally-recognised AMAZON trademark, including in those countries found within the IO's asserted community. Amazon will be happy to provide further details or documents upon request. Please treat this annex as confidential.

**Annex 6**

Proof of payment to ICC of the €5,000 filing fee.

Date: 24 May 2013

Signature:

# R-66

RESPONDENT'S EXHIBIT

**From:** King(Legal), Stacey
**To:** Contact Information Redacted
**CC:** Northcott, Dana; Nick Wood, Valideus Contact Information Redacted
Northcott,Dana; Nick Wood,Valideus Contact Information Redacted
**Sent:** 4/8/2013 3:44:35 AM
**Subject:** RE: Private and Confidential

Dear Mark,

I write to follow up with you on our discussions, specifically in connection with GAC advice on the question of geographic concerns over strings in the new gTLDs.

We respectfully ask you to oppose any proposals that would give individual GAC member countries the ability to veto applications on the basis of a sensitivity, without considerations of the laws of other sovereign nations. Accordingly, we write to formally request that you object to any objection to the .amazon application (and its IDN variants). Alternatively, if you cannot object, we ask that you remain neutral.

The ICANN community, and the GAC, has already addressed the geographic names issue on multiple occasions in the debate over the original Applicant Guidebook. We, and other applicants, submitted applications in good faith reliance on those rules.

Please let us know if you would like to speak with us about our request, or require any additional information from us.

Best

Stacey

Stacey King

Senior Corporate Counsel, IP | Amazon.com | Contact Information Redacted

From: King(Legal), Stacey
Sent: Thursday, April 04, 2013 10:58 AM
To: 'Contact Information Redacted
Cc: Northcott, Dana
Subject: Private and Confidential

Mark,

I hope you had an easy trip to Beijing and that you are settling in. Dana Northcott and I arrived in Beijing last night and will be here throughout the week. We would love to meet with you – and others – at your convenience, to discuss Brazil and Peru's objection to .amazon.

As you are aware, Amazon has been working hard to come to a common understanding with Brazil and Peru regarding our application for the .amazon gtld string. Regardless, their request that we withdraw our application, or change it to '.amazoncorporation', by way of example, is not one we can agree to.

Not only does this affect the timing of our application (we would likely need to wait for the next round) and put us at a disadvantage to our competitors who will be allowed to develop their spaces in the next few years, but it also fundamentally affects our global trademark rights. Amazon is a company that is trusted by consumers in countries throughout the world. Indeed our trademark is considered one of the most trusted marks by consumers. To dilute the goodwill and trust we have carefully built over the years, on a global basis, by changing our core operating brand and all live sites from "Amazon" to "Amazon Corporation", is not something Amazon is willing to do, nor does it meet the principles of fairness set out in the DAG or pervious GAC discussions (namely, our trademark AMAZON doesn't match the name of the region AMAZONAS or AMAZONIA, our company has never had any issues with confusion or misunderstanding of a representation within the region, AMAZON is not on the ISO list, and the regions of the Amazonas region didn't apply). As a result, we would like to ask the UK, among others, to object to Brazil and Peru's objection to our application.

To be clear, we have reached out to the governments of the Amazonas region, flew to Brasilia for in-person discussions at their request, have proposed multiple ways to move forward, and are committed to continuing these discussions even after Beijing. We believe, however, that these conversations on the core resolutions requested by Brazil and Peru - dropping our application and/or changing our string in the next application round- will not change between now and the next ICANN meeting, considering we have put forward a number of compromise solutions which Brazil and Peru have rejected. We ask that it be resolved here in Beijing and that the United Kingdom object to their objection.

Per our earlier correspondence, we hope we are able to meet with you on Saturday to discuss this in more detail, including why strings such as '.amazoninc' do not work as a viable alternative. If you have any questions for us in the meantime, we would be happy to answer them, meet up with you, or any others who you think may have an interest in talking with us.

With best regards,

Stacey

Stacey King

Senior Corporate Counsel, IP | Amazon.com | Contact Information Redacted
<mailto: Contact Information Redacted

# R-67

RESPONDENT'S EXHIBIT

**From:** Huseman, Brian
**To:** Contact Information Redacted
**Sent:** 4/8/2013 6:37:57 AM
**Subject:** GAC Advice

Hubert—

I write to follow up with you on our discussions, specifically in connection with GAC advice on the question of geographic concerns over strings in the new gTLDs.

We respectfully ask you to oppose any proposals that would give individual GAC member countries the ability to veto applications on the basis of a sensitivity, without considerations of the laws of other sovereign nations. Accordingly, we write to formally request that you object to any objection to the .amazon application (and its IDN variants). Alternatively, if you cannot object, we ask that you remain neutral.

The ICANN community, and the GAC, has already addressed the geographic names issue on multiple occasions in the debate over the original Applicant Guidebook. We, and other applicants, submitted applications in good faith reliance on those rules.

Please let me know if you would like to speak with us about our request, or require any additional information from us.

Brian Huseman | Director, Public Policy | Amazon

Contact Information Redacted <mailto:Contact Information Redacted > | M Contact Information Redacted

# R-68

RESPONDENT'S EXHIBIT

**From:** King(Legal), Stacey
**To:** Contact Information Redacted
**CC:** O'Keefe, Emmett; O'Keefe,Emmett
**Sent:** 4/8/2013 5:41:07 AM
**Subject:** RE: Private and Confidential

Dear Claudine,

I write to follow up with you on our discussions, specifically in connection with GAC advice on the question of geographic concerns over strings in the new gTLDs.

We respectfully ask you to oppose any proposals that would give individual GAC member countries the ability to veto applications on the basis of a sensitivity, without considerations of the laws of other sovereign nations. Accordingly, we write to formally request that you object to any objection to the .amazon application (and its IDN variants). Alternatively, if you cannot object, we ask that you remain neutral.

The ICANN community, and the GAC, has already addressed the geographic names issue on multiple occasions in the debate over the original Applicant Guidebook. We, and other applicants, submitted applications in good faith reliance on those rules.

Please let us know if you would like to speak with us about our request, or require any additional information from us.

Best

Stacey

Stacey King

Senior Corporate Counsel, IP | Amazon.com | Contact Information Redacted

From: King(Legal), Stacey
Sent: Thursday, April 04, 2013 11:19 AM
To: 'Contact Information Redacted
Cc: Northcott, Dana
Subject: Private and Confidential

Dear Claudine,

I hope you had an easy trip to Beijing and that you are settling in. Dana Northcott and I are also in Beijing and will be here throughout the week. We would love to meet with you - and others - at your convenience, to discuss Brazil and Peru's objection to .amazon.

As you may be aware, Amazon has been working hard to come to a common understanding with

Brazil and Peru regarding our application for the .amazon gtld string. Regardless, their request that we withdraw our application, or change it to '.amazoncorporation', by way of example, is not one we can agree to.

Not only does this affect the timing of our application (we would likely need to wait for the next round) and put us at a disadvantage to our competitors who will be allowed to develop their spaces in the next few years, but it also fundamentally affects our global trademark rights. Amazon is a company that is trusted by consumers in countries throughout the world. Indeed our trademark is considered one of the most trusted marks by consumers. To dilute the goodwill and trust we have carefully built over the years, on a global basis, by changing our core operating brand and all live sites from "Amazon" to "Amazon Corporation", is not something Amazon is willing to do, nor does it meet the principles of fairness set out in the DAG or pervious GAC discussions (namely, our trademark AMAZON doesn't match the name of the region AMAZONAS or AMAZONIA, our company has never had any issues with confusion or misunderstanding of a representation within the region, AMAZON is not on the ISO list, and the regions of the Amazonas region didn't apply). As a result, we would like to ask Luxembourg, among others, to object to Brazil and Peru's objection to our application.

To be clear, we have reached out to the governments of the Amazonas region, flew to Brasilia for in-person discussions at their request, have proposed multiple ways to move forward, and are committed to continuing these discussions even after Beijing. We believe, however, that these conversations on the core resolutions requested by Brazil and Peru - dropping our application and/or changing our string in the next application round- will not change between now and the next ICANN meeting, considering we have put forward a number of compromise solutions which Brazil and Peru have rejected. We ask that it be resolved here in Beijing and that Luxembourg object to their objection.

If you have any questions for us in the meantime, we would be happy to answer them, meet up with you, or any others who you think may have an interest in talking with us.

With best regards,

Stacey

Stacey King

Senior Corporate Counsel, IP | Amazon.com | Contact Information Redacted

# R-69

RESPONDENT'S EXHIBIT

**From:** King(Legal), Stacey
**To:** Contact Information Redacted
**CC:** Northcott, Dana; Northcott,Dana
**Sent:** 4/8/2013 5:45:47 AM
**Subject:** RE: Private and Confidential

Dear Peter,

I write to follow up with you on our discussions, specifically in connection with GAC advice on the question of geographic concerns over strings in the new gTLDs.

We respectfully ask you to oppose any proposals that would give individual GAC member countries the ability to veto applications on the basis of a sensitivity, without considerations of the laws of other sovereign nations. Accordingly, we write to formally request that you object to any objection to the .amazon application (and its IDN variants). Alternatively, if you cannot object, we ask that you remain neutral.

The ICANN community, and the GAC, has already addressed the geographic names issue on multiple occasions in the debate over the original Applicant Guidebook. We, and other applicants, submitted applications in good faith reliance on those rules.

Please let us know if you would like to speak with us about our request, or require any additional information from us.

Best

Stacey

Stacey King

Senior Corporate Counsel, IP | Amazon.com | Contact Information Redacted

From: King(Legal), Stacey
Sent: Thursday, April 04, 2013 11:07 AM
To: ' Contact Information Redacted
Cc: Northcott, Dana
Subject: Private and Confidential

Peter,

I hope you had an easy trip to Beijing and that you are settling in. Dana Northcott and I are also in Beijing and will be here throughout the week. We would love to meet with you - and others - at your convenience, to discuss Brazil and Peru's objection to .amazon.

As you may be aware, Amazon has been working hard to come to a common understanding with Brazil and Peru regarding our application for the .amazon gtld string. Regardless, their request that we withdraw our application, or change it to '.amazoncorporation', by way of

example, is not one we can agree to.

Not only does this affect the timing of our application (we would likely need to wait for the next round) and put us at a disadvantage to our competitors who will be allowed to develop their spaces in the next few years, but it also fundamentally affects our global trademark rights. Amazon is a company that is trusted by consumers in countries throughout the world. Indeed our trademark is considered one of the most trusted marks by consumers. To dilute the goodwill and trust we have carefully built over the years, on a global basis, by changing our core operating brand and all live sites from "Amazon" to "Amazon Corporation", is not something Amazon is willing to do, nor does it meet the principles of fairness set out in the DAG or pervious GAC discussions (namely, our trademark AMAZON doesn't match the name of the region AMAZONAS or AMAZONIA, our company has never had any issues with confusion or misunderstanding of a representation within the region, AMAZON is not on the ISO list, and the regions of the Amazonas region didn't apply). As a result, we would like to ask Australia, among others, to object to Brazil and Peru's objection to our application.

To be clear, we have reached out to the governments of the Amazonas region, flew to Brasilia for in-person discussions at their request, have proposed multiple ways to move forward, and are committed to continuing these discussions even after Beijing. We believe, however, that these conversations on the core resolutions requested by Brazil and Peru - dropping our application and/or changing our string in the next application round- will not change between now and the next ICANN meeting, considering we have put forward a number of compromise solutions which Brazil and Peru have rejected. We ask that it be resolved here in Beijing and that the United Kingdom object to their objection.

If you have any questions for us in the meantime, we would be happy to answer them, meet up with you, or any others who you think may have an interest in talking with us.

With best regards,

Stacey

Stacey King

Senior Corporate Counsel, IP | Amazon.com | Contact Information Redacted

# R-70

RESPONDENT'S EXHIBIT

**From:** Gross, David
**To:** Conroy, Stephen
**CC:** King(Legal), Stacey; Huseman, Brian
**Sent:** 6/19/2013 4:05:00 PM
**Subject:** ICANN and Amazon

Dear Stephen:

I miss seeing you! I hope that all is well with you and your family.

As you may be aware, Amazon.com <http://Amazon.com> , Inc. (a client) and both the Brazilian and Peruvian governments have been at odds on whether Amazon can obtain from ICANN new generic top level domain names ("gTLD") using the word "Amazon". This matter has generated substantial international debate and discussions not only with ICANN, but also in various other international forums such as at the International Telecommunication Union (ITU). The USG, including the Department of Commerce and the Department of State, has been helpful in this process.

In light of the importance and visibility of this matter, especially in the GAC, I thought that you and your staff might find it useful if Amazon's team were to provide a briefing on what is happening on this issue, including the fact that in Brazil (as well as virtually everywhere else) Amazon has a trademark to the name "Amazon" and many related names. If you want, they can also brief you and your team on their attempts to find a settlement with the Brazilian government that might provide substantial benefits to Brazil and to the Brazilian people. I should note that (as you may know) Amazon has already had very helpful meetings on this subject with Australia's GAC representative.

Please let me know if meeting with you and or your staff (perhaps by video conference) would be helpful. Amazon would very much appreciate the opportunity!

Best wishes,

David

Amb. David A. Gross | Attorney At Law | Wiley Rein LLP | 1776 K Street NW | Washington, DC 20006
(Tel) 202.719.7414 | (Fax) 202.719.7049 | **Contact Information Redacted**

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# R-71

RESPONDENT'S EXHIBIT

Brasília, 14 April 2014

Mr. Stephen D. Crocker

Chair, ICANN Board of Directors

Dear Mr. Crocker,

It is our pleasure to acknowledge receipt of your letter of 7 April 2014 addressed to the Chair of the Governmental Advisory Committee and also make reference to the response letter of 11 April 2014 by H.E. Mr. Fernando Rojas Samanéz, Vice Minister of Foreign Affairs of Perú.

It is our understanding that all the steps prescribed in the gTLD Applicant Guidebook in order to object the Amazon EU S.à.r.l´ s application for the *.amazon* generic top level domain, including the holding of bilateral consultations with representatives of the said company, have been timely taken by Brazil and Peru, on behalf of the member States of the Amazon Cooperation Treaty Organization.

As you are aware, our initiative culminated in the issuance of a consensus advice by the Governmental Advisory Committee in July 2013, on occasion of ICANN 47. Taking into account that almost nine months have elapsed since then, and as we move to final stages of preparation for NETmundial (São Paulo, 23-24 April 2014), we wish to reiterate our expectation that the GAC Board decision will be made in the shortest possible term.

In the light of the above, we wish to reiterate the views expressed in our previous interventions on this matter, including the early warning, the report to the GAC and the GAC advice itself.

Faithfully Yours,

Benedicto Fonseca Filho
Director, Department of Scientific and Technological Themes
Ministry of External Relations
Federative Republic of Brazil

Virgilio Fernandes Almeida
National Secretary for Information Technology Policies
Ministry of Science, Technology and Innovation
Federative Republic of Brazil

# R-72

RESPONDENT'S EXHIBIT

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**Important note:** The Board Resolutions are as reported in the Board Meeting Transcripts, Minutes & Resolutions portion of ICANN's website. Only the words contained in the Resolutions themselves represent the official acts of the Board. The explanatory text provided through this database (including the summary, implementation actions, identification of related resolutions, and additional information) is an interpretation or an explanation that has no official authority and does not represent the purpose behind the Board actions, nor does any explanations or interpretations modify or override the Resolutions themselves. Resolutions can only be modified through further act of the ICANN Board.

# GAC Advice on .AMAZON (and related IDNs)

Resolution of the ICANN Board

### Meeting Date:

Mer, 14 Mai 2014

### Resolution Number:

2014.05.14.NG03

### URL for Resolution:

https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-e...

### Resolution Text:

Resolved (2014.05.14.NG03), the NGPC accepts the GAC advice identified in the GAC Register of Advice as 2013-07-18-Obj-Amazon, and directs the President and CEO, or his designee, that the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5581) filed by Amazon EU S.à r.l. should not proceed. By

adopting the GAC advice, the NGPC notes that the decision is without prejudice to the continuing efforts by Amazon EU S.à r.l. and members of the GAC to pursue dialogue on the relevant issues.

## Rationale for Resolution:

The NGPC's action today, addressing open items of GAC advice concerning .AMAZON (and related IDNs in Japanese and Chinese), is part of the ICANN Board's role to address advice put to it by the Governmental Advisory Committee (GAC). Article XI, Section 2.1 of the ICANN Bylaws http://www.icann.org/en/about/governance/bylaws#XI permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The action being approved today is to accept the GAC's advice to the ICANN Board contained in the GAC's Durban Communiqué stating that it is the consensus of the GAC that the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591) should not proceed. The New gTLD Applicant Guidebook (AGB) provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) To implement this advice, the NGPC is directing the ICANN President and CEO (or his designee) that the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5581) filed by Amazon EU S.à r.l. should not proceed. By adopting the GAC advice, the NGPC notes that the decision is without prejudice to the continuing efforts by Amazon EU S.à r.l. and members of the GAC to pursue dialogue on the relevant issues.

As part of its consideration of the GAC advice, ICANN posted the GAC advice and officially notified applicants of the advice, including Amazon EU S.à r.l. (the applicant for .AMAZON (and related IDNs)), triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. Amazon's response to the Board is provided at: http://newgtlds.icann.org/en/applicants/gac-advice/, and the NGPC has considered this response as part of its deliberations on the GAC advice. In its response to the Board, Amazon asserted that the GAC advice should be rejected because: (1) it is inconsistent with international law; (2) the acceptance of GAC advice would be non-transparent and discriminatory, which conflicts with ICANN's governing documents; and (3) the GAC Advice contravenes policy recommendations implemented within the Applicant Guidebook and achieved through international consensus over many years.

The NGPC previously decided to further study and analyze the issues raised by the applicant and the GAC advice, and in a recent iteration of the GAC-NGPC Scorecard [PDF, 371 KB] adopted by the NGPC on 5 February 2014 noted that "ICANN has commissioned an independent, third-party expert to provide additional analysis on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments." The independent, third-party expert analysis [PDF, 737 KB] ("Expert Analysis") explores relevant international and local law on geographical indications, related international treaties, and principles of intellectual property law to address the specific issues of application of law at issue. Among other things, the Expert Analysis considers whether the consensus advice issued by the GAC is of such nature as to oblige ICANN to reject the application filed by Amazon, or to the contrary, whether the rules and principles cited by Amazon in its response of 23 August 2013 to the GAC's advice oblige ICANN to approve the applications for .AMAZON (and related IDNs). The Expert Analysis concludes the following:

As regards the application for assignment of the new gTLD '.amazon' filed by the Amazon company:

i) there is no rule of international, or even regional or national, law applicable in the field of geographical indications which obliges ICANN to reject the application;

ii) there is no rule of international, or even regional or national, law applicable in the field of intellectual property and in particular of trade marks or in the field of fundamental rights, which obliges ICANN to accept this application.

The Expert Analysis, which was considered as part of the NGPC's deliberations in adopting this resolution, was provided to the GAC as well as Amazon on 7 April 2014. ICANN provided the Expert Analysis to keep the parties informed and noted that it welcomed any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC's advice.

In response to the 7 April 2014 communication to the GAC and Amazon, ICANN received related correspondence, including the following, which were considered as part of the NGPC's action:

Letter [PDF, 66 KB] dated 11 April 2014 from Mr. Fernando Rojas Samanéz (Vice Minister of Foreign Affairs, Peru). The letter comments on the independent, third party advice and requests that the NGPC reject the applications for .AMAZON. The letter comments on the Expert Analysis and requests that the NGPC reject the applications for .AMAZON.

Letter dated 14 April 2014 from Mr. Benedicto Fonseca Filho (Director, Department of Scientific and Technological Themes, Ministry of External Relations, Federative Republic of Brazil) and Mr. Virgilio Fernandes Almeida (National Secretary for Information Technology Policies, Ministry of Science, Technology and Innovation, Federative Republic of Brazil). The letter reiterates Brazil's objection to the

applications for .AMAZON.

Letter dated 14 April 2014 from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon). The letter comments on the Expert Analysis and requests that the NGPC allow the applications for .AMAZON to continue to move forward.

The NGPC considered several significant factors during its deliberations about how to address the GAC advice concerning .AMAZON (and related IDNs). The NGPC had to balance the competing interests of each factor to arrive at a decision. The concerns raised by the relevant parties highlight the difficulty of the issue. In addition to the factors highlighted above, the following are among the factors the NGPC found to be significant:

Although the NGPC does not have the benefit of the rationale relied upon by the GAC in issuing its consensus advice in the Durban Communiqué on the applications for .AMAZON (and related IDNs), the NGPC considered the reason/rationale provided in the GAC Early Warning [PDF, 79 KB] submitted on behalf of the governments of Brazil and Peru on 20 November 2012 expressing concern regarding Amazon's application for the .AMAZON gTLD. In the Early Warning, the concerned governments indicated that among other reasons, it was requesting that Amazon withdraw its application because "[g]ranting exclusive rights to this specific gTLD to a private company would prevent the use of this domain for the purposes of public interest related to the protection, promotion and awareness raising on issues related to the Amazon biome. It would also hinder the possibility of use of this domain to congregate web pages related to the population inhabiting that geographical region." The Early Warning also explains that the applied-for string "matches part of the name, in English, of the 'Amazon Cooperation Treaty Organization', an international organization which coordinates initiatives in the framework of the Amazon Cooperation Treaty…."

The NGPC also considered correspondence received on the matter, and takes particular note of correspondence from Amazon dated 4 July 2013 and 3 December 2013, wherein Amazon describes its "attempts to find a mutual resolution with the Governments of Brazil and Peru" concerning the .AMAZON applications, and the public interest commitments it is willing to include as contractually enforceable provisions in the Registry Agreement. Amazon indicates that it is willing to be contractually committed to do the following:

Limit the registration of culturally sensitive terms such as "Amazonia," "Amazonas," and "Amazonica" under the .AMAZON new gTLD to OTCA [Organização do Tratado de Cooperação Amazônica's] and its Member Governments.

Continue to engage in good faith discussions with the OTCA and its member governments to identify any other existing terms of specific cultural sensitivity.

Present a Memorandum of Understanding to ICANN setting out Amazon's non-objection to any future application filed by the OTCA and/or its Member Governments for the terms ".AMAZONIA", ".AMAZONAS", or ".AMAZONICA".

The NGPC considered the community-developed processes established in the Applicant Guidebook, including Section 5.1 of the Applicant Guidebook, which provides that, "ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism."

As part of its deliberations, the NGPC's review of significant materials included, but is not limited to the following, letters, materials and documents:

GAC Early Warning:
https://gacweb.icann.org/download/attachments/27131927/Amazon-BR-PE-5808... [PDF, 79 KB]

GAC Beijing Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communi... [PDF, 238 KB]

GAC Durban Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communi... [PDF, 104 KB]

GAC Buenos Aires Communiqué:
https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aire... [PDF, 97 KB]

GAC Singapore Communiqué (Amended):
https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Commu... [PDF, 147 KB]

Applicant Guidebook, Module 3:
http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12... [PDF, 261 KB]

Applicant responses to GAC advice:
http://newgtlds.icann.org/en/applicants/gac-advice/

Letter [PDF, 94 KB] dated 3 March 2013 from Stacey King (Sr. Corporate Counsel – Amazon).

Letter [PDF, 68 KB] dated 4 July 2013 from Stacey King (Sr. Corporate Counsel – Amazon).

Letter [PDF, 465 KB] dated 4 October 2013 from Mr. Ernesto H.F. Araújo (Chargé D' Affaires, a.i., Brazilian

Embassy).

Letter dated 3 December 2013 from Stacey King (Sr. Corporate Counsel – Amazon).

Letter dated 24 December 2013 from Mr. Fernando Rojas Samanez (Vice Minister of Foreign Affairs, Peru).

Letter [PDF, 72 KB] dated 10 January 2014 from Stacey King (Sr. Corporate Counsel – Amazon).

Letter dated 3 March 2014 from Mr. Fernando Rojas Samanéz (Vice Minister of Foreign Affairs, Peru).

Letter [PDF, 459 KB] dated 25 March 2014 from Ambassador Robby Ramlakhan (Secretary General, Amazon Cooperation Treaty Organization).

Letter [PDF, 66 KB] dated 11 April 2014 from Mr. Fernando Rojas Samanéz (Vice Minister of Foreign Affairs, Peru).

Letter dated 14 April 2014 from Mr. Benedicto Fonseca Filho (Director, Department of Scientific and Technological Themes, Ministry of External Relations, Federative Republic of Brazil) and Mr. Virgilio Fernandes Almeida (National Secretary for Information Technology Policies, Ministry of Science, Technology and Innovation, Federative Republic of Brazil).

Letter dated 14 April 2014 from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon).

There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS. As part of ICANN's organizational administrative function, ICANN posted the Singapore Communiqué, the Buenos Aires Communiqué, the Durban Communiqué, and the Beijing Communiqué and officially notified applicants of the advice. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. Additionally, as noted above, the Expert Analysis was provided to the GAC as well as Amazon on 7 April 2014. ICANN provided the analysis to keep the parties informed and noted that it welcomed any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC's advice.

# R-73

RESPONDENT'S EXHIBIT

# Approved Resolutions | Meeting of the New gTLD Program Committee

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08 Sep 2014

1. **Main Agenda:**
   a. Approval of Minutes
   b. Remaining Items from Beijing, Durban, Buenos Aires, Singapore and London GAC Advice: Updates and Actions
   c. BGC Recommendation on Reconsideration Request 14-27, Amazon EU S.a.r.l.
   d. Perceived Inconsistent String Confusion Expert Determinations
   e. Any Other Business

## 1. Main Agenda:

### a. Approval of Minutes

Resolved (2014.09.08.NG01), the Board New gTLD Program Committee (NGPC) approves the minutes of its 21 June, 18 July and 30 July 2014 NGPC meetings.

### b. Remaining Items from Beijing, Durban, Buenos Aires, Singapore and London GAC Advice: Updates and Actions

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué").

Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the GAC met during the ICANN 48 meeting in Buenos Aires and issued a Communiqué on 20 November 2013 ("Buenos Aires Communiqué").

Whereas, the GAC met during the ICANN 49 meeting in Singapore and issued a Communiqué

on 27 March 2014, which was amended on 16 April 2014 ("Singapore Communiqué").

Whereas, the GAC met during the ICANN 50 meeting in London and issued a Communiqué on 25 June 2014 ("London Communiqué").

Whereas, the NGPC adopted scorecards to respond to certain items of the GAC's advice, which were adopted on 4 June 2013, 10 September 2013, 28 September 2013, 5 February 2014 and 14 May 2014.

Whereas, the NGPC has developed another iteration of the scorecard to respond to certain remaining items of GAC advice in the Beijing Communiqué, the Durban Communiqué, the Buenos Aires Communiqué, the Singapore Communiqué, and new advice in the London Communiqué.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.09.08.NG02), the NGPC adopts the scorecard titled "GAC Advice (Beijing, Durban, Buenos Aires, Singapore, and London): Actions and Updates (8 September 2014)", attached as Annex 1 [PDF, 429 KB] to this Resolution, in response to open items of Beijing, Durban, Buenos Aires, Singapore and London GAC advice.

## Rationale for Resolution 2014.09.08.NG02

Article XI, Section 2.1 of the ICANN Bylaws https://www.icann.org/resources/pages/bylaws-2012-02-25-en - XI permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, its Buenos Aires Communiqué dated 20 November 2013, its Singapore Communiqué dated 27 March 2014 (as amended 16 April 2014), and its London Communiqué dated 25 June 2014. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The NGPC has previously addressed items of the GAC's Beijing, Durban, Buenos Aires, and Singapore advice, but there are some items that the NGPC continues to work through. Additionally, the GAC issued new advice in its London Communiqué that relates to the New gTLD Program. The NGPC is being asked to consider accepting some of the remaining open items of the Beijing, Durban, Buenos Aires, and Singapore GAC advice, and new items of advice from London as described in the scorecard [PDF, 429 KB] (dated 8 September 2014).

As part of its consideration of the GAC advice, ICANN posted the GAC advice and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The Beijing GAC advice was posted on 18 April 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>; the Durban GAC advice was posted on 1 August 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>; the

Buenos Aires GAC advice was posted on 11 December 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-11dec13-en>; the Singapore advice was posted on 11 April 2014 http://newgtlds.icann.org/en/announcements-and-media/announcement-11apr14-en; and the London advice was posted on 14 July 2014 <http://newgtlds.icann.org/en/announcements-and-media/announcement-14jul14-en>. The complete set of applicant responses are provided at: <http://newgtlds.icann.org/en/applicants/gac-advice/>.

In addition, on 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address Be jing GAC advice regarding safeguards applicable to broad categories of new gTLD strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>. The NGPC has considered the applicant responses in addition to the community feedback on how ICANN could implement the GAC's safeguard advice in the Beijing Communiqué in formulating its response to the remaining items of GAC advice.

As part of its deliberations, the NGPC reviewed various materials, including, but not limited to, the following materials and documents:

- GAC Beijing Communiqué: https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2 [PDF, 237 KB]
- GAC Durban Communiqué: https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2 [PDF, 103 KB]
- GAC Buenos Aires Communiqué: https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2 [PDF, 97 KB]
- GAC Singapore Communiqué (as amended): https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2 [PDF, 147 KB]
- GAC London Communiqué: https://gacweb.icann.org/download/attachments/27132037/Communique%20London%20final.pdf?version=1&modificationDate=1406852169128&api=v2 [PDF, 140 KB]
- Applicant responses to GAC advice: http://newgtlds.icann.org/en/applicants/gac-advice/
- Applicant Guidebook, Module 3: http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf [PDF, 260 KB]

In adopting its response to remaining items of Beijing, Durban, Buenos Aires, and Singapore GAC advice, and the new London advice, the NGPC considered the applicant comments submitted, the GAC's advice transmitted in the Communiqués, and the procedures established in the AGB and the ICANN Bylaws. The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

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

As part of ICANN's organizational administrative function, ICANN posted the London Communiqué and officially notified applicants of the advice on 14 July 2014. The Singapore Communiqué, the Buenos Aires Communiqué, the Durban Communiqué, and the Beijing Communiqué were posted on 11 April 2014, 11 December 2013, 18 April 2013 and 1 August 2013, respectively. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

### c. BGC Recommendation on Reconsideration Request 14-27, Amazon EU S.a.r.l.

Whereas, Amazon EU S.à.r.l ("Requester") filed Reconsideration Request 14-27 asking the New gTLD Program Committee ("NGPC") to: (i) reverse Resolution 2014.05.14.NG03; (ii) reject the Governmental Advisory Committee's advice on .AMAZON and the related internationalized domain names (collectively, the "Amazon Applications"); and (iii) direct ICANN staff to proceed with the Amazon Applications.

Whereas, the BGC considered the issues raised in Reconsideration Request 14-27.

Whereas, the BGC recommended that the Request be denied because the Requester has not stated proper grounds for reconsideration and the NGPC agrees.

Resolved (2014.09.08.NG03), the NGPC adopts the BGC Recommendation on Reconsideration Request 14-27, which can be found at https://www.icann.org/en/system/files/files/recommendation-amazon-22aug14-en.pdf [PDF, 177 KB].

## Rationale for Resolution 2014.09.08.NG03

### I. Brief Summary

Amazon EU S.à.r.l. (the "Requester") applied for .AMAZON and related internationalized domain names ("IDNs") in Japanese and Chinese (the "Amazon Applications"). In its Durban Communiqué, the Governmental Advisory Committee ("GAC") informed the Board that it had reached consensus advice on .AMAZON and the related IDNs ("GAC Durban Advice"). After significant and careful consideration, on 14 May 2014, the NGPC passed Resolution 2014.05.14.NG03 ("Resolution") accepting the GAC Durban Advice and directed that the Amazon Applications should not proceed.

On 30 May 2014, the Requester filed the instant Request, seeking reconsideration of the NGPC's acceptance of the GAC Durban Advice. The Requester argues that the GAC Durban Advice was untimely and was improperly accorded a strong presumption by the NGPC. In addition, the Requester argues that the NGPC considered false or inaccurate material information and failed to consider other material information in accepting the advice.

The BGC concluded that the Requester has not stated proper grounds for reconsideration. Specifically, the BGC concluded that: (i) there is no evidence that the NGPC's actions in adopting the Resolution support reconsideration; (ii) the Requester has not demonstrated that the NGPC failed to consider any material information in

passing the Resolution or that the NGPC relied on false or inaccurate material information in passing the Resolution; and (iii) the NGPC properly considered the GAC Durban Advice in accordance with ICANN's Bylaws and the procedures set forth in the gTLD Applicant Guidebook. Therefore, the BGC recommended that Reconsideration Request 14-27 be denied (and the entirety of the BGC Recommendation is incorporated by reference as though fully set forth in this rationale). The NGPC agrees.

## II. Relevant Background Facts

The Requester applied for the Amazon Applications.

On 17 June 2012 the GAC Chair sent a letter to ICANN's Board, which included the following:

Given the delays in the gTLD application process, the timing of the upcoming ICANN meetings, and the amount of work involved, **the GAC advises the Board** that it will not be in a position to offer any new advice on the gTLD applications in 2012. For this reason, the GAC is considering the implications of providing any GAC advice on gTLD applications. These considerations are not expected to be finalized before the Asia-Pacific meeting in April 2013.[1]

On 20 November 2012, the GAC representatives for the governments of Brazil and Peru submitted an Early Warning with respect to the Amazon Applications.[2]

On 14 February 2013, the GAC declared that it would be posting a list of applications that the GAC would consider as a whole during the GAC meeting to be held in Beijing in April 2013.[3] On 25 February 2013, the GAC further stated that it was "still compiling and processing inputs received from GAC members" and would post further information as soon as poss ble.[4]

In March 2013, the Requester wrote to the Board regarding its Public Interest Commitments with respect to the Amazon Applications,[5] and ICANN's Independent Objector ("IO") objected to the Amazon Applications on behalf of the "Amazon Community," *i.e.*, the "South-American region with the same English name around the Amazon River" ("Community Objection").[6]

On 11 April 2013, in its Be jing Communiqué the GAC identified the Amazon Applications as warranting further GAC consideration and advised the Board not to proceed with those applications beyond Initial Evaluation ("GAC Beijing Advice").[7] The Requester responded to the GAC Beijing Advice arguing that the GAC had not reached consensus advice on the Applications, and that the New gTLD Applicant Guidebook ("Guidebook") did not provide for ICANN to delay specific applications for further GAC consideration.[8] The Requester also argued that it had relied on the Guidebook's provisions regarding geographic strings, which included a provision for Community Objections to geographic strings, and that the GAC Be jing Advice represented a "new attempt to isolate strings that raise geographic issues" and acted "as an effective veto on Community-driven policies."[9]

In early July 2013, the U.S. Government stated its intent to "remain neutral" with respect to the Amazon Applications, "thereby allowing [the] GAC to present consensus objections on these strings to the Board, if no other government objects."[10] Also in early

July 2013, the Requester wrote to the Board about its ongoing efforts to negotiate with Brazil and Peru regarding the Amazon Applications. The Requester also submitted proposed Public Interest Commitments.[11]

On 18 July 2013, in its Durban Communiqué, the GAC informed the Board that it had reached consensus on GAC Objection Advice on the Amazon Applications.[12]

On 23 August 2013, the Requester responded to the GAC Durban Advice, arguing that it: "(1) is inconsistent with international law; (2) would have discriminatory impacts that conflict directly with ICANN's Governing Documents; and (3) contravenes policy recommendations implemented within the [Guidebook] achieved by international consensus over many years."[13]

On 3 December 2013, the Requester sent another letter to the Board, providing further detail and clarification regarding the Requester's ongoing attempts to negotiate with the governments of Brazil and Peru regarding the Amazon Applications.[14] Just about a month later the Requester wrote to the Board contending that the Amazon Applications do not fall within any of the five Guidebook categories of "geographic names" requiring government or public authority support.[15]

On 30 May 2014, the Requester filed the instant Request, seeking reconsideration of the NGPC's acceptance of the GAC Durban Advice. The Requester argues that the GAC Durban Advice was untimely and was improperly accorded a strong presumption by the NGPC. In addition, the Requester argues that the NGPC considered false or inaccurate material information and failed to consider material information in accepting the advice.[16]

On 26 July 2014, the BGC asked the Requester for clarification regarding its allegation that the NGPC considered false or inaccurate material information in passing the Resolution. Amazon responded to the BGC's request clarifying the allegedly false or inaccurate material information that Amazon claims the NGPC relied upon in passing the Resolution. ("2 August Letter").[17]

## III. Issues

The issues for reconsideration are whether the NGPC failed to consider material information or relied on false or inaccurate material information in:

1. Accepting the GAC Durban Advice although it was filed after the close of the objection filing period[18];
2. Individually considering the Amazon Applications, although the NGPC should only do so "under exceptional circumstances,"[19];
3. Failing to adhere to appropriate GAC Governing Principles by applying a "strong presumption" to the GAC Durban Advice[20];
4. Improperly relying on the Early Warning as rationale for the GAC Durban Advice[21];
5. Improperly: (i) considering false or inaccurate material information in correspondence submitted from representatives of the governments of Brazil and Peru; and (ii) failing to consider material correspondence and comments from the Requester and other parties[22];

6. Failing to consider material information provided by the United States Government in its July 2013 statement[23];

7. Failing to consider the Expert Determination rejecting the IO's Community Objection to the Amazon Applications[24];

8. Failing to consider the Expert Analysis and the Requester's request for additional studies[25];

9. Failing to consider its obligations under ICANN's Bylaws and Articles of Incorporation in accepting the GAC Durban Advice[26]; and

10. Failing to consider the fiscal implications of its acceptance of the GAC Durban Advice.[27]

## IV. The Relevant Standards for Evaluating Reconsideration Requests

ICANN's Bylaws call for the BGC to evaluate and, for challenged Board (or NGPC) action, make recommendations to the Board (or NGPC) with respect to Reconsideration Requests. *See* Article IV, Section 2 of the Bylaws. The NGPC, bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Request 14-27 and finds the analysis sound.[28]

## V. Analysis and Rationale

### A. The Requester Has Not Stated a Proper Basis for Reconsideration with Respect to the Timeliness of the GAC Durban Advice.

The BGC concluded, and the NGPC agrees, that the Requester has not stated a proper basis for reconsideration with respect to the timeliness of the GAC Durban Advice. The Requester argues that the NGPC should not have accepted the GAC Durban Advice because that advice was submitted on 18 July 2013, after the 13 March 2013 close of the objection filing period. The Requester, however, neither argues nor provides any evidence demonstrating that the NGPC considered false or inaccurate material information, or failed to consider material information, in accepting the allegedly untimely GAC Durban Advice. Accordingly, there is no basis for reconsideration.

Further, contrary to what the Requester argues, the NGPC must consider GAC advice on new gTLDs submitted at any time. Notwithstanding the Guidebook, ICANN's Bylaws affirmatively require the Board to consider any issues that the GAC may put to the Board by way of comment or advice. (Bylaws, Art. XI, §§ 2.1.i and 2.1.j.) The provisions of the Guidebook regarding the treatment of GAC Advice do not supplant the requirements of the Bylaws on this subject matter.

### B. The Requester Has Not Stated A Proper Basis for Reconsideration With Respect To The NGPC's Consideration Of The Amazon Applications.

The BGC concluded, and the NGPC agrees, that the Requester has not stated a proper basis for reconsideration with respect to the NGPC's consideration of the

Amazon Applications. The Requester argues that the NGPC improperly "individually" considered the Amazon Applications failing to explain why the circumstances surrounding its Applications are sufficiently "exceptional" to warrant individual consideration.[29] Again, the Requester does not argue that the NGPC considered false or inaccurate material information, or failed to consider material information, in passing the Resolution and therefore has not stated proper grounds for reconsideration. (Bylaws, Art. IV, § 2.2.)

In any event, Requester's argument contradicts Section 5.1 of the Guidebook, which explicitly provides for the Board to individually consider any new gTLD application, including as the result of GAC Advice:

The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet Community. Under exceptional circumstances, the Board may individually consider a gTLD application. ***For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs*** or of the use of an ICANN accountability mechanism.

(Guidebook, § 5.1) (emphasis added). As the Guidebook makes clear, GAC Advice is precisely the sort of "exceptional circumstance" that would justify the Board's individual consideration of a gTLD application. Further, as discussed above, ICANN's Bylaws affirmatively require the Board to consider any issues that the GAC may put to the Board by way of comment or advice. (Bylaws, Art. XI, §§ 2.1.i and 2.1.j.)

### C. The Requester's Claim that the NGPC Afforded a Strong Presumption to the GAC Durban Advice Does Not Support Reconsideration.

The BGC concluded, and the NGPC agrees, that the Requester has not stated proper grounds for reconsideration with respect to the alleged presumption applied to the GAC Durban Advice on the Amazon Applications.

Requester claims that the GAC Durban Advice should not have created a strong presumption for the ICANN Board that the Amazon Applications should not proceed.[30] In support, the Requester contends that because the GAC Durban Advice was provided after the close of the objection period, it was not provided pursuant to the Guidebook, and thus was not subject to the presumption standards set forth therein regarding GAC Advice.[31] Once again, because the Requester does not argue that the NGPC considered false or inaccurate material information, or failed to consider material information, in accepting the GAC Durban Advice, it has not stated proper grounds for reconsideration. (Bylaws, Art. IV, § 2.2.)

### D. The NGPC Properly Considered The Rationale Given In Early Warnings

The BGC concluded, and the NGPC agrees, that the NGPC properly considered the rationale provided in the GAC Early Warning submitted on behalf of the governments of Brazil and Peru. The Requester argues that the NGPC

improperly considered the rationale given in the Early Warning because, the Requester claims, that rationale "reflects only the concerns of two governments and cannot be used as the consensus rationale of the entire GAC."[32] The Requester's claims do not support reconsideration.

In its rationale for the Resolution, the NGPC stated that although it "d[id] not have the benefit of the rationale relied upon by the GAC in issuing [the GAC Durban Advice], the NGPC considered the reason/rationale provided in the GAC Early Warning submitted on behalf of the governments of Brazil and Peru . . . ."[33] The NGPC did not state that it considered or relied on the rationale of the Early Warning to represent the rationale for the GAC Durban Advice—to the contrary, it explicitly stated that it "d[id] not have the benefit" of that rationale. There simply is no evidence that the NGPC relied on false or inaccurate material information in accepting the GAC Durban Advice. Further, insofar as the Requester argues that the NGPC failed to consider material information in failing to "conduct further inquiry of the GAC as to the basis and reason for the consensus advice,"[34] nothing in ICANN's Bylaws, the Guidebook, or the GAC's Operating Principles requires the GAC to provide a rationale for its advice.

Finally, the BGC notes that the NGPC did not "rely" on the Early Warning in determining whether to accept the GAC Durban Advice. Rather, as is reflected in the resolution, the NGPC considered, among other materials, numerous documents, legal advice and letters submitted by the Requester and by other community stakeholders.

## E. The NGPC Did Not Rely on False or Inaccurate Material Information or Fail to Consider Material Information in its Consideration of Public Comments and Correspondence to the Board.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC relied on false or inaccurate material information or failed to consider material relevant information with respect to public comments and correspondence to the Board.

The Requester argues that the NGPC: (i) relied on false or inaccurate material information in considering correspondence sent to the Board by the governments of Brazil and Peru; and (ii) failed to consider material information in failing to consider other correspondence, including correspondence sent by the Requester.[35]

As to consideration of correspondence sent by the governments of Brazil and Peru, the Requester appears to argue that the "NGPC accepts the views of two governments and infers that these opinions represent consensus advice of all GAC members."[36]> The claim is unsupported. In its rationale for the Resolution, the NGPC stated only that it "considered as part of the NGPC's action" an 11 April 2014 letter from the Vice Minister of Foreign Affairs for Peru, and a 14 April 2014 letter from a Director in the Ministry of External Relations of Brazil. Nowhere does the NGPC state, or even imply, that it took the correspondence from Brazil and Peru as GAC consensus advice. Furthermore, the Requester cites to no Guidebook or Bylaws provision that prohibits the NGPC from taking into

consideration correspondence duly submitted to ICANN.

The Requester also argues that, although the 11 April 2014 letter from the Peruvian Government contained false information regarding whether Amazon has an ISO 3166-2 code,[37] the NGPC "failed to identify any false and inaccurate information contained in the letter."[38] However, alleged reliance on false or inaccurate information is a basis for reconsideration only if that information was material to a decision. The NGPC's rationale does not state that it relied on the Peruvian Government's representation regarding the ISO 3166-2 code in deciding to accept the GAC Durban Advice, and the Requester does not explain how the NGPC did so rely, or how the information is at all relevant.[39] Furthermore, the NGPC is not required to identify any and all false or inaccurate information contained in the correspondence it considers and explain that the NGPC did not rely on that specific information in reaching its determination, particularly when that information is not relevant or material to the decision being made.

Finally, in its 2 August Letter responding to the BGC's request for clarification, the Requester argues that the 14 April 2014 letter from the Brazilian government inaccurately states that "all steps prescribed in the gTLD Applicant Guidebook in order to object to [the Amazon Applications] . . . have been timely taken by Brazil and Peru . . . ."[40] The Requester claims that this statement is inaccurate because the GAC Durban Advice was not timely. Again, the NGPC's alleged reliance on false or inaccurate information is a basis for reconsideration only if that information was material to the NGPC's determination. And, once again, the Requester does not explain how the NGPC relied upon the Brazilian Government's allegedly inaccurate representation in deciding to accept the GAC Durban Advice. Further, as is discussed above, the Requester's argument regarding the alleged untimeliness of the GAC Durban Advice is not a proper basis for reconsideration.[41]

The Requester also argues that the NGPC failed to consider material public comments and correspondence. For instance, the Requester argues that, while the NGPC considered the responses of the governments of Brazil and Peru to the Expert Analysis, it did not consider the Requester's response.[42] However, in its rationale the NGPC explicitly noted that it considered communications it received in response to the Expert Analysis, including the 14 April 2014 response from Scott Hayden, the Requester's Vice President, Intellectual Property, as well as letters from the Peruvian government and the Brazilian government. The Requester identifies no other specific public comment or piece of correspondence that it claims the NGPC failed to consider, and the NGPC's rationale for the Resolution clearly states that its "review of significant materials included, but [was] not limited to," the listed materials.[43] In any event, the Requester does not identify any provision in the Bylaws or Guidebook that would require the NGPC to consider (much less identify and discuss) every comment or piece of correspondence received.[44]

## F. The NGPC Did Not Fail to Consider Material Information from the United States Government.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect

to the United States Government's statement.

The Requester argues that the NGPC failed to consider material information by failing to consider the July 2013 statement from the United States Government on geographic indicators.[45] In its statement, the United States Government expressed its intent to "remain neutral" on the Applications, so as to "allow[] the GAC to present consensus objections on those strings to the Board, if no other government objects." Nonetheless, the Requester argues that "[t]he statement from the U.S. Government calls into direct question the belief that the GAC Durban Advice is clearly representative of the consensus adoption of the entire GAC of the opinion set forth by Brazil and Peru in its Early Warning or follow-up correspondence."[46]

Further, the United States Government's statement does not negate the fact that the GAC Durban Advice represents consensus GAC Advice. Pursuant to GAC Operating Principle 47, "consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection."[47] As the statement makes clear, the United States did not object to the GAC Durban Advice. The mere fact that the United States remained neutral with respect to the GAC Durban Advice was not material to the NGPC's consideration of that advice.

## G. The NGPC Did Not Fail to Consider Material Information with Respect to the Expert Determination.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the Expert Determination.

The Requester argues that the NGPC improperly failed to consider the Expert Determination rejecting the IO's Community Objection to the Amazon Applications.[48] The Requester appears to contend that the Expert Determination was material because: (1) the objections of the Brazilian and Peruvian governments would have been properly raised in the context of a Community Objection—which those governments did not bring; and (2) a Community Objection by those governments would have failed, as is evidenced by the Expert Determination.[49]

GAC members are not limited to raising objections that could have been raised in, or that meet the standards required to prevail upon, one of the four enumerated grounds for formal objections. (Guidebook Module 3, § 3.2.) Rather, GAC Advice on new gTLD applications is generally "intended to address applications that are identified by national governments to be problematic, e.g., that potentially violate national law or raise sensitivities." (Guidebook Module 3, § 3.1.) GAC members' discretion with respect to their reasons for objecting to gTLD applications is reflected in the fact that the GAC is not required to issue a rationale for its advice. In any event, the briefing materials of the NGPC's 29 April 2014 and 14 May 2014 meetings reflect that the Expert Determination was considered by the NGPC during its deliberations on the Amazon Applications.[50]

## H. The NGPC Did Not Fail to Consider Material Information with

### Respect to the Expert Analysis.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the Expert Analysis.

The Requester argues that ICANN instructed Professor Passa "to address only whether under intellectual property laws, governments could claim legally recognized sovereign or geographic rights in the term 'Amazon' or whether ICANN was 'obliged' to grant .AMAZON based on pre-existing trademark registrations," when "[t]he real question is whether, by accepting GAC advice, which is not rooted in any existing law, ICANN would be violating either national [or] international law." [51]

The Guidebook sets forth the parameters in which GAC Advice will be given under the New gTLD Program:

> ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board ***may consult with independent experts***, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.

(Guidebook, § 3.1) (emphasis added). Under this provision, the Board has the discretion to seek an independent expert opinion on issues raised by GAC Advice. The Board may also define the scope of its consultation with independent experts. As such, the Requester's objection to the scope of Professor Passa's assignment is not a basis for reconsideration.

The Requester has not cited to any provision of the Bylaws or Guidebook that would require ICANN to commission additional legal studies at the request of a New gTLD Applicant. Reconsideration for failure to consider material information is not proper where "the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of the action or refusal to act." (Bylaws, Art. IV, § 2.b.) The Requester was given multiple opportunities to present materials for the NGPC's consideration, including the opportunity—which it accepted—to respond to the Expert Analysis. In fact, the Requester attached to its response to the GAC Durban Advice a lengthy except from a legal treatise on the protection of geographic names.[52] If the Requester believed that additional legal analysis was required, it was free to commission that analysis and submit it to the NGPC.

### I. The NGPC Did Not Fail to Consider Material Information with Respect to Its Bylaws, Articles of Incorporation, and Affirmations of Commitment.

The BGC concluded, and the NGPC agrees, that the Requester has not stated a proper basis for reconsideration with respect to the NGPC's consideration of its obligations under ICANN's Bylaws, Articles of Incorporation, and Affirmations of

Commitment.

The Requester alleges that the NGPC failed to take into account material information regarding its obligations under Articles I.2, II.3, and III.1 of ICANN's Bylaws; Article 4 of its Articles of Incorporation; and Sections 4, 5, 7, and 9.3 of its Affirmations of Commitment.[53] The Requester's disagreement with the Resolution does not, however, demonstrate that the NGPC failed to consider those obligations. And, as the rationale for the Resolution makes clear, the NGPC acted pursuant to its obligation under Article XI, Section 2.1 of the Bylaws, to duly address advice put to it by the GAC.[54]

### J. The NGPC Did Not Fail to Consider Material Information with Respect to the Fiscal Implications of the Resolution.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the fiscal implications of the Resolution. The Requester contends that "[s]hould it be determined that the [Resolution] in fact violates various national and international laws, the costs of defending an action (whether through the Independent Review Process or through U.S. courts) will have significant fiscal impacts on ICANN. . . . "[55] The Requester has not demonstrated that the NGPC did not consider the potential for litigation arising out of the Resolution, including the potential fiscal impact of such litigation. In any event, the Requester has not demonstrated how the speculative possibility of litigation is material to the NGPC's determination here. As such, the Requester has not identified a proper ground for reconsideration.

## VI. Decision

The NGPC had the opportunity to consider all of the materials submitted by or on behalf of the Requester or that otherwise relate to Request 14-27, including correspondence dated 4 September 2014 from Flip Petillion on behalf of the Requester regarding the BGC Recommendation on Reconsideration Request 14-27.[56] Following consideration of all relevant information provided, the NGPC reviewed and has adopted the BGC's Recommendation on Request 14-27 (https://www.icann.org/en/system/files/files/recommendation-amazon-22aug14-en.pdf [PDF, 177 KB]), which shall be deemed a part of this Rationale and is attached to the Reference Materials to the NGPC Submission on this matter.

In terms of timing of the BGC's Recommendation, Sections 2.16 and 2.17 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation to the Board [or NGPC as appropriate] with respect to a Reconsideration Request within thirty days following receipt of the request, unless impractical and the Board [or NGPC as appropriate] shall issue its decision on the BGC's recommendation within 60 days of receipt of the Reconsideration Request, or as soon thereafter as feasible. (See Bylaws, Article IV, Sections 2.16 and 2.17.) The BGC required additional time to make its recommendation due to its request for clarification from the Requester, and due to the volume of Reconsideration Requests received within recent months. As such, the first practical opportunity for the BGC to make a decision on this Request was on 22 August 2014; it was impractical for the BGC to do so sooner. Then, the first feasible chance for the NGPG to consider Request 14-27 was on 8 September 2014.

Adopting the BGC's recommendation has no direct financial impact on ICANN and will not negatively impact the systemic security, stability and resiliency of the domain name system.

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

### d. Perceived Inconsistent String Confusion Expert Determinations

No resolution taken.

### e. Any Other Business

No resolution taken

Published on 10 September 2014

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[1] 17 June 2013 Letter *available at* https://www.icann.org/en/system/files/correspondence/dryden-to-crocker-17jun12-en.pdf [PDF, 74 KB] (emphasis in original).

[2] https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en

[3] https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee

[4] https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee

[5] https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-05mar13-en.pdf [PDF, 96 KB]

[6] Determination on Community Objection, ¶¶ 40, 59, *available at* http://newgtlds.icann.org/sites/default/files/drsp/03feb14/determination-1-1-1315-58086-en.pdf [PDF, 553 KB].

[7] Beijing Communiqué *available at* https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf [PDF, 155 KB].

[8] Response to GAC Beijing Advice, at Pgs. 3-5, *available at* http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf [PDF, 280 KB].

[9] Response to GAC Beijing Advice, at Pgs. 2-3, *available at* http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf [PDF, 280 KB].

[10] http://www.ntia.doc.gov/files/ntia/publications/usg_nextsteps_07052013_0.pdf [PDF, 12 KB]

[11] https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-04jul13-en.pdf [PDF, 68 KB]

[12] Durban Communiqué *available at* http://newgtlds.icann.org/en/applicants/gac-advice/durban47.

[13] Response to GAC Durban Advice, at Pg. 2, *available at*

http://newgtlds.icann.org/sites/default/files/applicants/03sep13/gac-advice-response-1-1315-58086-en.pdf. [PDF, 7 MB]

[14] https://www.icann.org/en/system/files/correspondence/king-to-chehade-et-al-03dec13-en.pdf [PDF, 132 KB]

[15] https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-10jan14-en.pdf [PDF, 72 KB]

[16] https://www.icann.org/en/system/files/files/request-amazon-30may14-en.pdf [PDF, 184 KB]

[17] https://www.icann.org/en/system/files/files/petillion-to-ngpc-bgc-02aug14-en.pdf [PDF, 475 KB]

[18] *See* Request 14-27, § 8, Pgs. 6-7.

[19] *See* Request 14-27, § 8, Pgs. 7-8.

[20] *See* Request 14-27, § 8, Pgs. 8-9.

[21] *See* Request 14-27, § 8, Pgs. 10-11.

[22] *See* Request 14-27, § 8, Pgs. 11-14.

[23] *See* Request 14-27, § 8, Pgs. 14-16.

[24] *See* Request 14-27, § 8, Pgs. 16-18.

[25] *See* Request 14-27, § 8, Pgs. 18-19.

[26] *See* Request 14-27, § 8, Pgs. 19-21.

[27] *See* Request 14-27, § 8, Pgs. 21-22.

[28] Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval, positively affects ICANN's transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN's policies, Bylaws, and Articles of Incorporation.

[29] *See* Request 14-27, § 8, Pg. 8.

[30] *See* Request 14-27, § 8, Pgs. 8-9.

[31] *See* Request 14-27, § 8, Pgs. 8-9.

[32] Request 14-27, § 8, Pg.10.

[33] Resolution 2014.05.14.NG03 Rationale *available at* https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en - 2.b.

[34] Request 14-27, § 8, Pg. 10.

[35] *See* Request 14-27, § 8, Pgs. 11-14.

[36] *See* Request 14-27, § 8, Pg. 11; *see also* Request 14-27, § 8, Pgs. 13-14.

[37] The ISO 3166-2 code is published by the International Organization for Standardization and assigns five-digit alphanumeric strings to countries' administrative divisions and dependent territories. (*See* http://www.iso.org/iso/home/standards/country_codes/updates_on_iso_3166.htm?show=tab3.)

[38] *See* Request 14-27, § 8, Pgs. 13-14.

[39] In its 2 August Letter responding to the BGC's request for clarification, the Requester adds that this same representation was made by Peru's GAC representative to the GAC prior to its vote on the GAC Durban Advice. (2 August Letter at 1-2.) However, the GAC is an independent advisory committee, and not part of ICANN's Board. As such, the materials considered by the GAC in rendering its advice are not a proper basis for reconsideration.

[40] 2 August Letter, Pg. 2, available at https://www.icann.org/en/system/files/files/petillion-to-ngpc-bgc-02aug14-en.pdf [PDF, 475 KB]

[41] In its 2 August Letter, the Requester also argues that following the issuance of the GAC Durban Advice but prior to the NGPC vote on the Resolution, it requested, and was denied, the opportunity to meet with the NGPC to present its position. The Requester does not challenge this staff and/or Board action and points to no Bylaw or ICANN policy or procedure that would require such a meeting.

[42] *See* Request 14-27, § 8, Pg. 12.

[43] Resolution 2014.05.14.NG03 Rationale *available at* https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en - 2.b.

[44] The Requester also appears to argue that the NGPC should have solicited opinions from other governments. (Request, § 8, Pg. 12.) However, it cites to no Bylaws or Guidebook provision that would require the NGPC to do so.

[45] *See* Request 14-27, § 8, Pgs. 14-15.

[46] *See* Request 14-27, § 8, Pg. 15.

[47] GAC Operating Principle 47 *available at* https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles.

[48] *See* Request 14-27, § 8, Pgs. 16-17.

[49] *See* Request 14-27, § 8, Pg. 17.

[50] Briefing materials of NGPC 29 April 2014 meeting *available at* https://www.icann.org/en/system/files/bm/briefing-materials-1-29apr14-en.pdf [PDF, 485 KB] and https://www.icann.org/en/system/files/bm/briefing-materials-2-29apr14-en.pdf [PDF, 950 KB]; Briefing materials of NGPC 14 May 2014 meeting *available at* https://www.icann.org/en/system/files/bm/briefing-materials-1-14may14-en.pdf [PDF, 688 KB] and https://www.icann.org/en/system/files/bm/briefing-materials-2-14may14-en.pdf [PDF, 1.62 MB].

[51] Request 14-27, § 8, Pgs. 18-19 (emphasis in original).

[52] *See* Response to GAC Durban Advice, Appx. A, *available at* https://www.icann.org/en/system/files/files/request-annex-amazon-2-30may14-en.pdf [PDF, 20 MB].

[53] *See* Request 14-27, § 8, Pgs. 19-21.

[54] The Requester also argues that the NGPC "should have sought comment from the [Generic Names Supporting Organization ("GNSO")] as to whether [the GAC Durban Advice was] in violation of GNSO Policy." (Request, § 8, Pg. 21.) However, the Requester cites to no Bylaws or Guidebook provision that would require the NGPC to do so.

[55] Request 14-27, § 8, Pgs. 21-22.

[56] 4 September Letter, available at https://www.icann.org/en/system/files/files/petillion-to-ngpc-04sep14-en.pdf [PDF, 504 KB].

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# R-74

RESPONDENT'S EXHIBIT

ICANN Board of Directors Meeting
ICANN Meeting - Paris
Thursday, 26 June 08

>>PETER DENGATE THRUSH: Well, let's begin. I can declare the board meeting at this 32nd ICANN meeting here in Paris open, and welcome board members and welcome the audience.
We begin with the question of the minutes of the previous meeting, and I am going to move that the minutes of the board meeting of the 29th of May, 2008 are approved.
Is there a seconder for that motion?
>>STEVE GOLDSTEIN: Second.
>>PETER DENGATE THRUSH: Thank you, Mr. Goldstein. It's been moved and seconded that the minutes be approved. Is there any discussion about the resolution? In which case I will put the motion, all those in favor of approving the minutes as a true and correct record of the meeting, please raise your hands.
(hands raised).
>>PETER DENGATE THRUSH: Any opposed? Abstentions?
Carried.
Now the second item is the -- deals with the GNSO recommendation in relation to a policy for creating new gTLDs. This is a result of two years' work, at least, in the GNSO, resulting in a policy which was presented to us last year.
And there is now a substantive resolution on that. And it gives me great pleasure to call on Bruce Tonkin, a former chair of the GNSO and who has been very helpful to the board in understanding all the work that went on at the GNSO, to introduce that resolution.
Bruce.
>>BRUCE TONKIN: Thank you, Peter. This will be a fairly long resolution, and I will try and read it slowly so that it can be transcribed.
Whereas, the GNSO initiated a policy development process on the introduction of new gTLDs in December of 2005.
Whereas, the GNSO committee on the introduction of new gTLDs addressed a range of difficult technical, operational, legal, economic, and policy questions, and facilitated widespread participation and public comment throughout the process.
Whereas, the GNSO successfully completed its policy development process on the introduction of new gTLDs, and on the 7th of September of 2007, achieved a supermajority vote on its 19 policy recommendations.
Whereas, the board instructed staff to review the GNSO recommendations and determine whether they were capable of implementation.
Whereas, staff has engaged international technical, operational, and legal expertise to provide counsel on details to support the implementation of the policy recommendations, and as a result, ICANN cross-functional teams have developed implementation details in support of the GNSO's policy recommendations and have concluded that the recommendations are capable of implementation.
Whereas, staff has provided regular updates to the community and the board on the implementation plan.
Whereas, consultation with the DNS technical community has led to the conclusion that there is not currently any evidence to support establishing a limit to how many TLDs can be inserted in the root based on technical stability concerns.
Whereas, the board recognizes that the process will need to be resilient to unforeseen circumstances.
Whereas, the board has listened to the concerns about the recommendations that have been raised by the community, and will continue to take into account the advice of ICANN's supporting organizations and advisory committees in the implementation plan.
It is therefore resolved, based on both the support of the community for new gTLDs and the advice of staff, that the introduction of new gTLDs is capable of implementation. The board adopts the GNSO policy recommendations for the introduction of new gTLDs.
It is also resolved that the board directs staff to continue to further develop and complete its detailed implementation plan, continue communication with the community on such work, and provide the board with a final version of the implementation proposals for the board and community to approve before the new gTLD introduction process is launched.
>>PETER DENGATE THRUSH: Thank you, Bruce.
Is there a seconder for that resolution?
Rita.
Any discussion about the resolution to adopt the GNSO proposals?
Dave Wodelet.
>>DAVE WODELET: Thank you, Mr. Chairman.
I just think it's important for the public record to make some comments about adding new gTLDs to the root. While conceptually I agree and see the benefit to the community with adding more TLDs to the root, there are still some concerns about how scalable in the long term this will be.
How many can we truly support? Well, from the best guess we have, and I do stress the word "guess," somewhere around 5,000 or so TLDs seem to be realistic.
But how high can we actually go? We really don't know.
There are both technical and administrative issue limits to the scaling. And it looks like the administrative issues may be more limiting than the technical ones.
Certainly, what we do now administratively will certainly need to change to support even the 5,000 or so that I mentioned earlier.
So how many will we have to support? Well, if we just look at the number of place names, there seems to be somewhere between 5 and 6 million place names in the world. And if every one of these wanted a TLD, that might not be possible.
And the 5 to 6 million place names doesn't include the number of commercial TLDs businesses may want, and this 5 to 6 million doesn't include the vanity names people may want as well, nor does this 5 to 6 million include what we may need in the future for names of planets, planetary colonies, which may, indeed, happen within the life of our Internet.
So I am a bit concerned about spending our TLD name inheritance for future generations of Internet users. As we know, everything has limits, like IPv4. We all know that has a limit, and that's why we're looking at IPv6.
Like fossil fuel, which we all know will be used up in a very narrow slice in human history.
I certainly don't want future generations to look back at us with disdain for not being good stewards of this limited TLD resource. But today, at this point in time in the Internet, can we support more TLDs in the root? Most certainly.
Is there a benefit to the Internet community by adding more TLDs? Yes, I believe there is.
So that's why I'm supporting this proposal.
But as I mentioned earlier, I feel it's important to highlight some of the possible limits we may find as we go forward. I think it's important to let everyone know this is something we are going to have to monitor carefully as we slowly move forward in adding new gTLDs.
Thank you, Mr. Chairman.
>>PETER DENGATE THRUSH: Thank you, Dave.
Any other comments?
Janis.
>>JANIS KARKLINS: Thank you, Chair.
Since there was not possibility to read the GAC communiqu this time, I think that this is appropriate to make a statement on behalf of the GAC in relation with this topic.
The GAC welcomed the extensive efforts by the GNSO to respect and incorporate provisions of the GAC principles regarding new gTLDs in their approach.

During its discussion in Paris, however, the GAC expressed concern to the GNSO and to the ICANN board that the GNSO proposal not include provisions reflecting important elements of the GAC principles; in particular, section 2.2, 2.6 and 2.7. The GAC feels these are particularly important provisions that need to be incorporated into any ICANN policy for introducing new gTLDs.

In particular, given the existing levels of concentration in the gTLD market, the GAC reiterates that ICANN needs to adopt an implementation procedure that further facilitates new entrants to the registry, registry services, and registrar markets, and avoid unduly favoring those existing registries and registrars involved directly in the policy development process.

Thank you, Chair.

>>PETER DENGATE THRUSH: Thank you, Janis.

I have a speaking order with Wendy and Susan, followed by Rita, on it.

Wendy.

>>WENDY SELTZER: Thank you, Peter.

So the at-large, as registrants and as users of domain names, supports the introduction of new gTLDs. Has no interest in delaying that process, but does wish to express its concern about two of the recommendations in the GNSO recommendation set. Specifically, the morality and public order objection and the objection based on community objections.

And ALAC and its RALOs, in discussion during this meeting, put together a statement, which I won't read in its entirety, but expressed concern that putting these criteria into the gTLD approval process, even as opportunities for objection, injects ICANN into the business of making morality and public order decisions, or injects that into ICANN's processes in a way that, as ALAC put it, debases the ICANN process. And at-large does not want to see ICANN put into the business of adjudicating or even delegating the adjudication of morality or public order or community support.

And so we hope that in implementation, these criteria can be kept sufficiently narrow so that they are both administrable and understandable and so that they do not involve ICANN, the organization, in making, or allowing to be made, determinations about any claim to generally accepted morality principles.

Thank you.

>>PETER DENGATE THRUSH: Thank you, Wendy.

Susan.

[ Applause ]

>>SUSAN CRAWFORD: Thank you, Mr. Chairman.

I have mixed feelings on this day. I have long supported the entry of new gTLDs into the root. It has seemed to me that it's inappropriate for ICANN to use its monopoly position over giving advice about the existence of new TLDs to create artificial scarcity in TLDs, where there is no natural scarcity, in my view.

And that has led to a great deal of pent-up demand for the creation of new TLDs for various reasons, for communities, for new identities, all over the world.

And in particular, it is urgent that we create IDN gTLDs for the many language communities around the world that would prefer to have those.

The question presented to the board today is a little strange.

What we're being asked to respond to is whether the recommendations, the policy recommendations from the GNSO are implementable. And then staff will go on, and if we decide they are, theoretically, implementable, will draft the implementation guidelines for the recommendations made by the GNSO council.

There is a lot of important effort to go into those implementation details. And I am signing up to these recommendations on the condition that the implementation work will proceed as planned, and that the board and the community will have an opportunity to comment in detail on that implementation work.

In particular, I want to applaud and underline what Wendy Seltzer just said about the morality and public order recommendation, recommendation number 6.

Way back when ICANN was formed, that original MOU, which we're now talking about as the JPA, talked of transitioning the management of the Domain Name System to the private sector.

And the idea was to figure out whether the private sector had the capability and resources to assume the important responsibilities related to the technical management of the DNS. So that was the question.

And so the creation of ICANN, and the question before all of us, was whether this entity would be a good vessel for allowing the private sector to take the lead in the management of the Domain Name System.

And, in fact, the white paper in 1998 said that while international organizations may provide specific expertise or act as advisors to the new corporation, the U.S. continues to believe, as do most commenters, that neither national governments acting as sovereigns nor intergovernmental organizations acting as representatives of governments should participate in management of Internet names and addresses.

Of course, national governments now have, and will continue to have, authority to manage or establish policy for their own ccTLDs.

This wasn't done out of enthusiasm for the free market alone. The idea was also to avoid having sovereigns use the Domain Name System for their own content, control, desires. To avoid having the Domain Name System used as a choke point for content.

Recommendation 6, which is the morality and public order recommendation, represents quite a sea change in this approach, because the recommendation is that strings must not be contrary to generally acceptable legal norms relating to morality and public order that are recognized under international principles of law. That's the language of the recommendation.

Now, if this is broadly implemented, this recommendation would allow for any government to effectively veto a string that made it uncomfortable.

Having a government veto strings is not allowing the private sector to lead. It's allowing sovereigns to censor.

Particularly in the absence of straightforward clear limits on what morality and public order means, people will be unwilling to propose even controversial strings and we'll end up with a plain vanilla list of TLDs.

So I am unhappy about this recommendation. I am willing to vote for it on the strength of the board's discussion and the staff's undertakings that the standards for this recommendation will be narrowly stated.

And on my expectation that the board and the community will have an opportunity to review and approve, or not, the details of those standards.

We do have some global norms of morality and public policy. They are very view. One of them is incitement to violent, lawless action. Nobody wants that around the world.

A second might be incitement to or promotion of discrimination based on race, color, gender, ethnicity, religion, or national origin.

And the third might be incitement to or promotion of child pornography or other sexual abuse of children.

Otherwise, the question of morality and public order varies dramatically around the world. It's a diverse, complicated world out there. And it may not be -- it should not be possible to state that there is a single standard of morality and public order around the world.

So I am asking that staff come back with an express standard that's constrained to stated norms, like the three I just listed, found and expressly in their national treaties. We need clear lines of adjudication. And I would be content with that kind of implementation.

Another concern of mine is with -- with this list of recommendations is recommendation 20 which says, "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."

It's quite unclear how it's all going to work out, whether any generic applicant could ever win over a community, could ever succeed in contention for a string over a community that says it's a community. And I look forward to many more details on this recommendation as well.

And finally -- and I'm sorry to speak at such length but I think it's an important moment. Finally, I'm not happy with the idea that there will be auctions on strings for which there is more than one applicant. And I note that the GNSO's own recommendations on this subject don't mention auctions. And I hope the board will not adopt this approach.

My bottom line is I will vote for this set of recommendations, and I hope that the implementation will be sensible.

Thank you.
[ Applause ]
>>PETER DENGATE THRUSH: Thank you, Susan.
Rita.
>>RITA RODIN: I guess I have a little bit of a different sentiment. I share Susan's notion that I am thrilled that we are finally doing this today. It's certainly been a long time coming. But I actually think this new gTLD approval is indication that the bottom-up community-based approach actually works.
You can see a little bit in the resolution language here what the board's thoughts were, but I wanted to highlight a couple of things for the audience.
First, one of the things that the board talked about today was, and you heard from Dave Wodelet as well, was that technically, there's no reason at this point that we should limit the number of new gTLDs in the root.
We also have a report from the GNSO that was approved by a supermajority. So two-thirds of that council said, from a commercial and -- perspective, we want to have more gTLDs.
But I think you have heard from some board members that there are concerns of varying types about this process.
And so we have had everything from trademark owners. We heard someone yesterday from a small business saying that they were concerned about protecting their brand. We have heard people talk about morality and public order now and what does that mean. We had a public comment today that said does that mean we are going to have everything go to the most restrictive standard, and is that something that's advisable for this process?
There are a lot of practical things we still need to talk about. How do we deal with rolling out potentially 5,000 new TLDs in the root? How are people going to get them? Susan mentioned auctions.
So I think there's still a lot of work to do.
I think this principle has been adopted by the board, and we should all be happy about that. But there's lots of issues, lots of detail that needs to be determined. And I hope that the community continues to provide input and continues to work constructively with the board and with each other to ensure that we have a fair, straightforward, and successful new gTLD launch.
Thank you.
>>PETER DENGATE THRUSH: Thank you, Rita.
Paul Twomey.
>>PAUL TWOMEY: Thank you, Chairman.
I will say on behalf of myself and the staff that this particular policy proposal is, indeed, if people in Paris will forgive me, this is both the best of times and the worst of times, to quote a certain book about this city, in that this is an extremely exciting time and an extremely exciting proposition in front of the board to move forward with the liberalization of the regime for new gTLDs. But if ever there was an incident where the phrase "the devil is in the detail" were to apply, it is in this particular circumstance.
In some respects, I think what we are now considering is a global equivalent of people moving to liberalized telecommunications markets or electricity markets or any type of market. All of the dynamics that we have seen in those sorts of markets and more so, we can expect to foresee will take place within this changing industry structure that will emerge from this recommendation.
The challenge that you, Chairman, and other board members have put before the staff at previous meetings was to ask us to consider is it possible -- the question you put to us is, are the recommendations from the GNSO council implementable?
We have spent -- I think it's nearly nine months, and I would say 20, 25 members of staff and at least $10 million working through implementation analysis to date for us to be able to say to you, as the resolution says, that it is our judgment that the recommendations are implementable.
What we have not been able to do is present to you a detailed implementation plan.
So the next stage that is now before us, if you are to proceed and the board does vote for this resolution, is that we shall have to sit down and do, in great detail, the actual implementation planning for the related implementation and -- which will be reflected in requests for proposal documentation and draft contracts for the gTLDs.
We must not underestimate how much more work there needs to be done.
And if I can just, quite specifically, pick up some of the points that have already been raised. To the points made by Susan, Wendy and others relating to some of the objections, objection criteria.
We have had the chance to speak to major international, experienced arbitration organizations, and we have had the chance to take -- we have had lawyers in well over a dozen jurisdictions doing work for us, working through these issues, and we have been able to come to the conclusion about that it is implementable. What we will now need to do is go back and further advance that as to what specifically would be required to actually operate a process for implementation.
This is very similar, if you like to think of it at the initiation. Uniform dispute resolution procedures. And one of my colleagues shared with us earlier today, and I thanked them for the idea so let me share it further. If you go back prior to the UDRP, there was no global intellectual property regime. There was intellectual property regimes reflected in national jurisdictions. There was law related to it, there were treaties, but it's reflected in national jurisdictions.
The UDRP process has built a de facto form of -- over its period of time, a de facto form or place for a global approach to intellectual property as it applies to domain names.
We will be confronted with establishing the same sort of framework and evolutionary process for development and the foregrounds of headings going into the future.
So we need to think through, A, very carefully, what are those procedures and criteria that we shall come back, but also, importantly, the role that the arbitrators have played in the UDRP I think is key.
They have built up over a period of time from their experience a body of precedent which now has sway and real effect in the international Internet environment.
We should expect to see and we are looking for that level of experience of arbitrators to bring similar sorts of capability to this development work, and we are very conscious as staff of the advice we have received from the board and board members on some of these policies. They are not at all easy.
So that will be one of the things that we shall be coming back, reporting. We will be making available for public comment and we will be making available for board approval in the months ahead.
A second one is some of the points that the chair of the Governmental Advisory Committee has put forward. Quite a number of the recommendations from the GAC principles have been incorporated so far in the implementation planning.
But we have not had the opportunity to fully take all of the issues and take them to the next level of detail. And it is certainly our intent. Specifically, issues around geographical terms is clearly something that we will have to consider and write up an implementation terms and bring back for consideration with the board and the community.
So I just wish to make the point to the members of the GAC is that the communiqu[illegible]s that are put forward, principles for consideration, are certainly being listened to in great detail, or being observed in great detail by staff preparing thinking on implementation. But it's happening in layers as we deal with levels of detail in this task.
Another very important area that we have yet to do to put forward for implementation is the key issue of what is the -- what is an analysis of the industry structural separation of registries and registrars in the generic top-level domain space.
The original ICANN compact, the basis upon which ICANN was first brought together, was on the basis of a separation of registry and registrar. Indeed, it was a concept by the international ad hoc committee prior to the formation of ICANN, or at least it was discussed in that format.
So the concept of a separation of registry and registrar in the industry circumstances as of 1998 was embedded within agreements, within legacy agreements in the generic top-level domains, the legacy agreements.

Clearly, the market continues to evolve.
This issue of how do you think about, in the long term, the benefits to the consumers of whether you should or should not have industry structural separation and what should the rules that apply to that is a key question. As we have already indicated at the Los Angeles meeting and since to members of the community, we have commissioned outside international computational economists, people with experience on these issues, to prepare reports on this specific point.
We have not yet received a report. This report will be made available for comment and will be a key basis of consideration for what may well be terms in the draft contract on that particular issue.
Similarly, the pricing of application fees, as has been pointed out by board members, the application fee process, the council's recommendation is that this process should be cost-neutral. And you will have heard from the chief operating officer that ICANN's budgeting has quite separately been structured -- or by the chair of the finance committee, in particular -- has been structured so that ongoing operational costs and expenditure is structured one way and that there will be separate reporting on the new TLD process and the costs and revenues associated with that.
The recommendation from the council has been that the second part needs to be cost-neutral. In other words, it is cost recovery.
I can inform you that we have so far spent about $10 million, and we -- I expect that in the total, we will spend somewhere between 10 and $20 million. And it will be fully accounted to the community, and full details will be made available.
We will, of course, have to make decisions about which of those costs are appropriately applied. May I give you an example.
The cost of the GNSO Council's work itself in developing the policy, I think that's something like around $2 million. The question is whether that's an appropriate figure that should be included or not.
We shall have to have that as a discussion.
The other part, of course, is over what period of time do you immortalize that expensive, over how many applicants, and what sort of risk premium do you need to bring in, considering inevitably that there shall be lawsuits.
So there's, you know -- part of life.
So there's a series of things we have to work through before we have the pricing. I know I'm taking a lot of time, so I'll try to make more quickly.
I think I can summarize the rest of my points in saying that we are taking a lot of care in thinking about ensuring the stability of the mechanisms for introduction and for the ability for review, and, importantly, to ensure that there is some form of scaled measure of enforcement of undertakings by the new gTLDs.
So I want to give the community some detail of the issues that have not yet been brought to the board for consideration and that we, as a community, will need to work on over the next five, six months.
Thank you, Chairman.
>>PETER DENGATE THRUSH: Thank you, Paul.
Unless there is any -- Raimundo.
>>RAIMUNDO BECA: Thanks, Peter.
Today, we are confronted to a discussion of principles. And tomorrow, we will discuss about the implementation and the RFPs.
The wording we have today, I feel comfortable with it, just because it is -- it's sufficiently broad and it leaves the room to find a way to implement it.
Many people in the community, and even in this board, think that a broad definition is not implementable. No doubt, it's not easy to implement broad principles like those. But at least myself, I am persuaded that the converse is even less implementable. If we tried to make a definition and the definition of all these principles, we are going to be spending for many years and will not have consensus. We'll never achieve consensus.
I had the privilege many years ago, 25 years ago exactly, to be at the table discussing the guidelines of the OECD on privacy. And I can tell you how difficult, how difficult privacy of data is to achieve consensus between a European culture and an American culture. Almost impossible. And the fact is that the guidelines of the OECD have been used and not used according to the culture of different -- of the members of the organization.
Finally, I would like to underline that the root has to have two characteristics.
Number one, it has to be global. And not every string in the world is global.
And, number two, it has to be not scalable.
Why so?
Because of the billions of domains that we are going to have, not all of them, not all of the names are going to be -- we are able to put it in the root. The root will always be scarce.
And many times, the value of a string becomes not of the value of the name itself, but of the place, of the place where it is. As soon as we go from the right to the left in the spelling of a string, the names are getting lower and lower value. And, finally, a string which is in the fourth level within a company has no value at all.
So we have to have, in the preparation of the -- of these RFPs, a strong sense of saying, well, let's keep it global, and let's keep it not scalable.
In particular, I have said that before, and I will continue to say to this board, I have a big concern about vanity names. There's (inaudible) in the world that would like only for vanity, to have their name in the root. And they have the capital to invest and to be there.
We have to downscale that. If not, we are going to have millions, millions of vanity names in the root.
Thanks.
>>PETER DENGATE THRUSH: Raimundo, and Dennis.
>>DENNIS JENNINGS: Thank you, Chairman.
Just very briefly, I'd like to assure the audience here and online that we are aware of all the concerns of many of the people in the various stakeholder organizations, and we have considered them very carefully. And that, on balance, the board feels that adopting this resolution is in the best interests of the Internet and the public at large that we move forward the process of introducing IDN and ASCII gTLDs.
>>PETER DENGATE THRUSH: Thank you.
Well, thank you for those contributions from various board members. I think we have covered a wide range of topics, including the origins and the historic importance of this particular decision.
But I think sufficient time has now been given for board members to contribute, and I'm going to put the question to the vote.
So it's moved and -- was it seconded? Rita seconded.
I think we all understand the consequences. So I'll put the vote. All those in favor, please raise your hands.
All those opposed.
Any abstentions?
Well, I'm pleased to record that's carried unanimously.
Well done.
[ Applause ]
>>PETER DENGATE THRUSH: Bruce, was there a further question?
>>BRUCE TONKIN: Yeah, I didn't have a question, but I just think it's important to record for the minutes -- and I guess I'll express this personally -- but, really, the thanks to Paul Twomey and the staff, especially Kurt Pritz, and just the effort that they have undertaken so far. It's difficult when you're dealing with recommendations. And you've heard on the board, there's several in particular that have been contentious from day one. But I think the staff have done a superb job of trying to just focus on taking them at face value, seeing if they are implementable, and testing it from every possible angle to try and actually provide a plan for the community.
So I'd just like to commend the work that the staff have done.
[ Applause ]
>>PETER DENGATE THRUSH: Perhaps the minutes could record that the board joined in the acclamation for that recognition of the staff effort.
Can we move, then, to the next item, which is in relation to IDN and the IDN fast track. I'm going to call upon Demi Getschko to introduce this

resolution.
Demi.
>>DEMI GETSCHKO: Thank you, Peter.
Whereas the ICANN board recognizes that IDNC Working Group developed after extensive community comment a final report on feasible matters for timely fast-track introduction of limited number of IDN ccTLDs associated with the ISO 3166-1 two-letter codes, while an overall long-term IDN ccTLD policy is under development by the ccNSO.
Whereas the IDNC Working Group has concluded its work and has submitted recommendations for the selection and delegation of the fast-track IDN ccTLDs and pursuant to its charter, has taken into account and was guided by consideration of the requirements to:
Preserve the security and stability of the DNS, comply with IDNA protocols, take input and advice from technical community with respect to the implementation of IDNs, and build on and maintain the current practices for delegation of ccTLDs, which include the current IANA practices.
Whereas the IDNC Working Group's high-level recommendations require implementation planning.
Whereas, ICANN is looking closely at interaction with the final IDN ccTLD PDP process and potential risks, and intends to implement IDN ccTLDs using a procedure that will be resilient to unforeseen circumstances.
Whereas, staff will consider the full range of implementation issues related to the introduction of IDN ccTLDs associated with the ISO 3166-1 list, including means of promoting adherence to technical standards and mechanisms to cover the costs associated with IDN ccTLDs.
Whereas, the board intends that the timing of the process for introduction of IDN ccTLDs should be aligned with the process for the introduction of new gTLDs.
Resolved, the board thanks the members of the IDNC Working Group for completing their chartered tasks in a timely manner.
Resolved, the board directed staff to, one, post the IDNC Working Group final report for public comments. Two, commence work on implementation issues in consultation with relevant stakeholder. And, three, submit a detailed implementation report, including a list of any outstanding issues, to the board in advance of the ICANN Cairo meeting in November 2008.
>>PETER DENGATE THRUSH: Thank you, Demi. Is there a seconder for that resolution?
Thank you, Dennis.
Any discussion about this resolution? It takes the same general pattern as we did with the policy for new gTLDs. It's to post the recommendations, commence investigative work on implementation, with a fairly tight reporting-back at Cairo.
Janis.
>>JANIS KARKLINS: Thank you, Chair.
I would like to say that the GAC welcomes the results of the IDNC Working Group towards development of the fast-track methodology to allow on exceptional basis the introduction of a limited number of country codes -- country code IDNs in top-level domains.
The GAC believes that IDNC Working Group report and the recommendations contained therein provide the basis for the development of an implementation plan and encourages board to initiate this process.
The GAC looks forward to continuing this implementation -- to contributing to these implementation proposals.
The GAC also recalls that in its agreement in New Delhi, that the substantive public policy provisions set out in the -- set out by the GAC in the principles and guidelines for the delegation and administration of the country code top-level domain which were approved by the GAC in 2005 are equally relevant to the introduction of IDN ccTLDs, in particular, the principle of delegation and redelegation.
In this respect, the GAC emphasized that it is primarily for the local Internet community, including the relevant governmental or public authority, to determine the manner in which a string should be selected, the manner in which a registry operator should be selected, and the registry policy that should apply for the selected IDN ccTLD.
The GAC believes that it is appropriate for an applicant to provide authentication of the meaning of the selected string from an internationally recognized organization. UNESCO could be one such organization. And the GAC is willing to contribute further to the process of developing IDN ccTLD general policy, which will replace the fast track in due course.
Thank you, Mr. Chair.
>>PETER DENGATE THRUSH: Thank you, Janis.
I have a speaking order, beginning with Susan, then Raimundo, then Roberto.
So beginning Susan.
>>SUSAN CRAWFORD: Thank you very much, chairman. Just three comments.
At a very high level, there's no theoretical distinction between IDN ccTLDs associated with the ISO 3166-1 list and new gTLDs. They are all TLDs that will enter into the root in the future. And there's a very high interest in IDNs generally. They've been a long time coming. We've been working on this, on the technical procedures here, for a long time.
So with that brief preamble, just three comments.
First, that I understand the reference to a fast track to mean that it's -- this track is faster than an ordinary ccTLD policy process would be, and that it is our intention, as the resolution says, to align the timing of the new gTLD IDN process and the process for the introduction of these IDN ccTLDs associated with the 3166 list.
So we've tried to be quite precise about that language and helpful to both communities.
Second, it's comforting to me that in the working group paper, the applicants for these new things will have to represent that what they're providing is a meaningful representation of a country name, and that as Janis has said, this will be looked at carefully by a third party.
So what we're talking about here, really, are country names.
And then, third, that there -- there are remaining some crucial open issues. And we talked about some of them in the public forum earlier today. The nature of an agreement between the operator and ICANN, and any technical issues that need to be harmonized between the gTLD work and the ccTLD work.
Thank you very much.
>>PETER DENGATE THRUSH: Thank you, Susan.
Raimundo.
>>RAIMUNDO BECA: Thanks, Peter.
I will speak in Spanish.
Since we are talking about country codes, I have decided to speak in the language of my region. That's why I'm speaking in Spanish.
I just wanted to highlight that as the other documents clearly outlined the president's strategic committee on this issue, ICANN has a legitimacy problem, which is getting resolved as time goes by. This legitimacy problem is in terms of its attributions, largely, in terms of its relations with the government of the United States, and, in particular, even though the delegation and redelegation rules are clearly used. This has nothing to do with what we've been discussing. In other words, these functions stem from what has been invested in the IANA functions.
Country codes have been subjected to this contractual relationship. Thank you.
>>PETER DENGATE THRUSH: Next, the microphone to Roberto.
>>ROBERTO GAETANO: Thank you, Mr. Chairman.
I think that with the moment that I have joined this -- the process of ICANN, that was even before ICANN, it was -- the whole thing was about the introduction of new TLDs. So for what was the previous resolution, I can only express joy for the fact that we are going forward, although it has taken a little bit more time than what I thought when I joined.
But in this case, now that we are talking about IDN TLDs, I would like to express even further satisfaction, because this was something that we at any time take into account in the early days and that has been a very welcome development over the years, as we have discovered that enlarging the ICANN community, it was essential for the inclusiveness that is one of the major principles of ICANN.
It is important to give to a large part of the world that is not familiar with Latin characters the ability to fully explore the Internet.

And I think that what we are doing here when we consider IDN TLDs -- now in this specific resolution, we are talking about IDN ccTLDs -- but generally what we are doing with IDNs is opening up the possibility of a large part of the world that has been partly neglected up to now to fully benefit of the Internet with -- using their own scripts.
And I would like to underline the difference that we have in expanding the gTLD market in ASCII and the TLD market in ASCII, and the introduction of IDNs.
There is a substantial difference. Whereas the introduction of further TLD in ASCII is surely welcome, because it improves the possibility of choice of the users. With the IDNs, we are opening completely a different world. And I think that this cannot be -- cannot be underestimated.
>>PETER DENGATE THRUSH: Thank you, Roberto.
Reinhard.
>>REINHARD SCHOLL: Thank you, Peter.
I'd like to make just a small addition to what the chairman of the GAC said. The communiqu&#65533; also mentioned a welcomed presentation by UNESCO and ITU representatives regarding a proposed collaboration between their organizations and ICANN to advance multilingualism on the Internet.
Thank you.
>>PETER DENGATE THRUSH: Thank you.
Any further contributions?
I note that it's been moved, Demi. Seconded by Dennis. I think the process we've adopted is clear and understood. So I'll put the resolution. All those in favor please raise your hands.
Any opposed?
Any abstentions?
Carried unanimously.
Thank you.
[ Applause ]
>>PETER DENGATE THRUSH: And I company to the issue of domain tasting and I call on Dave Wodelet to lead us through the resolution. Dave.
>>DAVE WODELET: Thank you, Mr. Chairman, before I start reading the resolution, I just wanted to relate that I was asked earlier today just exactly what a domain name tasted like.
And I had to admit, I didn't really know. So now I feel a bit inadequate for reading this resolution at all. But I just wanted to put it out there, the big Internet, that if anyone actually does know what a domain name tastes like, if you could provide me that feedback, I'd like to know. And judging by the response, I suspect I -- I suspect it wasn't a very good pun, but.... The best I could do.
>>PETER DENGATE THRUSH: I confirm they're serving them in the hall every morning.
>>DAVE WODELET: So let me read. Whereas, ICANN community stakeholders are increasingly concerned about domain name tasting, which is the practice of using the add grace period to register domain names in bulk in order to test their profitability.
Whereas, on 17th of April, 2008, the GNSO Council approved, by a supermajority vote, a motion to prohibit any gTLD operator that has implemented an add grace period from offering a refund for any domain name deleted during the add grace period that exceeds 10% of its net new registrations in that month, or 50 domain names, whichever is greater.
Whereas on the 25th of April, 2008, the GNSO Council forwarded its formal "report to the ICANN board - recommendation for domain tasting," which outlines the full text of the motion and the full context and procedural history of this proceeding.
Whereas, the board is also considering the proposed fiscal 2009 operating plan and budget, which includes, at the encouragement of the GNSO Council, a proposal similar to the GNSO policy recommendation to expand the applicability of the ICANN transaction fee in order to limit domain name tasting.
It's resolved the board adopt the GNSO policy recommendation on domain name tasting and direct staff to implement the policy, following appropriate comment and notice periods on the implementation documents.
>>PETER DENGATE THRUSH: Thank you, Dave. Is there a seconder for this resolution?
I see Jean-Jacques.
Any discussion?
I think the intent is reasonably clear.
Wendy.
>>WENDY SELTZER: I want to thank the board on behalf of the At-Large Advisory Committee. It was ALAC who initially brought this motion up to the GNSO, out of registrants and Internet users' concerns about the churn in the domain name market introduced by domain name tasting and the decreased availability of names to individual registrants. So we're pleased to see this process concluding and pleased with the conclusion that it has come to.
Thank you.
[ Applause ]
>>PETER DENGATE THRUSH: Thank you, Wendy. Is there any further comment? Dennis Jennings. Dennis.
>>PETER DENGATE THRUSH: Thank you, Wendy. Is there any further comment? Dennis Jennings.
Dennis.
>>DENNIS JENNINGS: Thank you, Chairman. As a new member to the board quite recently, I only found out about domain tasting a about six months ago, and I was truly horrified. And I am very pleased that we have moved, at least from my perspective, rapidly to address this problem.
>>PETER DENGATE THRUSH: Jean-Jacques.
>>JEAN-JACQUES SUBRENAT: Just as a relief at this late hour, I would encourage very strongly domain tasting, but of wines, whilst you are in France.
[ Applause ]
>>PETER DENGATE THRUSH: Well, we have finally put an end to the awful puns. I think I better put this resolution so we can move on. Is there any other contribution from the board?
In that case, I am going to put the resolution.
All those in favor, please raise your hands.
(Hands raised).
>>PETER DENGATE THRUSH: Any opposed? Abstentions? Carried.
[ Applause ]
>>PETER DENGATE THRUSH: We come, then, to an important item in terms of the business of the business of ICANN, and that is the approval of the operating plan and the budget. And I call upon Raimundo Beca, the chairman of the board's finance committee, to introduce the resolution.
Raimundo.
>>RAIMUNDO BECA: I will first make a strong introduction in French, and then I will read -- I will read the resolution.
It's my pleasure and honor to present the operating plan and budget for ICANN. For three reasons, at least, this is a historical operational plan and budget.
First of all, by reason of the process that has been followed, a process which is perfectly in line in terms of harmonizing the operating plan, the strategic plan and the budget, it is also historic because of the consultation process which took place and which involved several steps in Delhi, talking about the budget, in Paris, and also in discussions on the Web site.

Secondly, it is historic because of the amount of money involved. The amount I think is justified at the end of the day, and I believe that the board will approve it today.
The amount I believe is fully justified.
Thirdly and finally, it is historic because there is a separation between the normal ICANN budget and the (inaudible) and gTLD budgets. And that is important. The choice to separate these two budgets is an important one because it will not put at risk the functioning of something that is working.
A process which is very important and risky will not jeopardize what is already functioning smoothly.
Before I read the resolution, I would also like to add that it is my duty to express the gratitude of the finance committee and my own gratitude towards the staff, and particularly Kevin Wilson and (saying name) for the work that they have done.
Now I will switch to English.
The resolution reads like this. Whereas ICANN approved an update to the strategic plan in December 2007.
Whereas the initial operating plan and budget framework for fiscal year 2009 was presented at the New Delhi ICANN meeting and was posted in February 2008 for community consultation.
Whereas, community consultations were held to discuss and obtain feedback on the initial framework.
Whereas, the draft fiscal year '09 operating plan and budget was posted for public comment in accordance with the bylaws on 17th May, 2008, based upon the initial framework, community consultation, and consultations with the Board Finance Committee. A slightly revised version was posted on 23 May 2008.
Whereas, ICANN has actively solicited community feedback and consultation with ICANN's constituencies.
Whereas, the ICANN Board Finance Committee has discussed and guided staff on the fiscal year '09 operating plan and budget at each of its regularly scheduled monthly meetings.
Whereas the final fiscal year '09 operating plan and budget was posted on 26 June 2008.
Whereas, the ICANN Board Finance Committee met in Paris on 22 June 2008 to discuss the fiscal year '09 operating plan and budget, and recommended that the board adopt the fiscal year '09 operating plan and budget.
Whereas, the president has advised that the fiscal year '09 operating plan and budget reflects the work of staff and community to identify the plan of activities, the expected revenue, and resources necessary to be spent in fiscal year ending 30 June 2009.
Whereas, continuing consultation on the budget has been conducted at ICANN's meeting in Paris, at constituency meetings, and during the public forum.
Resolved, the board adopts the fiscal year 2008-2009 operating plan and budget.
Thank you, Mr. Chairman.
>>PETER DENGATE THRUSH: Thank you, Raimundo. Is there a seconder for that one? Thank you, Demi.
Any discussion about adopting the plan and the budget?
Steve Goldstein.
>>STEVE GOLDSTEIN: Thank you, Chair. I have a green light -- Okay, now I have got it.
I had heard that, not too many years ago, a former board member actually had to sue the corporation to get access to budget details.
When I joined the board about a year and a half ago, our current accounting system or financial management system was such that it was extremely difficult just to produce pie charts showing the major sources of our income and our expenditures.
Now, not only we on the board but the community at large, gets to see all the details of our budget, not only with tables of figures but, what I like, nice graphical displays and pie charts and so forth, quite expertly done by a staff that I understand has been working well into the night and weekends for the past two months to get things done.
The tax form that has to be filed with the Internal Revenue Service and the similar one with the State of California, in the past, sometimes had been filed late, and certainly were not disclosed easily. They are now on the Web site.
So I just want to express my pride in this organization for how far it has come in such a short time, and to express my gratitude to our financial staff for all the hard work that they are doing.
Thank you.
>>PETER DENGATE THRUSH: Thank you, Steve.
I have Janis, Dennis.
>>JANIS KARKLINS: Thank you, Chair.
I just wanted to place on the record during the meeting with the board, the GAC expressed its wish to receive further assistance from organization in organizing its meetings. And namely, the GAC would enormously benefit from translation of GAC considerations in other language than English, as well as a translation of documentation.
Equally in the framework of the review of travel support policy, we would like to see whether it will be possible to give some assistance to GAC members coming from developing and least developed countries. And it would be good if this consideration would be given already in this budgetary year.
Thank you.
>>PETER DENGATE THRUSH: Thank you, Janis.
Can I just confirm receipt, if you like, on behalf of the board, of that request. And note that the staff are also aware of it and there will be steps taken to see what can be done to meet the needs of the GAC.
Dennis.
>>DENNIS JENNINGS: Thank you, Chairman.
I would like to echo Steve Goldstein's words of congratulations to the management and staff for the improvements that have been achieved.
But I would also like to highlight to the community that there is more work to be done, and that more work is being done, and more work will be done, so that the budget and reporting against the budget will become increasingly open and transparent and clear to everybody.
People will be able to look at the reporting and ask simple questions, like what are we doing and how much are we spending on it, and get simple and straightforward answers at least at the high level, and at some level of detail.
That's an enormous job, but I can say that already, work has started on that internally, and that next year, I am very confident, I hope that I will be expressing my pleasure next year, very confident that we will have even more significant improvements in the presentation of the budget and the plan and the reporting against those next year.
Thank you, Chairman.
>>PETER DENGATE THRUSH: Thank you. And Ram.
>>RAJASEKHAR RAMARAJ: I think just taking off from what Dennis was saying about some more information and clarity of that information, I thought I would draw the attention of the board and community to some feedback and concern about the substantial increase in budget for the year 2008 and 2009.
So taking that feedback, Kevin and his staff have done an exercise to do exactly what Dennis was saying, which is to categorize the various spends that have been planned.
You will actually find it very reassuring to know that the baseline budget, that is the amount being spent in the normal day-to-day running of ICANN, is going to be almost the same next year as it has been this year. So to date, there has been no real increase.
And all the increase is really coming on new initiatives that flows from the strategy plan that's been approved by the community.
So thank you.
>>PETER DENGATE THRUSH: Thank you.
Any further contributions? If not, I would like, as Chair, to extend my personal thanks to Raimundo as chairman of the Board Finance Committee

and to all the rest of the members of the Board Finance Committee for the work that they have done in producing this plan. And then also to the chief operating officer, Doug Brent, and the chief financial officer, Kevin Wilson, for the enormous effort that has gone into producing this. And to note that not only is it a large budget but includes the operating plan at an earlier stage in the strategic planning cycle. And I welcome the increasing sophistication of our business processes and congratulate everybody associated with it.
[ Applause ]
>>PETER DENGATE THRUSH: So I'm going to put the resolution. All those in favor, please raise your hands.
[ Applause ]
Any opposed?
Abstentions?
Well, the CEO will be delighted that I can report that we have a budget.
>>PAUL TWOMEY: Yes.
>>PETER DENGATE THRUSH: And we have a plan.
Congratulations.
[ Applause ]
>>PETER DENGATE THRUSH: Now, the next item on the agenda is an update for the board on amendments or draft amendments to the Registrar Accreditation Agreement, and I'm going to ask Kurt Pritz if you could just take us through some of it. Kurt, I see you are ready to go.
>>KURT PRITZ: Hello. Thanks.
The purpose of this agenda item is to report that 15 draft amendments are posted for community review. Those amendments are to the Registrar Accreditation Agreement.
They were prompted by increased interest in the CEO's call to attention to this issue, as well as interest in protecting registrants and updating contracts that haven't been updated in some years.
The amendments, as formulated, are based on fairly intensive community consultations that included significant input from the ALAC, the At-Large Advisory Committee, and also the intellectual property constituency, among others, and then an extended dialogue with registrars to arrive at this set of amendments that's now posted.
It's posted for a period of 45 days. It can be found on ICANN's announcement page. It was posted on June 18th.
The posting includes a summary of the amendments, a red-line agreement and then a side-by-side comparison of the language.
There are four categories of change described in the amendments. One is enforcement tools, such as graduated sanctions, a provision for audits, and group liability for families of registrars. Another category on registrant would be called registrant protections with a focus on issues around data escrow, and that is the data underlying the -- the privacy data underlying proxy registrations and also reseller compliance.
There's also a set of amendments promoting stable and competitive registrar marketplace, and it includes registrar operating training and addressing the issue of accreditation by purchase.
And there's also various housekeeping things that I would categorize as agreement modernization.
The amendments, I think represent some significant improvements in these four areas and as far as protection for registrants. They may not go as far as some would like, and may be not even as far as I would prefer. But these amendments as written -- consideration of these amendments as written probably represent the most -- the path for those timely change, timely implementation to these changes.
So what could be a path for incorporation into the RAA? Well, as I said, we started with this community dialogue to formulate a set of draft amendments, and then a dialogue with registrars.
The draft amendments are now posted for community review. That community review has already started.
At this meeting, there were presentations made to and questions taken from the intellectual property constituency and ALAC. There was a workshop dedicated to protection of registrants that reviewed this set of amendments. Now, that's just the starting point. We don't think those consultations, even with those two constituency groups are over.
Depending on the comment we receive on the set of amendments, the GNSO council and the board may decide to approve the whole set. It's for the community and the GNSO council and the board to balance whether these amendments should be adopted as a set in order to incorporate them into the RAA in the most timely manner.
As far as incorporating them, according to the RAA, these amendments would be incorporated into each agreement as they expire, or registrars may individually elect to adopt them. And we may look at ways to incent registrars to adopt them.
That essentially is a summary of what's posted, why it was posted, and what the next steps are.
Thank you, Mr. Chairman.
>>PETER DENGATE THRUSH: Thanks, Kurt.
Just be ready to answer a question, if there is any.
Paul.
>>PAUL TWOMEY: Well, thank you, Kurt. And I appreciate the observation you made that, potentially, there are proposals here that may not go as far as you yourself personally may think is appropriate, but that that's a product of, if you like, a common view that emerged in a discussion.
But I would like to again recommend to the community that this is being posted for consultation and for feedback, public feedback. Everybody, everybody in ICANN is affected. Every constituency is affected by the RAA. It is one of the hearts on which registrants' interests are protected. And so we want to ensure that people understand that this is up for consultation.
I very much want to put on the record my appreciation to the leadership of Jon Nevett and other members of the registrar constituency who have responded to a call that I made, after the RegisterFly issue, to review this and they have done so in good faith, and I appreciate that and would particularly like to thank Jon. But let's be clear. Even though this is the product of two groups talking to each other, it is now out for all to give us comment before it can proceed.
>>PETER DENGATE THRUSH: Thank you, Paul.
Is there comment or question from the board?
I think we do appreciate the significance, Paul, as you said, and appreciate the efforts that have gone into getting it this far.
If not, thank you, Kurt.
We'll move to the next agenda item, which is a request by PIR to implementation DNSsec. And I'll ask Steve Crocker to take us through this one.
Steve.
>>STEPHEN CROCKER: Thank you, Peter.
PIR submitted a request to add DNSsec capability in its registry service. And that has been reviewed by the ICANN staff, been sent out for processing and evaluation by the RSTEP process.
And the staff now forwards and requests approval of the following resolution.
Whereas, Public Interest Registry has submitted a proposal to implement DNS security extensions, known as DNSsec, in dot org.
And whereas, staff has evaluated the dot org DNSsec proposal as a new registry service via the registry services evaluation policy, and has -- and the proposal included a requested amendment to section 3.1, subsection (c), subsubsection (i) of the dot org registry agreement which was posted for public comment along with the PIR proposal. And there are URLs associated with each of those.
Whereas, the evaluation under the threshold test of the registry services evaluation policy found a likelihood of security and stability issues associated with the proposed implementation.
The RSTEP review team considered the proposal and found there was a risk of meaningful adverse effect on security and stability which could be effectively mitigated by policies, decisions, and actions to which PIR has expressly committed in its proposal, or could be reasonably required to commit.
Whereas, the chair of SSAC, that's me, has advised that RSTEP's thorough investigation of every issue that has been raised concerning the security

and stability effects of DNSsec deployment concludes that effective measures to deal with all of them can, indeed, be taken by PIR, and that this conclusion after exhaustive review greatly increases the confidence with which DNSsec deployment in dot org can be undertaken.
Whereas PIR intends to implement DNSsec only after extended testing and consultation.
Resolved, that PIR's proposal to implement DNSsec in dot org is approved, with the understanding that PIR will continue to cooperate and consult with ICANN on details of the implementation.
The president and the general counsel are authorized to enter the associated amendment to the dot org registry agreement, and to take other actions as appropriate to enable the deployment of DNSsec in dot org.
>>PETER DENGATE THRUSH: Thanks, Steve. Is there a seconder for this resolution?
Thank you, Bruce.
Any discussion?
No? Just when I thought we were able to move on.
>>SUSAN CRAWFORD: It's one of the most beautifully written resolutions that actually provides every piece of information we need. And we already discuss it had and it looks terrific to me.
>>PETER DENGATE THRUSH: Let's move forward. It's been moved and seconded. All those in favor of the resolution, please raise your hands.
Any opposed? Abstentions? Carried unanimously.
Now, the next item relates to the introduction of a Code of Conduct, which is a process that began some time ago, was not resolved satisfactorily, was placed on hold. But more recently, Steve Goldstein has taken upon himself to get into this and has done an excellent job.
So Steve, would you take us through the resolution on the directors' Code of Conduct.
>>STEVE GOLDSTEIN: Thank you, Chair. It's my pleasure and honor to do so.
Modern day boards are being asked to have Codes of Conduct for their board members.
And, in fact, at a recent instructional seminar I attended at the National Association of Corporate Directors, one of the early questions they ask you is, "Does your board have a Code of Conduct?"
Well, with your approval, as we posted, we are about to have a Code of Conduct.
And while I don't want to emphasize the negative, toward the end of this document, which is a little over four pages, we talk about enforcement, breaches of this code, whether intentional or unintentional, shall be reviewed by such committee as designated by the board, which may make recommendations to the full board for corrective action if deemed necessary. Serious breaches of the code may be cause for dismissal of the person or persons committing the infraction.
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.
And finally, a review or sunset clause. This code will be reviewed annually by such committee as designated by the board which shall make recommendations to the full board regarding changes to or rescinding of the code.
So I am grateful to my colleagues on the Board Governance Committee and the board for agreeing to offer this for public comment.
And the resolution reads:
Whereas, the members of ICANN's Board of Directors are committed to maintaining a high standard of ethical conduct.
Whereas, the Board Governance Committee has developed a Code of Conduct to provide the board with guiding principles for conducting themselves in an ethical manner.
Resolved, that the board directs staff to post the newly proposed ICANN Board of Directors' Code of Conduct for public comment, for consideration by the board as soon as feasible.
Thank you, Chair.
>>PETER DENGATE THRUSH: Thank you, Steve. Is there a seconder? Roberto.
Any comments on the code?
Jean-Jacques and Roberto.
>>JEAN-JACQUES SUBRENAT: Thank you.
I just wanted to commend very strongly Steve for having taken this initiative, for having done the drafting and for having inspired us and brought our attention to the importance of disposing of a Code of Conduct.
Thank you very much, Steve.
>>PETER DENGATE THRUSH: Thanks, Jean-Jacques.
Roberto.
>>ROBERTO GAETANO: That's pretty much what I wanted to say. But I would like to add that it has been a great help for me as a chair of the BGC to have somebody who was reminding me all the time that this was an item on the agenda. And I think that without somebody pushing me, I -- my laziness would have taken over.
>>PETER DENGATE THRUSH: Dennis Jennings.
>>DENNIS JENNINGS: Thank you, Peter.
I'm delighted that this is before us. I've taken the opportunity of reading it carefully during the meeting. And it's excellent.
But I do note that in the preamble, there is a restatement of our mission and our core values, which come from other documents.
And I just note that our core values do not explicitly identify the -- taking the public interest into account as a core value, taking the interests of consumers and citizens in the globe as Internet users. And not that I'm objecting to the code of conduct, but I think there is an issue there that I would like just to flag that we might come back to in our discussions of the board about, making that a core value for ICANN.
[ Applause ]
>>PETER DENGATE THRUSH: Excellent point, Dennis, and I can see a number of opportunities as we review, for example, the steps taken in relation to the President's Strategy Committee about reviewing accountability and strengthening accountability. There's also the accountability principles. So there are a number of places where that very important point can be carefully reviewed.
Any other comments?
Raimundo.
>>RAIMUNDO BECA: Thank you, Peter.
I haven't had yet the opportunity to look to this code of conduct. But, however, I would like to underline that the -- ICANN has a framework on accountability and transparency. This framework on accountability and transparency has incorporated in itself a code of conduct. And I would like that this exercise of a new code of conduct should not undermine what is included in the framework.
This framework was the object of very long consultations. It took about a year between the first draft and the second draft. And the committee gave a lot of input to this document. So everything which goes to strengthen the framework, I would support it. But everything which is -- would undermine it, I would not support it.
Thanks.
>>PETER DENGATE THRUSH: Thank you.
Any further comment?
No. In that case, I'll put this resolution.
All those in favor, please raise their hands.
Any opposed?
Abstentions?
Carried.
Which leads us, while we're talking about the board, to the next resolution, which is to ratify the selection of consultation who are conducting the

independent review of the board.
The board, like all other entities in ICANN, is subject to periodic three-year review. And we have a resolution on that, which I'll ask Susan Crawford to introduce.
Thank you, Susan.
>>SUSAN CRAWFORD: Thank you, Peter. This resolution focuses on ratifying the retention of the Boston Consulting Group to work with us on an independent review of the board. And we've been privileged to have the consultants observing us this week. And one of them said to me, "You know, a lot of boards say they're unique, but you guys really are unique." And we need some review, I'm sure.
All right. And also, listen carefully if you're slowing down here, because there's a marriage of acronyms in this particular resolution.
Whereas, the Board Governance Committee has recommended that Boston Consulting Group be selected as the consultant to perform the independent review of the ICANN board.
Whereas, the BGC's recommendation to retain BCG was approved by the Executive Committee during its meeting on 12 June, 2008.
Resolved, the board ratifies the Executive Committee's approval of the Board Governance Committee's recommendation to select Boston Consulting Group as the consultant to perform the independent review of the ICANN board.
>>PETER DENGATE THRUSH: I hesitate to throw this one open.
Is there a seconder for this resolution? Not somebody whose name begins with a "B," a "G," or a "C," I hope.
I think I saw Ramaraj first. Thanks, ram.
Just a report to the community in case they weren't aware, the consultants are actually present. They observed the board in its five-and-a-half-hour workshop. And they've begun their work.
Any other discussion about that? No, I'll put the resolution to a point.
The -- whatever they are.
The Boston Consulting Group. Thank you.
All those in favor, please raise their hands.
Any opposed?
Abstentions? Carried.
We then come to the appointment of our own review groups which we have supervising some of the other reviews that are going on.
And I'll ask Njeri to introduce this resolution.
>>NJERI RIONGE: Thank you, Chairman. Whereas the Board Governance Committee has recommended that several working groups should be formed to coordinate pending independent reviews of ICANN structures, it was resolved the board establishes the following independent review working groups as follows:
ICANN board independent review working group, with the members Amadeu, Roberto, Stephen, Thomas, Ramaraj, Rita, and Jean-Jacques.
All these are members of the current board.
And then the DNS Root Server System Advisory Committee, with independent review working group, with Harald, Steve, and Bruce Tonkin.
And then the Security and Stability Advisory Committee independent review working group with Robert, Dennis, and Reinhard and Suzanne Woolf.
Thank you.
>>PETER DENGATE THRUSH: Thank you. Is there a seconder for that? Roberto.
Any discussion about the formation of those?
Roberto.
>>ROBERTO GAETANO: Just one thing, because -- one -- whoops.
There are a couple of people that are not currently board members. So Robert is, in fact, in the Security and Stability Advisory Committee, is, in reality, Rob Blokzijl should not be confused with myself.
>>PETER DENGATE THRUSH: Roberto, is it worth perhaps explaining the principle behind these working groups? I know there's an understanding, there seems to be a belief, that it's a good thing to get on to one of these working groups because you'll be able to influence the outcome.
Perhaps you'd like to comment on the purpose of these groups and where they're selected from.
>>ROBERTO GAETANO: Yes.
I'll do that with pleasure.
The origin of the working group was in fact, when we realized that having an external contractor doing the job and presenting the point of view as an independent consultant, without specific knowledge of ICANN and of the functioning of ICANN, was a good thing in itself. But sometimes some of the recommendations were not immediately workable because what has not been taken into account were some constraints or some specificity that an external contractor was not always able to identify in the short term that he had to perform the job.
And, on the other hand, we didn't want to let the contractor go through an intensive learning of all the different links that we have and of the complexity of the environment, because, otherwise, it would have lost to a certain extent the ability to look at things from the outside.
So this decision -- the decision of creating working groups was taken in relationship to how to manage a further phase after the delivery of the London School of Economics' reports on the GNSO independent review. And we have retained this methodology for further work.
We have been trying as reviews were starting to anticipate as much as possible the moment of the formation of the working group so that they could also assist the contractor, ensure the completeness of the scope, and be able to support them when they needed some indications on how to proceed.
I would like to underline the fact that the working group is not doing the work, but is providing in the first phase guidance to the contractor, actually, is participating also to the selection of the contractor if it's put in place before the selection time comes. And will be available for explanations to the contractor and generally support.
Then, in a second phase, once the contractor has delivered the draft of the report, then they will take over, and they will manage the process of letting the draft report go through a public comment period. And then they are in charge of, I would say, compiling the comments that come from the community and produce the final draft that goes for approval to the BGC and then from the BGC is passed to the board for final ratification.
The composition of the working group is board members or liaison or former board members or liaison. The reason for this is to somehow limit the choice of the people and to have a kind of a homogeneous set of people that can do this task.
I would like also to mention that the board has internally discussed the feasibility and the scalability of this model the moment that the reviews are becoming of a certain number. And so we are going to revise this process later on in the year.
But this is the situation as such. And so we are continuing with this model for the time being.
>>PETER DENGATE THRUSH: Thanks, Roberto.
Steve Crocker.
>>STEVE CROCKER: There may be some slight misunderstanding about the status of Rob Blokzijl. He was a valued member of SSAC for a good period of time, but rotated off of the committee last fall, I think, or perhaps earlier. But he's not -- is not and has not been a member of the committee for a while.
There may be other kinds of issues here. We're all sort of feeling our way how to get the best talent and available cycles, because we're all sort of overcommitted, to help manage these processes along.
>>PETER DENGATE THRUSH: Thanks, Steve.
Can I put that resolution, then? That's appoint the working groups for these various reviews. All those in favor, please raise your hands.
Any opposed?
Abstentions?

Carried.
Now, ladies and gentlemen, I will, with your permission, skip the next agenda on the agenda, which was a further update from Denise Michel on independent reviews. In the interest of time, I think we have to move on. We have had a full report from Denise at this meeting.
So move then to the next item, which is the board committee assignment revisions. And Roberto is chairman of the Board Governance Committee that's responsible for assigning board members to committees.
Could you take us through this, please. Thank you.
>>ROBERTO GAETANO: Thank you, Peter.
Please allow me to say a couple of words to explain what and when we are doing these things.
A major rearrangement and overhaul of the committees happens every year at the annual general meeting.
Due to the fact that at that date, we change chairmen, but we re-elect a chairman and vice chairman, and we have new members that come from the NomCom process, and we allocate them to committees to replace the members that are leaving the board.
So why do we have -- and this is -- why do we have an update of the committees in the middle of the year? Well, this was something that we decided as BGC at the annual general meeting last time in Los Angeles. And we thought that for two reasons. One reason is the fact that we could have had new members coming from the supporting organizations, new directors appointed by the supporting organizations. Although this didn't happen, because the ccNSO and the GNSO reappointed for the further term the outgoing members.
And secondly, to allow a rotation of the board members, especially for chairman position, as the work is pretty intense. And we have 15 people on the board -- because chairmanship of the committees is limited to the voting members -- and that are all capable. And some sort of rotation seems to be a good way to ensure that people are not burned out and that we can get the maximum from everybody.
So this time, this rearrangement of the committees has touched three committees: The audit committee, the finance committee, and Reconsideration Committee.
Let's start with the audit committee.
The audit committee, in particular, had an excellent chair, has an excellent chair, until the board will approve the resolution, if it does. And that was Njeri Rionge.
She has done an excellent job. And we are now trying to pass the knowledge in the last months that she is still on the board, because her term ends at the end of the year. We have this opportunity to have a new chair that will learn from the past chair and in order to ensure a smooth transition.
The second committee that has had some change is the finance committee. We have just heard the excellent work that Raimundo Beca has done for the committee. He is remaining in the committee and will help Ramaraj to go up to speed, who was already a member of this committee, so that we can have a transition that is smooth and Ramaraj can inherent some of the knowledge of Raimundo in his experience of chair.
The last one that is touched is the Reconsideration Committee, where the former chair was Rita. And since she has moved to take over responsibility of the audit committee, we are appointing a different chair, that is Susan Crawford. And the same applies, the same considerations apply to the Reconsideration Committee. I think that Rita as well in this task has done an excellent job.
So without further time -- consumption of time, I will go to read the resolution.
Whereas, the Board Governance Committee has recommended that the membership of several board committees should be revised and that all other committees should remain unchanged until the 2008 annual meeting, resolved, the membership of the audit, finance, and reconsideration committees are revised as follows:
Audit committee: Raimundo Beca, Demi Getschko, Dennis Jennings, Njeri Rionge, and Rita Rodin as chair.
Finance committee: Raimundo Beca, Peter Dengate Thrush, Steve Goldstein, Dennis Jennings, Rajashekar Ramaraj as chair, and Bruce Tonkin as observer.
Reconsideration Committee: Susan Crawford as chair, Demi Getschko, Dennis Jennings, Rita Rodin, and Jean-Jacques Subrenat.
>>PETER DENGATE THRUSH: Thank you, Roberto. Is there a seconder for that resolution?
Susan.
Any discussion?
Raimundo.
>>RAIMUNDO BECA: I would like, Peter, if the vote, at least on the finance committee, could be separated from the other one. Because I would like to make a comment at that moment.
>>PETER DENGATE THRUSH: I can't separate them, because we could, actually, vote on them serially, but they're all consequential. If we start one and we -- 'cause the way the committee assignments work, they're done as a batch. And if we take one here and don't do another one, then we're not going to be able to put someone onto the right place. So I think I'd rather keep them as a single resolution.
Do you want to make a comment?
>>RAIMUNDO BECA: Well, I would like to make a comment in the moment of the voting.
>>PETER DENGATE THRUSH: Are there any comments on the committee reassignments?
If not, I'll put that resolution moved by Roberto, seconded by Susan.
All those in favor of the resolution, please raise your hands.
Any abstentions -- any opposed?
Any abstentions?
Raimundo.
I'll declare the resolution carried.
And would you like to make a comment?
>>RAIMUNDO BECA: The reason I abstained relates only to the finance committee.
Even if my family and clients would highly appreciate the fact of this rotation, personally, I would have preferred two things. Number one, to be informed clearly when I was nominated for this year that I was going to be serve only for half of the year. And, number two, I think that I haven't -- I would have liked to end my job on the separate budget. The separate budget for the IDNs and gTLDs is something new in the organization. And it's a particular challenge in which I have invested a lot, and I would have liked to continue until the end of that.
But, well, it was decided in another way.
Anyhow, I would like to clarify that this does not mean in nothing that I don't approve the nomination of Ramaraj, which is a member of the finance committee and has been for one year and a half has been there. He has been very contributive and also respecting in this committee we have people in all the four seasons, days of the year, hours of the day, so we have always very complicated, very complicated timelines. And he has been very contributive also.
Thank you very much.
>>PETER DENGATE THRUSH: Thank you, Raimundo. I just would like to repeat the thanks to you that I made earlier as we adopted the most significant budget that we have done, which has been put together under your leadership of the board finance committee, and to note with some pleasure and relief that you will remain on the finance committee so that we're not losing your expertise in that particular area.
Steve Goldstein.
>>STEVE GOLDSTEIN: Chair, just a quick one. I notice on the screen, and I think -- and I think the scribes accurately put down what I heard Raimundo say, but I don't think he meant to say it quite that way.
What I heard was that he -- "I don't approve the selection of Ramaraj as chair." And I think he meant to say "I don't disapprove the selection of Ramaraj as chair." So perhaps the record can be corrected.
>>PETER DENGATE THRUSH: I see Raimundo is nodding and saying absolutely. So we can take that as read.
All right. Well, I'll put that resolution -- oh, we've put that resolution, haven't we? We've done it. We can move on to the next item, which is the decisions on the Board Governance Committee's recommendations on GNSO improvements.

Rita, will you take us through this one.
>>RITA RODIN: Thank you, Mr. Chairman.
Just when you all thought the board was just up to their administrative items, and then a thank you, we have another substantive recommendation that has been the subject of much debate during this week.
Just a quick note. This is, to say what Susan said before, a little bittersweet for me. The GNSO improvement process and study has been going on for quite a while. We have a number of documents. We have an LSE report that calls for some change. We have people in the community, even in the GNSO, that talk about things that work well and that don't work well.
And I think the working group convened by the Board Governance Committee also thought that some changes should be made.
We have proposals on the table from this board working group and from others in the community that are fairly far apart. So after listening to the comments in the community, especially this week, and having a discussion amongst ourselves, the board wants to take one more opportunity to try to give the community one last chance to become a little bit closer and try to resolve some of their differences.
So now I'll read the resolution.
Whereas, article IV, section 4 of ICANN's bylaws calls for periodic reviews of the performance and operation of ICANN's structures by an entity or entities independent of the organization under review.
Whereas, the board created the Board Governance Committee GNSO Review Working Group to consider the independent review of the GNSO and other relevant input, and recommend to the Board Governance Committee a comprehensive proposal to improve the effectiveness of the GNSO, including its policy activities, structure, operations, and communications.
Whereas, the working group engaged in extensive public consultation and discussions, considered all input, and developed a final report containing a comprehensive and exhaustive list of proposed recommendations on GNSO improvements.
Whereas the Board Governance Committee determined that the GNSO improvements working group had fulfilled its charter and forwarded the final report to the board for consideration. Whereas a public comment forum was held open for 60 days to receive, consider, and summarize public comments on the final report.
Whereas, the GNSO Council and staff have worked diligently over the past few months to develop a top-level plan for approaching the implementation of the improvement recommendations, as requested by the board at its New Delhi meeting.
Whereas, ICANN has a continuing need for a strong structure for developing policies that reflect to the extent possible a consensus of all stakeholders in the community, including ICANN's contracted parties.
It is resolved that the board endorses the recommendations of the Board Governance Committee's GNSO Review Working Group, other than on GNSO Council restructuring, and requests that the GNSO convene a small working group on council restructuring, including one representative from the current NomCom appointees, one member from each constituency, and one member from each liaison-appointing advisory committee, if that advisory committee so desires, and that this group should reach consensus and submit a consensus recommendation on council restructuring by no later than July 25, 2008, for consideration by the ICANN board as soon as possible, but no later than the board's meeting in August 2008.
>>PETER DENGATE THRUSH: Thank you, Rita. Is there a seconder for that resolution? I see Ramaraj -- sorry, Jacques.
Now, discussion of this. Susan and then Bruce.
>>SUSAN CRAWFORD: Thank you, chair. I am sorely disappointed in this resolution. It's an echo of too many earlier ICANN decisions, somewhat delayed, ad hoc, potentially confusing, and the board has been subject to fierce -- if charming -- lobbying this week from the business constituency.
I wish the board had acted at this meeting.
This has been a very long process. We had, from the London School of Economics, a substantial report in September 2006. This whole issue of GNSO reform did not spring upon the world in the last few months. We've been discussing restructuring for a long time with lots of consultation, and the vast bulk of the working group's report -- and I was a member of the working group -- was focused on moving to a working group format, so that far fewer things would happen through voting, and that we would work towards deliberation on policy issues, and that the role of the council would be much less legislative but more managerial in function.
There would be voting on the council, but to focus on -- at the council level -- whether adequate issues had been considered and not to reopen the substance of policy.
So -- but some votes are needed on the council structure, and so the report suggests that there would be four large stakeholder groups, that we would retain the parity between contracted and non-contracted parties that has been in place since the evolution of the reform process in 2003, and there was no question in the working group but that that parity should stay in place between contracted and non-contracted parties.
This is a remarkable entity, ICANN. We have private parties with contracts with ICANN who have agreed in advance to have policies imposed on them that are binding, provided they're the subject of consensus acknowledgment or adoption through this process, and so parity between contracted and non-contracted parties is essential to make sure that everybody comes to the party -- to the table and deliberates and can't just force everything into voting at the council level.
So the principle of parity was in place in the report, and also parity between commercial and noncommercial users on one-half of the council.
Again, because parity as a principle has more going for it than the status quo. And that we really need to develop the noncommercial part of the GNSO. And giving votes on the council might encourage the development of that noncommercial portion.
So if the board today adopts this resolution, which comes with a sunset, a very crisply defined sunset -- thanks to my colleagues -- I hope we give no extensions. There's enormous work on GNSO improvements that is pending the resolution of this last question. And I firmly -- it is my firm desire that if a proposal comes back to the board that is the subject of consensus from the GNSO, that it comes no later than July 25th, and that the board will act in August, absent such a proposal. Thanks.
[Applause]
>>PETER DENGATE THRUSH: Susan, I want to respond to a couple of things that you've said. I think I agree mostly. Just a comment that the board is, of course, acting on this resolution on the working group's report at this meeting. It has endorsed everything else in the report except the issue of council voting, so there's 95% of the work is accepted and approved and I hope we can see implementation steps on all the other things which were in that very good report. And just what's left is this issue of the structure and the voting.
Let me go on from that to say I hope there is absolutely no misunderstanding about this in the community. This, amongst other things, is a real test of the self-regulatory model, and if the groups involved cannot regulate themselves on this issue, then this is going to be a significant failure of much more than just the GNSO voting patterns.
Nor should there be any misunderstanding about the time line that's provided. Nor about what is being requested.
A very -- this is -- we are not just waiting for something to come to us. We are directing the formation of a very specific group to get together with a very specific job to be completed within a very specific time.
There will be no extensions of that time.
Dennis? I'm sorry. Was it -- Raimundo.
>>RAIMUNDO BECA: Okay. I would like to ratify what Susan said in the sense that in the working group, we -- there was unanimity, in the sense that there should be a parity between the contracted and non-contracted parties, and that this parity was based on the fact that this proposal was not changing the existence, and the existence of the -- actually, there is parity between the contracted and non-contracted parties, and the fact is that the parity is obtained by the way of the weighted vote, but anyone who has worked really in bottom-up policies knows that a weighted vote is the position absolutely of the bottom-up procedure. A consensus cannot be obtained if in the table of people that vote with a weight more important than the others, so the cost -- the cost of having the suppression of the weighted vote was to have the existence of a parity of 4-4 and 4-4 -- and 4-4. But there was not UNANIMITY in the 4-4 in the side of the users. In the side of the users, there were two resolutions, two minority votes in the working group. One was in favor of 4-4, 5-3 and the other which I presented myself was in the favor of asking the GNSO Council, asking the GNSO Council to propose an alternative. Only -- only in the users side.

And surprisingly now, we have come back exactly -- almost exactly to the same situation I proposed and it was not accepted in January, and so we have lost all the time from January to now exactly on the same thing. I hope that now it will be definite.
>>PETER DENGATE THRUSH: I'm not sure what you're saying. Are you going to vote in favor of this or not?
>>RAIMUNDO BECA: Oh, yes. I was in favor.
>>PETER DENGATE THRUSH: All right.
[Laughter]
>>PETER DENGATE THRUSH: Roberto.
>>ROBERTO GAETANO: Yes. I will not talk to the merit of the resolution. I only have two short comments.
The first one, I would like to express my apologies to the community. I have been in charge of the working group and I have been in charge of the Board Governance Committee during all this process, and although I have tried to push it through, it has taken much longer than what was in the expectation of everybody.
We had a rapid consensus on several points and we had some other things that remained to be discussed because the community had different opinions, and while I have been unable to come to a resolution in the short times.
So I was pessimistic at the beginning of this week because I knew that we had to come to a closure and we were going to take the risk of having a closure with a divided community.
My second comment is that in the last couple of days, I have seen a lot of activity in the corridors, in the bar, in the public forum, and I think that the community has had the feeling -- had my same feeling that we're going to go to a closure and that there were two proposals that were opposing each other, to a certain sense, and we are going to get out from this process in an unhealthy situation of having a winner and a loser.
And so I really saw -- and I heard and I have been contacted by different parties in the last couple of days, and I heard finally comments of the type, "Do you think that this type of thing can work if we compromise on that, if we do this, if you do that?"
I'm extremely happy, although I have to admit that we have a situation in which the community has to step in to overcome the shortcomings of a chair, but in any case, what is important is the result. So I think that by giving this additional time, that I was not really dramatically happy in the beginning of the week as a possibility, but giving this time in which the community can get together and really work together with the perspective of having, at the end of this process, not a winner and a loser, but to have a consensus that although it's not going to be perfect for anybody, like every consensus, is something that is at least acceptable to everybody.
And I think that this is -- will be a great achievement if, at the end of this week we can come with this solution that comes from the community and avoid the extreme possibility, the last resort, which will be that the board has to make a decision and that at that point the decision will leave somebody less happy than others.
So I'm really inviting the community, now that -- after the end of this meeting, to start -- to continue the collaboration that has started in this last hours, I would say, so that we can close this.
And in any case, guys, in two years we are going to have another review. We are going to restart this process. This process of the GNSO review has taken longer than the gap between two successive reviews, so I don't think that we can get to a situation in which we have the GNSO that is in a permanent review mode.
So let's find a solution, let's find a solution that will be valid for the next few months until the next review, and then we'll see and we will learn from the experience and we will do further adjustment down the road. Thank you.
>>PETER DENGATE THRUSH: Thanks, Roberto. I've got Harald and then Bruce. Harald?
>>HARALD TVEIT ALVESTRAND: One thing about principles and purposes. I don't regard parity as a purpose or principle. I regard it as a tool.
The principle is that there are certain groups that should not be able to force other groups into something without getting agreement with them. And I encourage the community to look at the -- look at the principle and find the right tool for the job.
>>PETER DENGATE THRUSH: Thank you, Harald. Bruce?
>>BRUCE TONKIN: Yeah. I'm going to support both what Roberto said and Harald said.
From my point of view from a process, this is, I guess, the first major review of -- which is conducted at both the council level and then there's a second review of the whole GNSO, and as an organization we need to get better at doing these reviews.
From my perspective, an independent report identified some problems in the GNSO, and then proposed a solution. This solution did not have widespread support in the GNSO. The Board Governance Committee had attempted doing better, and the Board Governance Committee had a solution as well, and that didn't receive, let's say, consensus support of the GNSO.
I think what -- what's changed a lot this week is that we have got the elements of the GNSO talking to each other, and I think we got lobbied just about every day this week on this topic, but it was pleasing to see that people were starting to move their positions.
My view is that the best outcome is when the people that are affected by the decision that really know the problems because they live it every day can propose the best solution, and should work together, and let me leave you with this last thought.
Be very afraid of what the board might do.
[Laughter]
.
>>PETER DENGATE THRUSH: Isn't there supposed to be scary music when you --
[Laughter]
>>PETER DENGATE THRUSH: -- say that, Bruce? Demi Getschko. Thank you.
>>DEMI GETSCHKO: Thank you, Peter.
I support what Harald said and others said also, and I don't want to see drawing a fence between -- to any groups in the GNSO constituency. I suppose we have to strive for balance, for equilibrium, but I don't see this parity as so hard a thing between two sides, contrary groups inside the constituency. I don't see this as a healthy way to make the things, to put a fence between two groups, and I hope that the community can bring us some very wise solution to the comfort of ICANN. Thank you.
>>PETER DENGATE THRUSH: Thanks, Demi. Are there any further contributions with -- we've had the discussion? All right. Let's put that resolution. That will be accepting all of the recommendations of the working group except in relation to the council and voting. And directing the formation of the small group to get on and come back to us by the 25th of July with a solution or else. Laugh.
>>PETER DENGATE THRUSH: All those in favor please put their hands up.
[Show of hands]
>>PETER DENGATE THRUSH: Any opposed? Any abstentions? Thanks very much. That's carried.
There's a fairly clear message in that to the various participants in that process.
Let's come into the report of the President's Strategy Committee. The president's strategy committee has produced some documents and there was a seminar on those here, and Jean-Jacques is a member of that committee, so I'll ask Jean-Jacques to introduce the resolution. Jean-Jacques?
>>JEAN-JACQUES SUBRENAT: Thank you, Peter. A few moments, Rita, introducing the previous item, said, "You may be expecting housekeeping items. That's not the case." So here's another substantial issue.
I will make a few remarks in French before reading the draft resolution.
Is that working?
Three comments. Firstly, on the transition and the context of the transition, then the challenges and then the project itself.
Firstly the context. We have to bear in mind that for nearly 10 years we have been working in ICANN. The agreement that links ICANN to the United States will come to an end in September 2009.
We will then enter a new Internet era, which will be characterized, no doubt, by considerable globalization, diversification and nationalization of the Internet. Also in terms of the users and the use made of the Internet.

Secondly, the challenges.
I think, above all, ICANN must have the tools necessary for managing these new challenges that we face tomorrow for the benefit of all.
Thirdly, the project that has been tabled. I remind you that it is only a draft. Whether you decide to accept it, the three documents that you have in front of you have to be borne in mind and the director strongly encourages all the components of the Internet as well as the individual users to contribute to this process. As was said by Eric Besson at the inauguration of this meeting here in Paris you are the Internet, so I encourage you to actively participate in this review because you are also the future of the Internet. Whereas, the chairman of the board requested that the President's Strategy Committee undertake a process on how to strengthen and complete the ICANN multistakeholder model.
Whereas, the PSC has developed three papers that outline key areas and possible responses to address them: "Transition Action Plan," "Improving Institutional Confidence in ICANN," and "Frequently Asked Questions."
Whereas these documents and the proposals contained in them have been discussed at ICANN's meeting in Paris.
Whereas, a dedicated Web page has been launched to provide the community with information, including regular updates.
Resolved, the board thanks the President's Strategy Committee for its work to date and an instructs ICANN staff to undertake the public consultation recommended in the action plan, and strongly encourages the entire ICANN community to participate in the continuing consultations on the future of ICANN by reviewing and submitting comments to the PSC by 31st of July, 2008.
>>PETER DENGATE THRUSH: Thank you, Jean-Jacques. Is there a seconder for this resolution?
Janis. Okay. Sorry. Bruce. Sorry.
Now, is there somebody that wants to speak to the resolution? Janis? Thank you.
>>JANIS KARKLINS: Sorry. I was looking for this moment.
Chairman, the GAC appreciates the effort of the President's Strategy Committee in preparing the recently published report outlining key areas that need to be developed in order to complete ICANN's transition process.
The GAC notes that the report covers the wide range of issues and constitutes a useful basis for discussion at this time. While it is open to individual governments to provide comments, the GAC will aim to formulate a contribution, including on the role of the GAC in the context of this report by the Cairo meeting. Thank you, chair.
>>PETER DENGATE THRUSH: Thank you, Janis. Any other comments?
In which case it's been moved and seconded. I'll put the resolution.
All those in favor please raise your hands.
[Show of hands]
>>PETER DENGATE THRUSH: Any opposed? Abstentions? Carried.
Well, we come into the resolution concerning the selection of a site for our meeting scheduled for March of 2009, and I'll call upon our CEO and president, Dr. Paul Twomey, to take us into this one. Paul?
>>PAUL TWOMEY: Thank you, Chairman. I'll read the resolution.
Whereas, ICANN intends to hold its first meeting for calendar year 2009 in the Latin America region.
Whereas, the Mexican Internet association (AMIPCI) has agreed to host the meeting.
It is resolved the board accepts the AMIPCI proposal to host ICANN's 34th global meeting in Mexico City in March 2009.
>>PETER DENGATE THRUSH: Is there a seconder for that proposal? Roberto.
Perhaps the board Finance Committee can confirm this is after a budget has been proposed and adopted by the board Finance Committee. It's not recorded in the resolution, but you have been through this and done a full costing and accept the finance proposal, the finances behind the proposal.
Thank you.
Are there any other comments on the resolution to have the meeting in Mexico City in March 2009? Paul?
>>PAUL TWOMEY: Thank you, Chairman. Two observations, I think.
One is that obviously I think this is a fair reflection of the participation of the Mexican community and the ICANN community and so it's a very pleasing decision.
The second one, of course, Chairman, is to reflect on observations you made in the last meetings. We will be coming up at the end of this year, to the celebration of the 10th anniversary of the founding of ICANN, and because of the specifics of the date and various preparations for those celebrations, it is likely that likely that the actual celebrationary process will take place in Mexico City, so the celebrations of the 10th anniversary of the establishment of ICANN will carry over to the Mexico City meeting.
>>PETER DENGATE THRUSH: All that is likely to it a very interesting meeting to attend. Raimundo.
>>RAIMUNDO BECA: Not only in -- to confirm that the affirmatively that the Finance Committee approved the budget for the meeting, but I would like their board to turn their face to our Mexican friends which are there with the T-shirt of the Mexican football team.
[Laughter]
[Applause]
>>PETER DENGATE THRUSH: Thanks, Raimundo. And thank you. I see there are more of you around the room.
[Laughter]
>>PETER DENGATE THRUSH: Thank you very much.
[Applause]
>>PETER DENGATE THRUSH: That's a testament to the continuing success of ICANN that people are willing to offer to host the meetings and to go through the processes and submit the bid and subject themselves to the inquiry and then eventually the work of hosting a meeting.
So thank you very much. Steve Goldstein.
>>STEVE GOLDSTEIN: Seen those beautiful green shirts, I guess they're trying to tell us that they're going to give each of us a beautiful green shirt when we get to Mexico City, right?
[Laughter]
>>PETER DENGATE THRUSH: Okay. Any other comments about the proposal? If not, I'll put the resolution.
All those in favor, please raise your hands.
[Show of hands]
>>PETER DENGATE THRUSH: Any opposed? Abstentions? Carried. Thank you.
[Applause]
>>PETER DENGATE THRUSH: And the next topic is a board review informally, just orally now, of meetings, and suggestion is that we have Paul Levins, who is in charge of meetings -- Paul, could you come to the -- just take us through a couple of quick -- we have only about five minutes for this but I think if you could highlight some of the major changes of this meeting --
[Laughter]
[Applause]
>> Sorry for the interruption.
[Applause]
[Laughter]
>>PETER DENGATE THRUSH: I have to take advice from general counsel about accepting gifts in public.
[Laughter]
>>PETER DENGATE THRUSH: Gifts in private is fine but...
[Laughter]
>>PETER DENGATE THRUSH: Paul, can you just take us through, perhaps, some of the things that we've tried at this meeting and then just get some quick feedback from board members about whether they're the sort of things we want to carry on with? Thanks.

>>PAUL LEVINS: Sure. Thanks, Peter. Firstly, I'll just rattle through a few of the things that were different, if you like. New and different at this meeting. We had the scribe feed, as we explained, has been operating pretty well, real-time text feed. We've had type and share initiative, which is something that we operated in association with ICANN wiki. The first time we had a by lingual site, which is quite an achievement and thanks to our French hosts who assisted us with that.
The first time we had a business access agenda, and a number of people were there to be thanked in relation to that, but that was, I think, early steps, but very successful.
Early posting of the agenda for this meeting. There was a comment made in the forum yesterday about the need for us to get even better at this, but we posted this agenda about 2 and a half months ahead. We've had more sponsors than ever before -- about 41, in fact -- and before anyone says I can only count 29 that I think is on that poster, it's because we now have a very clearly delineated sponsorship category, and under the conditions of some of those categories, you are allowed a display of your logo on ICANN signage.
Registrations were the most we've ever had at an ICANN meeting. 1672 registrations.
166 countries represented. Just to give you a very small window into the registration figures and the representation, we had 345 people from the United States, 264 from France, and in what could have been a rugby score 36 from Australia and 18 from New Zealand.
[Laughter]
>>PAUL LEVINS: Sorry. It was there to be said.
[Laughter]
>>PAUL LEVINS: Moving right along...
[Laughter]
>>PAUL TWOMEY: That would be a rare result but a satisfying one.
[Laughter]
>>PAUL LEVINS: Video posting, as we've never had before. We had four or five -- a regular stream of videos which involved live capture, obviously, of events here and then posting of them on the ICANN site where they're archived.
We've opened the registration for Cairo at this meeting, and we've announced the first meeting for 2009 as approved by the board just moments ago, and that means that we're six months -- now six months out in terms of meeting announcement. We have a target to try and be 12 months out from January of next year.
Very briefly, chair, I'll wind up. We heard commentary yesterday about the 4 to 5 days -- I'm sorry, the 5- to 4-day shift. Some very brief statistics about what we managed to achieve in that time frame as well.
We had about 5 hours of public forum. We had the -- about 13, I think it is, or 14 workshops in that period of time. And we also had probably more so than any other meeting a series of reviews which made it an extremely busy process for all a participants, NomCom, ALAC and of course the board review.
We got that feedback about the different opinions about whether or not 4 or 5 days was a meritorious thing.
So I'll leave it at that. Peter.
>>PETER DENGATE THRUSH: Thanks, Paul. That's really an impressive list of things and so well done to your team for all of those, and there will be time later for that.
Could I just get some feedback from the board and Bruce you're first away about some of the reactions about some of the things that have gone on at the Paris meeting. Bruce.
>>BRUCE TONKIN: I really just wanted to repeat one of the surveys that I did.
>>BRUCE TONKIN: I really just wanted to repeat one of the surveys I did the other day, but one of the significant changes this meeting from previous meetings was moving the board meeting from Friday morning to, obviously, here late Thursday afternoon.
I wonder from a show of hands of the regular attendees whether you prefer that or do you like the way that we've changed from Friday to Thursday afternoon, if you could raise your hand.
Conversely, how many people prefer to keep it on Friday morning?
[ Laughter ]
>>ROBERTO GAETANO: How many people don't want that at all?
[ Laughter ]
>>PETER DENGATE THRUSH: I have say that it's been a significant burden today. It was a burden for staff to get materials really 24 hours earlier than previously, and we have also lost some face time with the community, because the board has been locked away in workshop all day today.
So there are consequences. But it seems as if at this stage, at least, there's some community support for it. Any other comments from board members? Susan, I know Steve Crocker wants to say something.
>>SUSAN CRAWFORD: Very briefly, Peter, that having the live feed available from the scribes is an enormous advance and makes remote participation much easier. And I'm very glad to see that having happened. And thanks to everybody.
>>PETER DENGATE THRUSH: Steve, you want to comment, I think, on the same thing.
>>STEVE CROCKER: Yes, indeed.
And to echo that, it is a big deal. And there's a lot of more underneath the surface than is apparent. We put quite a bit of energy into this, starting some time ago. And the staff and the support contractors, VeriLan, and the scribes, working with our team, really pulled off something that deserves a lot more attention, and I hope that we get this documented. This is the first test run of it, and I think it's worked pretty well, as best I can tell.
Feedback, I think, would be very welcome.
One of the very key things that really has a big impact on remote participation is, this is now running the text through a low-bandwidth stream instead of a picture of the transcription from the screen as a video. That makes it possible to distribute this all over the world to places that do not have high-quality or high-bandwidth connections and should be able to make our meetings a great deal more accessible.
So it's the subtle stuff underneath the surface and it's a big deal.
>>PETER DENGATE THRUSH: Thanks, Steve. Paragraph Jean-Jacques, and while you're getting ready to speak, they're trying to put it up on the screen, for those people who are wondering.
>>JEAN-JACQUES SUBRENAT: As a board member who's been here -- sorry, a member of the board. I'm not bored. I'm wide awake. I hope you are.
But for only seven months, I think there has been huge progress in several areas, coming online in this way is tremendous.
The other aspect, I think, where we need to do more efforts is, of course, languages. That takes a lot of effort, but also expense.
And that will be the next step.
One little point for Paul Levins.
May I suggest that instead of the term "scribe feed," I'm not at a zoo. I would suggest "scribe line," if that is all right with the scribes.
>>PETER DENGATE THRUSH: Well, all talking about feeding the scribes aside, I'm sure they do need feeding.
I've got Dennis and then Paul and then Wendy. Dennis.
>>DENNIS JENNINGS: Thank you, Peter.
I think we've made tremendous progress, but I certainly felt this meeting was both long and rushed. And I'm not quite sure how to address that. But certainly I was locked away in meetings for long amount of time and didn't have enough time to walk the floors and meet people. I felt -- we started very early, and things went on for a long time. We sometimes curtail things because of fixed time points.
So I think we need to organize ourselves somewhat better and give more time for people to meet together, whether it's between constituencies or between SOs or between constituencies and the board and advisory groups and so on.

I think we need to do something about the fact that it's always the same faces who come up to the microphone. And I presume they've been saying the same thing at constituency level and at council level, and now at public forum level. And maybe we can somehow make that a better way of representing those views, rather than having them restated again and again.

And I think maybe some of the presentation and updates which were given, I seem to think a number of times I saw updates on the same topic, maybe that's just my mind getting terribly tired. Anyway, I think there's improvement. But the key thing, I think, is to have more time for people to talk to one another, whether at constituencies or support organizations, between those and with the board.

>>PETER DENGATE THRUSH: Thank you, Dennis, for those comments.

Paul.

>>PAUL TWOMEY: Thank you, Chairman.

I would, first of all, like to express my gratitude to Paul Levins, Diane Schroeder, and other members of the meetings team who, I think, Chairman, took the request of the board very seriously and tried at this meeting to cause a fairly fundamental restructuring to try to bring the meeting back, effectively, one calendar day.

So that's my first observation.

Having said that, I think it would be -- I'd have to report similar to what my colleague from Ireland has. For some of the executives, at least, this has been, I think, a very stressful meeting. It may just be because of the degree of content. But I would also endorse, if we're going to follow this format, we need to build cartilage between the bones. We need to have gaps between some of the things, and we also need to think, at least people like myself, need to think whether we almost need to have a "the doctor is in" day, so that people who want to meet, may be they have to come early or something, come a day earlier or something. Because I have found a number of executives who have found themselves in meeting rooms from, you know, dawn to midnight each day.

>>PETER DENGATE THRUSH: Thank you. I think the point about the content is a good one. This has been -- we've had some very detailed discussions, thinking of the GNSO restructuring, adopting the gTLD policy, and the IDN CC fast track, just to mention three.

I've got Wendy and Janis.

Wendy.

>>WENDY SELTZER: Thanks.

Just want to be very quick to thank Kieren, among others, for the hard work in getting the remote participation and chats and scribe text is very helpful to, especially, the at-large distributed members.

Want to note a few early concerns with telephonic links. But I think some of those got resolved as the meeting went forward. And so thanks to everyone who helped to make at-large participants able to participate.

>>PETER DENGATE THRUSH: Thanks, Wendy. Janis.

>>JANIS KARKLINS: Thank you, Peter.

Just to tell everybody that in the GAC meeting, there was a discussion on further improvements of the meetings.

And we came up with an idea to call for a cross-constituency informal working group to reflect how better organize interaction of different constituencies during the ICANN meeting.

And this -- Bertrand will animate this group from our side. We will send out information and will call on other constituencies to participate. And certainly the results will be shared with the whole community.

Thank you.

>>PETER DENGATE THRUSH: Thanks, Janis.

Anyone else want to contribute? We obviously will unpack all of this and digest it as we go. But this is the time when it's perhaps the freshest, even if we're not personally as fresh as we were at 7:00, when we started.

Okay, thank you for that. And thank you, Paul, for leading that discussion.

We come, then, to the last item of substantive business before we get into some of the more pleasurable and final items.

We received a suggestion in New Delhi that the at-large community would like to have a summit meeting. We put some money conditionally aside in the budget and asked for a proposal. And we now have a resolution about that. And I'll call upon the at-large liaison to the board, Wendy, to talk to us about that.

>>WENDY SELTZER: Thank you, Mr. Chair.

Want to thank the board for considering this. The At-Large Summit proposal represents real bottom-up work of the at-large community. It has been coordinated from members of the at-large regional organizations and at-large structures from around the Internet user groups represented in the at large, represented a lot of hard work in defining both the logistic and policy areas that the summit will cover, involved outreach to the groups, involved to get their feedback on issues they'd like to define for them and developed at a summit. The plan at the summit is to engage these user groups in substantive policy discussion so that when ICANN asks for policy recommendations or advice on ICANN policies from the at-large community, that groups who represent consumers and Internet users of all stripes are better equipped to participate in those discussions and to offer ICANN the viewpoints of the individual Internet users.

The vast majority of people who use the Internet, of course, are not registrars or registries or involved in the domain name industry, but are computer users who connect to the Internet and expect things to work and have interests around the use of domain names and the use of the Internet resources that ICANN coordinates.

So this summit is an opportunity for those involved in the at-large structures to get together to get a better sense of how ICANN works and how they can contribute to those policy discussions. And in the process, I think our summit working group will be reaching out to members of other constituencies to engage with members at the summit to strengthen cross-group communications.

So I'm pleased to present the proposal here for an ICANN at-large summit.

Whereas, at the ICANN meeting in New Delhi in February 2008, the board resolved to direct staff to work with the ALAC to finalize a proposal to fund an ICANN At-Large Summit for consideration as part of 9 2008/2009 operating plan and budget process. Whereas potential funding for such a summit has been identified in the fiscal year 2009 budget. Whereas a proposal for the summit was completed and submitted shortly before the ICANN meeting in Paris.

Resolved, the board approves the proposal to hold an ICANN At-Large Summit as a one-time special event and requests that the ALAC work with ICANN staff to implement the summit in a manner that achieves efficiency, including considering the Mexico meeting as the venue.

Resolved, with the maturation of at-large and the proposal of the at-large summit's objectives set out, the board expects the ALAC to look to more self-funding for at-large travel in fiscal year 2010 plan, consistent with the travel policies of other constituencies.

>>PETER DENGATE THRUSH: Thank you, Wendy. Is this a seconder for that proposal? Jean-Jacques.

Any discussion about the at-large summit proposal?

Steve Goldstein.

>>STEVE GOLDSTEIN: Okay. There we go. Thank you, Chair.

One of our dear departed senators once said, "A million here, a million there, and the next thing you know, you're talking real money."

We're looking at a half-a-million-dollar request for this. Our budget keeps growing. I believe it's incumbent upon us to exercise fiscal restraint. And in my estimation, spending this sum is frivolous. So I will vote no.

>>PETER DENGATE THRUSH: Thank you, Steve.

Roberto.

>>ROBERTO GAETANO: I think that we have been discussing this initiative for quite a while. I think that -- well, maybe I have a better understanding of what the situation in the ALAC is, because I'm coming from that part of the organization.

I found it an excellent initiative that in a moment especially in which we are doing an effort in order to bring the voice of the users in the picture that has been not as strong as other parts of the community, I think that this -- an initiative like this will have a beneficial consequence in the

organization in terms of more user participation. And the money that we are going to spend in this should be seen as an investment in order to broaden the -- our participation.
Thank you.
>>PETER DENGATE THRUSH: Thank you, Roberto.
[ Applause ]
>>PETER DENGATE THRUSH: Dennis.
>>DENNIS JENNINGS: Thank you, Chairman.
I mentioned earlier the -- my belief that a core value of ICANN is to ultimately to look after the interests of the citizens of the world and the Internet users, and to take cognizance of those interests.
ICANN, as I understand it -- and certainly when I was involved in the early days -- has had great difficulty in finding meaningful ways to have representation from the citizens of the world in its discussions and policy development. And I believe that this ALAC development, which is a structured approach of representative bodies, has the possibility to be much more successful than any previous attempt. And then I don't -- so, therefore, I do not think this is a frivolous expenditure of money. I think it's a very serious attempt to develop the ALAC into an organ that will bring that perspective to the policy development activities in ICANN. And I would very strongly urge us to move with this with all reasonable speed and to have the summit, if possible, in Cairo, but probably for budget reasons, better in Mexico.
Thank you.
[ Applause ]
>>PETER DENGATE THRUSH: Thank you, Dennis.
Bruce, I have you next in the queue. No?
Anyone else want to comment?
In that case, I'll put the resolution. It's been moved and seconded, it will result in funding of the At-Large Summit.
All those in favor, please raise their hands.
Those opposed?
Note Steve Goldstein opposing.
Any abstentions?
So the motion is carried.
[ Applause ]
>>PETER DENGATE THRUSH: I'm forced to conclude that there must be some at-large members and supporters in the room.
Good luck with the summit.
We come, then, to an item of staff, and in this case, it seems most appropriate to hand this resolution to the head of the staff, Paul Twomey.
>>PAUL TWOMEY: Thank you, Chairman.
Chairman, it's not a usual practice for me to bring to the board or to -- especially a public board meeting -- a celebration of a staff member furthering career and transiting out of ICANN employment. But I do think some people, you know, we really should take note of. And, in particular, a point that has been very close to my heart, which is to celebrate the careers of staff members who have been the early contributors to the ICANN process from '98 onwards.
We have had a small handful of staff, some of whom, of course, came across with Jon, but there's been, you know, in the history of ICANN that we're now celebrating, some people have played an amazing role in helping a very small startup on borrowed money turn into the sort of organization that's able to make the decisions that we have this afternoon.
One of those people who I have always both celebrated for his commitment and consider strongly as a friend is Steve Conte. So let me read the following resolution.
Whereas, Steve Conte has served as an employee of ICANN for over five years.
Whereas, Steve has served ICANN in a number of roles, currently as ICANN's chief security officer, but also as a vital support to the board and its work at meetings.
Whereas, Steve has given notice to ICANN that he has accepted a new position with the Internet Society and that his employment with ICANN will conclude at the end of this meeting.
Whereas, Steve is of a gentle nature, possessed of endless patience, a love of music, a love of Internet and of those who love the Internet.
Whereas ICANN board wishes to recognize Steve for his service to ICANN and the global Internet community. In particular, Steve has tirelessly and with good nature supported the past 19 ICANN meetings and his extraordinary efforts have been most appreciated.
Resolved, the IGO board formally thanks Steve Conte and for his service to ICANN, and expresses its good wishes to Steve for his work with ISOC and all his future endeavors.
[ Applause ]
>>PETER DENGATE THRUSH: Ladies and gentlemen, did I offer Steve a chance to respond, but such is the measure of the man that he was very touched by your response, and unable to.
Steve, thanks very much for all your hard work.
We come, then, to more thanks. And it's my pleasure now to thank the sponsors. And with your approval, I won't read them all out, because they're read into the record. But then that have we confirm how significant their sponsorship is to us and how much we appreciate it.
We've had 1672 people here at these meetings at no charge. And when you think of the services and the support and the provisions, not to mention the feeding, which Jean-Jacques raised, it's an extraordinary amount. And without the sponsors, these meetings just simply could not occur.
So the board extends thanks to all sponsors of the meeting. And I'd ask the board to show their appreciation for the sponsors by joining me in a round of applause.
[ Applause ]
>>PETER DENGATE THRUSH: I'm relatively sure the sponsors feel they've had good value for their money and I invite them to approach the representatives of the Mexican community while they're here to keep up the good work.
We also thank a number of other people who are very important, and we begin with thanks to the local host organizer, AGIFEM, its President Daniel Dardailler, Vice-President Pierre Bonis, and CEO Sebastien Bachollet, as well as Board Members from AFNIC, Amen, as well as Domaine fr, Eurodns, INDOM, Internet Society France, Internet fr, Namebay, Renater, and W3C.
The board would also like to thank Eric Besson, the Minister for Forward Planning, Assessment of Public Policies and Development of the Digital Economy for his participation in the Welcome Ceremony and the Welcome Cocktails.
The board also thanks Francis Bouvier, and Directeur, Philippe Nieuwbourg, and Bertrand Delano, Mare de Paris, and Jean-Louise Missika, adjoint au Maire de Paris.
The board expresses its appreciation to the scribes, Laura Brewer, Teri Darrenougue, Jennifer Schuck, and Charles Motter and to the entire ICANN staff for their efforts in facilitating the smooth operation of the meeting.
ICANN would particularly like to acknowledge the many efforts of Michael Evans for his assistance in organizing the past 18 public board meetings and many other smaller events for the ICANN community.
The board also wishes to express its appreciation to VeriLan Events Services, Inc., for technical support, Auvitec and Prosn for audio/visual support, Callipe Interpreters France for interpretation, and France Telecom for bandwith.
Additional thanks are given to Le Meridien Montparnasse for this fine facility and to the event's facilities and support. The board also wishes to thank all those who worked to introduce a business access agenda for the first time at this meeting, Ayesha Hassan of the International Chamber of Commerce, Marilyn Cade, and ICANN staff. The members of the board wish to especially thank their fellow board member, Jean-Jacques Subrenat for his assistance in making the arrangements for this meeting in Paris, France.

[Applause]
>>PETER DENGATE THRUSH: So merci.
Could I ask Jean-Jacques and Sebastien to come forward? Oh, and Daniel. Is Daniel Dardailler here?
>>PAUL TWOMEY: While we're all coming up to the -- I just thought I'd like to really congratulate the community all on what I think has been a magnificent meeting and I'd like to share with you something that maybe we'll put into the LORE. It's what we call inside the staff "the Conte principle" which emerged once in a staff meeting about 18 months ago when somebody said -- asked the question, you know, "Why do you work here," and Steve responded just like this, with the following phrase: "It's cool, it's global, it's important, it's noble." And we thought of making a T-shirt for it but I think that's a good summary of what we've been able to achieve together this meeting.
>>PETER DENGATE THRUSH: Jean-Jacques.
[Applause]
>>JEAN-JACQUES SUBRENAT: While accepting this -- these words of thanks, I think that it's all about the real organizers. I happen to be French. I happen to be on the board. Maybe I helped occasionally here and there, but that's not the point. The real point is not the few days of work, it's the months of devotion of selflessness of the organizers, on both sides of the ICANN side, on the side of the promoters, the initiators of this meeting, and I think that the success of this meeting is largely due to them.
So thank you to them.
[Applause]
>>PETER DENGATE THRUSH: Thank you, Jean-Jacques. Sebastien?
A small token of our thanks which we've expressed previously but I want to say now how sincerely we appreciate all the enormous effort that's gone into making this meeting. Those of us who have been associated with these meetings know that the work began at least a year ago, and your wife will be very glad to get you back. It's an extraordinary effort. Thank you very, very much for your work.
[Applause]
>>SEBASTIEN BACHOLLET: If you'll allow me, perhaps for the last time today will take the floor in French.
This is only been done in part but I would like to thank Daniel Dardailler and Pierre Bonis who were very helpful in organizing this event and I would like to thank several people. They may be present here in the room or they may not be, but they have been of tremendous assistance and when I say they have helped us, I mean the French organizers and the ICANN organizers.
I will start by thanking ICANN staff because this meeting would not have been possible, had we not been able to work together, teams here in Paris and the teams in Marina del Rey.
I would like to thank Diane. She is here. She has done tremendous work. She is not very visible, but if she were not here, we would not be here either. Thank you, Diane.
[Applause]
>>SEBASTIEN BACHOLLET: Michael as well as other members of the staff have been very helpful and carried out tremendous work.
They together have many skills, and I'd like to thank Laurent Ferrali. You may have seen him in the corridors, moving boxes around so the sponsors were able to set up properly, and that the recording was taking place in good conditions, and organized the rooms. Luis Senlis and the students from the communications school who came here as interns, so to speak, helping -- welcoming participants. And I'd also like to thank my own son, who is 15 years old, who spent two weeks helping us and spent two days here helping us with recording. Thank you, Olivier.
[Applause]
>>SEBASTIEN BACHOLLET: There are two people who have been particularly helpful in organizing this meeting. I don't know if they're here right now. Odile Ambry, if she is here, I wish to thank her, and Pierre Bonis. I'm mentioning his name a second time. He has been very helpful.
[Applause]
>>SEBASTIEN BACHOLLET: In closing, it has been said the city hall of France, and I would like to add the caterers who have been responsible for feeding everybody. There were 600 persons at dinner last night -- I'm sorry, over a thousand people were at the dinner last night that was hosted by city hall. This is truly a record, and the caterer should be thanked for all of his efforts.
Thank you. I hope you have worked very hard during the week and that you will now take advantage of this opportunity to enjoy Paris and France. We've been very happy to host you here, and I'm certain that ICANN will continue its work and move ahead. Thanks to all of you and enjoy your time in Paris.
[Applause]
>>PETER DENGATE THRUSH: Thank you, Sebastien. We have a small token for your colleague, Daniel (saying name).
>>PETER DENGATE THRUSH: So ladies and gentlemen, that brings us to the end of the board meeting. Thank you, members, for your attendance. Thank you, board members, to your service. A very long day. Particularly you guys, we count on your support and we look forward to seeing you in Cairo. Good evening.
[Applause]

# R-75

RESPONDENT'S EXHIBIT

# New gTLD Program
# Explanatory Memorandum

# Proposed Process for Geographic Name Applications

Date of Publication: 22 October 2008

## Background – New gTLD Program

Since ICANN was founded ten years ago as a not-for-profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, one of its foundational principles, recognized by the United States and other governments, has been to promote competition in the domain-name marketplace while ensuring Internet security and stability. The expansion will allow for more innovation, choice and change to the Internet's addressing system, now constrained by only 21 generic top-level domain names. In a world with 1.5 billion Internet users—and growing—diversity, choice and competition are key to the continued success and reach of the global network.

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. 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 coordinate 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 culmination of this policy development process was a decision by the ICANN Board of Directors to adopt the community-developed policy in June 2008 at the ICANN meeting in Paris. A thorough brief to the policy process and outcomes can be found at http://gnso.icann.org/issues/new-gtlds/.

This paper is part of a series of papers that will serve as explanatory memoranda published by ICANN to assist the Internet community to better understand the Request for Proposal (RFP), also known as *applicant guidebook.* A public comment period for the RFP will allow for detailed review and input to be made by the Internet community. Those comments will then be used to revise the documents in preparation of a final RFP. ICANN will release the final RFP in the first half of 2009. 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.

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

## Summary of Key Points in this Paper

- TLDs that are country, territory or counties and states names will require documented support from a relevant government or authority.
- Applicants requesting a TLD that represents a city name will also require such support unless the name is to be used only to represent a generic term or brand.
- Multiple applications for the same city name will require applicants to resolve the contention among them (as with existing practice regarding contested country code TLDs).
- Objection is available for misappropriation of language and people descriptions.
- IDN strings will be evaluated by linguistic panels.

## Background

Based on advice received from ICANN's Governmental Advisory Committee (GAC), applications for TLD strings that are considered to represent a country, territory or place name or regional language or people description should require the approval of the relevant government or public authority. The ICANN bylaws state that 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. (*See* http://www.icann.org/en/general/bylaws.htm#XI.)

The *GAC Principles Regarding New gTLDs* (GAC Principles), paragraph 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 governments or public authorities."

"Relevant government or public authority" means the national government or public authority of a distinct economy as recognized in international fora, as those terms are used in the ICANN bylaws and the GAC Operating Principles, associated with the country code. (From GAC ccTLD principles.)

Note 1

The GAC advice is inconsistent with recommendation 6 of the GNSO Reserved Names Working Group (referred to in this paper as the RNWG) that "There should be no geographical reserved names (i.e., no exclusionary list, no presumptive right of registration, no separate administrative procedure, etc.). The proposed challenge mechanisms currently being proposed in the draft new gTLD process (e.g., Recommendations 3 and 20 of the New gTLD Final Report) 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.

Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.

Note 2

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.

Note 3

In discussions with ICANN's Board and the GNSO Council, the GAC has indicated that they do not consider the objection process to be an adequate safeguard to a government's protection of their country or territory name, or other geographic or geopolitical terms, on the basis that many governments are not engaged in the ICANN process and would not be aware or understand the relevance to them of the introduction of new gTLDs or the application process.

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

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

Following is a consideration of the contrary views and a proposed process for strings which represent a geographical name.

## Considerations

According to Article XI, Section 2.1.j of the ICANN bylaws, the advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

The GAC has expressed concerns that the GNSO proposals do not include provisions reflecting important elements of the GAC principles. These elements include the treatment of geographical names as outlined in paragraph 2.2 of the GAC principles.

The GAC does not agree that the objection and dispute resolution procedures described by the GNSO policy recommendations is adequate for ensuring that governments and public authorities are aware of applications for strings which represent their country or territory names, or certain other geographic and geopolitical descriptions. The GAC principles state, among other things, that ICANN should avoid such names "…unless in

agreement with the relevant governments or public authorities". Therefore, the GAC has stated a preference that such applications require the affirmative relevant government or public authority's approval as opposed to relying on the objection process.

There are some areas of "intersection" between the GAC Principles and GNSO Policy Recommendations. The GAC principles call for a process that requires the applicant to provide evidence that the government or public authority supports, or does not object, to the release of names. It does not call for the names to be reserved and therefore names will not be withheld. While confirming government or public authority approval of a string will require an additional administrative step in the process, which the RNWG does not support, an application which has the relevant government or public authority support is expected to reduce the instances of objection for such names.

However, the requirement to include evidence of support for certain applications does not preclude or exempt any applications from being the subject of objections under GNSO Recommendation 20, under which applications may be rejected based on objections showing substantial opposition from the targeted community.

The RNWG does recognize that applicants interested in applying for a geographical name should be advised of the GAC principles and further "…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". With this knowledge, a prudent applicant would take steps to discuss their application with the relevant government or public authority, and seek their support, prior to submitting the application to reduce the possibility of being subject to an objection from the government at a later stage in the process. Prescribing evidence of support, or non-objection, is seen as a formalization of this step for the applicant.

Such a process for country and territory names was discussed to some extent among the GNSO Council, ICANN staff and others during a New gTLD implementation review in Los Angeles.

Country and territory names are relatively easily understood terms and the ISO 3166-1 list will be used as a guide to determining names that fit into this category. Even in the case of translations and alternative, accepted representations of country/territory names can be discerned with only limited difficulty. However, "place names" are more difficult to define and for the purposes of this process, the term "place names" is interpreted as sub-national names which could be those of a state, province or county. The protection of city names is challenging because it can also be a generic term, or a brand name, and the names are rarely unique. The protection of language names is considered difficult to administer as in a lot of cases there are no easily established rights associated with a language or a people description.

A suggested approach for each category will be addressed separately below.

## Approach

### Country and territory names

Applicants requesting a gTLD string that is a meaningful representation of the name of a country or territory listed in the ISO 3166-1 list http://www.iso.org/iso/country_codes/iso_3166_code_lists/english_country_names_and_code_elements.htm will be required to provide documented evidence of support, or

non- objection, from the relevant government or public authority. This will include a representation of the country or territory name in any of the six official United Nations languages (French, Spanish, Chinese, Arabic, Russian and English) and the country or territory's local language. For example, an application for .France in any of these languages will require evidence of support, or non-objection, from the French government; an application for .India in any of the UN languages, or any of the 11 official languages of India, will require evidence of support, or non-objection.

A string is meaningful if it is in the Official Language and: a) is the name of the Territory; or b) a part of the name of the Territory that denotes the Territory in the language; or c) a short-form designation for the name of the Territory, recognizably denoting it in the indicated language.

Note 4

Official language is defined as: 'one that has a legal status in the Territory or that serves as a language of administration (Official Language). This definition is based on: *Glossary of Terms for the Standardization of Geographical Names,* U.N. Group of Experts on Geographic Names, United Nations, New York, 2002. A language is demonstrated to be an Official Language: a) If the language is listed for the relevant Territory as an ISO 639 language in Part Three of the "Technical Reference Manual for the standardization of Geographical Names", United Nations Group of Experts on Geographical Names (the UNGEGN Manual) (http://unstats.un.org/unsd/geoinfo/default.htm); or b) If the language is listed as an administrative language for the relevant Territory in ISO 3166-1 standard under column 9 or 10; or c) If the relevant public authority in the Territory confirms that the language is used in official communications of the relevant public authority and serves as a language of administration.

It will be the applicant's responsibility to identify if the string represents a country or territory name, and also to determine the relevant government or public authority.

The letter/s should clearly express the support, or non-objection, for the application and demonstrate an understanding of the string being requested and what it will be used for.

The ISO 3166-1 list is identified as the reference list for determining, for the purposes of new gTLDs process, a country or territory name as the list is consistent with RFC 1591 in the selection of the ISO 3166 list as a basis for country code top-level domain names and is accepted in the ICANN community. The United Nations Multilingual Terminology Database at unterm.un.org may be used as an adjunct to the reference list to assist with the representation of country or territory names in local languages.

### Place names—counties, states, provinces (sub-national geographic name)

Place names are considered those that represent a sub-national geographical identifier such as counties, states, regions or provinces. City names will be addressed separately below. The ISO 3166-2 list (for more information see http://www.iso.org/iso/country_codes/background_on_iso_3166/iso_3166-2.htm) which provides a list of subdivisions within a country and will be used as a reference for applicants. A string which represents place names identified on this list will require evidence or support, or non-objection, from the relevant government or public authority.

Where the string is a sub-national geographical identifier on this list over which more than one government or public authority claims authority, ICANN will require the applicant to provide evidence of support, or non-objection, by all the relevant governments or public authorities claiming such authority.

It will be the applicant's responsibility to identify if the string represents a place name, and also to determine the relevant government/s or public authority/s.

The letter/s should clearly express the support, or non-objection, for the application and demonstrate an understanding of the string being requested and what it will be used for.

### Place names—cities

City names offer challenges because a city name can also be a generic term (Orange or Bath), a brand name (Leyland or Austin), and in many cases no city name is unique.

An applicant that declares it intends to use the TLD for purposes associated with the city name, will require supporting documentation, or evidence of non-objection, from the relevant government/s or public authority/s. It will not be necessary for an applicant to receive a non-objection from governments or public authorities considered outside the jurisdiction of the city intended to be represented by the applicant.

An applicant seeking a TLD that could be considered a city name, but is also a generic term or a brand name, and it is clear that the applicant declares to use the TLD for the generic or brand name use will not require supporting document, or evidence of non-objection.

Applicants, who are requesting a string which is also a city name, but will be used to represent a generic term or brand name will not require evidence of support or non-objection, provided the application clearly reflects that it will be used to leverage the generic term or brand name.

The capital cities of the countries or territories on the ISO 3166-1 list are more readily identifiable and will require evidence of support, or non-objection, from the relevant government of public authority for the use of the name.

It will be the applicant's responsibility to identify if the string represents a place name, and also to determine the relevant government/s or public authority/s.

### Applications for the same city name

In the event that more than one application is received for a city name, and all the applications have support from the relevant governments or public authorities, and pass all other application requirements, applicants will be placed in contact with each other and asked to resolve the contention. This is consistent with IANA processes regarding contested delegation of ccTLDs.

### Language and people descriptions

It is difficult to determine the relevant government or public authority for a string which represents a language or people description as there are generally no recognized established rights for such descriptions.

Recommendation 20 of the GNSO Final Report provides that an entity can object to a misappropriated community label thereby providing recourse for affected communities members.

Therefore, no further protection for strings representing such terms are afforded under this process.

### Continents and UN Regions

An application for a string which represents a continent or UN region appearing on the Composition of macro geographical (continental) regions, geographical sub-regions,

and selected economic and other groupings list http://unstats.un.org/unsd/methods/m49/m49regin.htm *will require evidence of support, or non-objection, from a substantial number of the relevant governments and/or public authorities associated with the continent or the UN region.*

It will be the applicant's responsibility to identify if the string represents a place name, and also to determine the relevant government/s or public authority/s.

## Applicability of IDNs

It is anticipated that the gTLD process will include IDNs. Therefore, IDN strings will be evaluated by panels with access to appropriate linguistic expertise to ascertain whether the IDN string represents a geographic or geopolitical name and therefore requires government approval. In the event that an IDN is considered to represent any of the categories defined above, the same requirements will apply.

## Requirements

The evidence of support, or non-objection, from the relevant government or public authority is defined as a signed letter of support, or non-objection, from the Minister with the portfolio responsible for domain name administration, ICT, foreign affairs or Office of the Prime Minister or President; or a senior representative of the agency or department responsible for domain name administration, ICT, Foreign Affairs or the Office of the Prime Minister.

The letter should clearly express the government or public authority's support, or non-objection, for the application and demonstrate an understanding of the string being requested and what it will be used for.

A Geographical Names Panel (GNP) will be established to evaluate applications to determine if a string represents a country or territory name, sub-national geographic name, city name, continent or UN Region; verify the supporting documentation is from the relevant government/s or public authority/s; and confirm the authenticity of the supporting documentation.

If there is any doubt regarding the relevant government or public authority, or the authenticity of the communication, the GNP may consult with additional expertise. This may include relevant diplomatic authorities or the Governmental Advisory Committee member for the government concerned on the competent authority and appropriate point of contact with their administration for communications. These consultations will occur in a manner consistent with the current ICANN's IANA root management function.

## Procedure

1. Applicant submits a geographic application and indicates whether the TLD represents a:
    - Country or territory and ensures that the application has the evidence of support, or non-objection from the relevant government or public authority;
    - Sub-national geographic name such as a province, state, or county and ensures that the application has evidence of support, or non-objection, from the relevant government/s or public authority/s;

- Capital city of a country or territory and ensures that the application has evidence of support, or non-objection from the relevant government/s or public authority/s;
- City name which the applicant intends to use for purposes associated with the city and ensures that the application has evidence of support, or non-objection, from the relevant government/s or public authority/s
- Continent or UN Regions and ensures that the application has the evidence of support, or non-objection, from a significant number of the governments or public authorities of the corresponding countries and territories.

2. All new gTLD applications will be reviewed by the Geographic Names Panel (GNP) to determine if the applied for TLD represents:
   - A country or territory name as listed on the ISO 3166-1 list, including translations of the name in the UN languages (English, French, Arabic, Spanish, Russian and Chinese) or the local language of the country or territory;
   - A sub-national names such as province, county or state as listed on the ISO 3166-2;
   - The capital city name of a country or territory appearing on the ISO 3166-1 list;
   - A city name which the applicant intends to use for purposes associated with the city
   - Continent or UN Region appearing on the *Composition of macro geographical (continental) regions, geographical sub-regions and selected economic and other groupings list*.

   The GNP may consult additional expertise.
3. Applications for strings determined to represent one of the geographic terms in Item 2 will be reviewed by the GNP to ensure that the necessary supporting documentation as outlined in Item 1 forms part of the application.
4. Applications determined by the GNP not to have the necessary supporting documentation will be considered incomplete. Applicants will be afforded an opportunity to provide, within a defined period, the necessary supporting documentation.
5. The GNP verifies that the supporting documentation is from the relevant government or public authority, which could be but is not limited to, the Minister responsible for domain name administration, ICT, foreign affairs or the Office of the Prime Minister or President. The GNP may consult additional expertise where there is doubt, such as the relevant GAC representative or diplomatic authority for the government concerned.
6. The GNP also verifies the authenticity of the supporting documentation. The GNP may also consult additional expertise, such as the relevant GAC representative or diplomatic authority to assist with this process.
7. Where the GNP determines that the supporting documentation is not from the relevant government or public authority, or that the documentation is not

authentic, the application will be considered ineligible and will not proceed further in the process. Applicants will be notified.

8. Where the GNP determines that the supporting documentation is from the relevant government or public authority, and that the documentation is authentic, the application will proceed to subsequent steps of the TLD evaluation process.
9. The results of the evaluation of all applications will be published.

# R-76

RESPONDENT'S EXHIBIT

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

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

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

## I. WHY NEW gTLDs ARE BEING INTRODUCED

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

## II. FOLLOWING ICANN'S MISSION AND COMMUNITY DEVELOPED PROCESSES

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

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

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

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

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

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

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

## III. COMMUNITY INVOLEMENT WAS KEY IN IMPLEMENTATION PLANNING

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

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

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

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

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

## IV. CONSULTATION WITH THE GAC LEAD TO IMPROVEMENTS

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

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

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

## V. MAJOR IMPLEMENTATION ISSUES HAVE BEEN THOROUGHLY CONSIDERED

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

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

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

**VI. CONCLUSION**

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

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

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

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

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

## I. Introduction

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

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

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

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

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

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

- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO's policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues. http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880

- Starting with the November 2007 Board meeting, the Board began to consider issues related to the selection procedure for new gTLDs, including the need for the process to respect the principles of fairness, transparency and non-discrimination.

- On 20 November 2007, the Board discussed the need for a detailed and robust evaluation process, to allow applicants to understand what is expected of them in the process and to provide a roadmap. The process should include discussion of technical criteria, business and financial criteria, and other specifications. ICANN proceeded to work on the first draft of the anticipated request for proposals. http://www.icann.org/en/minutes/minutes-18dec07.htm

- On 23 October 2008, ICANN posted the Draft Applicant Guidebook, including an outline of the evaluation procedures (incorporating both reviews of the applied-for gTLD string and of the applicant), as well as the intended application questions and scoring criteria. These were continually revised, updated, and posted for comment through successive drafts of the Guidebook. http://www.icann.org/en/topics/new-gtlds/comments-en.htm

- Between June and September 2009, KPMG conducted a benchmarking study on ICANN's behalf, with the objective of identifying benchmarks based on registry financial and operational data. The KPMG report on Benchmarking of Registry Operations ("KPMG Benchmarking Report") was designed to be used as a reference point during the review of new gTLD applications.

- In February 2010, ICANN published an overview of the KPMG Benchmarking Report. This overview stated that ICANN commissioned the study to gather industry data on registry operations as part of the ongoing implementation of the evaluation criteria and procedures for the new gTLD program. http://icann.org/en/topics/new-gtlds/benchmarking-report-15feb10-en.pdf Rationale-all -final-20110609.doc

- On 30 May 2011, ICANN posted the Applicant Guidebook for consideration by the Board. This lays out in full the proposed approach to the evaluation of gTLD applications.

## III. Analysis and Consideration of the Evaluation Process

### A. Policy Development Guidance

The GNSO's advice included the following:

- The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.

- All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.

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

- Applicants must be able to demonstrate their financial and organisational operational capability.

- There must be a clear and pre-published application process using objective and measurable criteria.

**B. Implementation of Policy Principles**

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

The criteria and evaluation processes used in Initial Evaluation are designed to be as objective as possible. With that goal in mind, an important objective of the new TLD process is to diversify the namespace, with different registry business models and target audiences. In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. The Board determined that the process must provide for an objective evaluation framework, but also allow for adaptation according to the differing models applicants will present.

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

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

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

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

### C. Public Comment

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

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

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

### A. Who the Board Consulted Regarding the Evaluation Process

- Legal Counsel
- The GNSO stakeholder groups

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

**B. What Significant Non-Privileged Materials the Board Reviewed**

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

**C. What Factors the Board Found to Be Significant**

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

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

- an established set of criteria that are as objective and measurable as possible;

- the selection of independent evaluation panels with sufficient expertise, resources and geographic diversity to review applications for the new gTLD program; and

- an evaluation and selection procedure for new gTLD registries that respects the principles of fairness, transparency and non-discrimination.

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

- The evaluation process allows for any public or private sector organization to apply to create and operate a new gTLD. However, the process is not like simply registering or buying a second-level domain. ICANN has developed an application process designed to evaluate and select candidates capable of running a registry. Any successful applicant will need to meet the published operational and technical criteria in order to ensure a preservation of internet stability and interoperability.

- ICANN's main goal for the evaluation process was to establish criteria that are as objective and measurable as possible while providing flexibility to address a wide range of business models. Following the policy advice, evaluating the public comments, and addressing concerns raised in discussions with the community, the Board decided on the proposed structure and procedures of the evaluation process to meet the goals established for the program.

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

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

## I. Introduction

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

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

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

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

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

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

- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO's policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues. http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880

- On 2 November 2007, the Board reviewed the ICANN Board or Committee Submission No. 2007-54 entitled Policy Development Process for the Delegation of New gTLDs. The submission discussed application fees and stated, "[a]pplication fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants." http://www.icann.org/en/minutes/minutes-18dec07.htm.

- On 23 October 2008, ICANN published the initial draft version of the gTLD Applicant Guidebook, including an evaluation fee of USD 185,000 and an annual registry fee of USD 75,000. http://www.icann.org/en/topics/new-gtlds/comments-en.htm

- At the 12 February 2009 Board Meeting, the ICANN Board discussed the new version of the Applicant Guidebook ("AGB"). The Board determined that the application fee should remain at the proposed fee of USD 185,000 but the annual minimum registry fee should be

reduced to USD 25,000, with a transaction fee at 25 cents per transaction. Analysis was conducted and budgets were provided to support the USD 185,000 fee. The decrease in of the registry fee to USD 25,000 was based on a level of effort to support registries. http://www.icann.org/en/minutes/minutes-12feb09.htm

- On 6 March 2009, the Board reviewed ICANN Board Submission No. 2009-03-06-05 entitled Update on new gTLDs. The submission analyzed recent public comments and detailed how ICANN incorporated those comments and changes into the fee structure. It also pointed out that the annual registry fee was reduced to a baseline of USD 25,000 plus a per transaction fee of 25 cents once the registry has registered 50,000 names. Also, the submission highlighted a refund structure for the USD 185,000 evaluation fee, with a minimum 20% refund to all unsuccessful applicants, and higher percentages to applicants who withdraw earlier in the process.

- On 25 June, ICANN Published the New gTLD Program Explanatory Memorandum – New gTLD Budget which broke down the cost components of the USD 185,000 application fee. http://www.icann.org/en/topics/new-gtlds/new-gtld-budget-28may10-en.pdf

- On 30 May 2011, ICANN posted a new version of the Applicant Guidebook, taking into account public comment and additional comments from the GAC. http://icann.org/en/topics/new-gtlds/comments-7-en.htm

## III. Major Principles Considered by the Board

### A. Important Financial Considerations

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

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

### 1. Care and Conservatism

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

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

### 2. Up-Front Payment/Incremental Consideration

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

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

#### 3. Fee Levels and Accessibility

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

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

### B. Important Assumptions

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

#### 1. Estimating Methodology

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

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

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

### 2. Expected Quantity of Applications

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

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

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

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

### 3. The New gTLD Program Will Be Ongoing

ICANN's goal is to launch subsequent gTLD application rounds as quickly as possible. The exact timing will be based on experiences gained and changes required after this round is completed. The goal is for the next application round to begin within one year of the close of the application submission period for the initial round.

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

## C. Cost Elements Determined by the Board

### 1. Application Fee

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

| | |
|---|---|
| Development Costs: | USD 27,000 |
| Risk Costs: | USD 60,000 |
| Application Processing: | USD 98,000 |
| Application Fee: | USD 185,000 |

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

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

### a. Development Costs

These costs have two components:

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

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

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

### b. Risk Costs

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

### c. Application Processing

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

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

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

**2. Annual Registry Fee**

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

**3. Refunds**

In certain cases, refunds of a portion of the evaluation fee may be available for applications that are withdrawn before the evaluation process is complete. An applicant may request a refund at any time until it has executed a registry agreement with ICANN. The amount of the refund will depend on the point in the process at which the withdrawal is requested. Any applicant that has not been successful is eligible for, at a minimum, a 20% refund of the evaluation fee if it withdraws its application.

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

| Refund Available to Applicant | Percentage of Evaluation Fee | Amount of Refund |
|---|---|---|
| Within 21 calendar days of a GAC Early Warning | 80% | USD 148,000 |
| After posting of applications until posting of Initial Evaluations results | 70% | USD 130,000 |
| After posting Initial Evaluation Results | 35% | USD 65,000 |
| After the applicant has completed Dispute Resolution, Extended Evaluation, or String Contention Resolution(s) | 20% | USD 37,000 |
| After the applicant has registered into a registry agreement with ICANN | | None |

#### 4. Application Support (JAS WG Charter)

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

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

## IV. The Board's Analysis of Fees

### A. Why the Board Addressed Fees

- ICANN's mission statement and one of its founding principles is to promote user choice and competition. ICANN has created significant competition at the registrar level that has resulted in enormous benefits for consumers. To date, ICANN has not created meaningful competition at the registry level. Based upon the report and recommendation from the GNSO to introduce new gTLDs, the Board decided to proceed with the new gTLD program.

- While the primary implications of the new gTLD program relate to possible improvements in choice and competition as a result of new domain names, there are also important cost implications, both to the ICANN corporate entity and to gTLD applicants. The Board initially determined that the application fees associated with new gTLD applications should be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process**.**

- Both the Board and members of the community have commented on the application fee structure for the new gTLD program. From those comments the Board has determined that the new gTLD implementation should be fully self-funding and revenue neutral, and that existing ICANN activities regarding technical coordination of names, numbers, and other identifiers should not cross-subsidize the new program.

**B. Who the Board Consulted Regarding Fees**

- Legal Counsel

- The GNSO

- ICANN's Supporting Organizations

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

**C. Public Comments Considered by the Board**

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

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

**D. What Factors the Board Found to Be Significant**

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

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

- That the new gTLD implementation should be fully self funding and revenue neutral; and

- That existing ICANN activities regarding technical coordination of names, numbers, and other identifiers should not cross-subsidize the new program.

- That any revenue received in excess of costs be used in a manner consistent with community input.

- Evaluation fees will be re-evaluated after the first round and adjusted.

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

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

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

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

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

## I. Introduction

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

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

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

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

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

- On 28 March 2007, the GAC adopted principles to govern the introduction of new gTLDs (the "GAC Principles"). Sections 2.2 and 2.7 of the GAC Principles address geographic names issues at the top and second level.
    - 2.2 ICANN should avoid country, territory, or place names, and country, territory, or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.
    - 2.7 Applicant registries for new gTLDs should pledge to: a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of

governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD, and b) ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.
http://gac.icann.org/system/files/gTLD_principles_0.pdf

- On 23 May 2007, the GNSO Reserved Names Working Group issued its final report. Recommendation 20 of the report stated that: (1) there should be no geographical reserved names; and (2) governments should protect their interests in certain names by raising objections on community grounds.
http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm

- On 8 August 2007, the GNSO issued its final report regarding the introduction of new gTLDs. Recommendation 20 of the report intended to provide protections for geographical names, stating that an application for a new gTLD should be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be targeted.
http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

- On 26 June 2008, the Board approved the GNSO's Recommendations for the introduction of new gTLDs and directed staff to develop an implementation plan.
http://www.icann.org/en/minutes/resolutions-26jun08.htm

- On 24 October 2008, ICANN published Version 1 of the new gTLD Applicant Guidebook ("Version 1"), which incorporated various concepts set forth in the GAC Principles. Version 1 required applications involving geographic names to be accompanied by documents of support or non-objection from the relevant government authority. Geographic names included country and territory names, sub-national names on the ISO 3166-2 list, city names (if the applicant was intending to leverage the city name), and names of continents and regions included on a UN-maintained

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

- The 24 October 2008 posting also included an explanatory memorandum on the topic of geographical names, describing the various considerations used in arriving at the proposed approach. http://www.icann.org/en/topics/new-gtlds/geographic-names-22oct08-en.pdf

- On 28 December 2008, the ccNSO commented on Version 1. The ccNSO stated that (1) the restriction of protections for country/territory names to the 6 official United Nations languages needed to be amended to translation in any language; and (2) All country names and territory names should be ccTLDs – not gTLDs and should not be allowed until the IDN ccPDP process concluded. http://forum.icann.org/lists/gtld-evaluation/msg00015.html

- On 12 February 2009, the Board met to discuss: (1) proposed changes to Version 1; and (2) the implementation of policy recommendations given by the GAC and GNSO. http://www.icann.org/en/minutes/minutes-12feb09.htm

- On 18 February 2009, ICANN published an analysis of public comments received http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf

- Also on 18 February 2009, ICANN published Version 2 of the new gTLD Applicant Guidebook ("Version 2"), which clarified the definition of geographic names set forth in Version 1. In addition, Version 2 expanded protection for country and territory names involving meaningful representations in any language, and augmented requirements for documentation of support or non-objection from relevant governments and public authorities. http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf; http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm

- On 6 March 2009, the Board resolved that it was generally in agreement with Version 2 as it related to geographic names, but directed staff to revise the relevant portions of Version 2 to provide greater specificity on the scope of protection at the top level for the

names of countries and territories listed in the ISO 3166-1 standard. The Board also directed ICANN staff to send a letter to the GAC by 17 March 2009 identifying implementation issues that have been identified in association with the GAC's advice, in order to continue communications with the GAC to find a mutually acceptable solution.
http://www.icann.org/en/minutes/resolutions-06mar09.htm

- On 17 March 2009, Paul Twomey delivered a letter to Janis Karklins that: (1) outlined the Board's 6 March 2009 resolution; (2) stated that ICANN's treatment of geographic names provided a workable compromise between the GAC Principles and GNSO policy recommendations; and (3) sought advice to resolve implementation issues regarding the protection of geographic names at the second level. http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf

- On 9 April 2009, the ccNSO commented on Version 2. The ccNSO reiterated that all country and territory names are ccTLDs – not gTLDs.
http://forum.icann.org/lists/2gtld-guide/pdfc3uGsuV7CG.pdf

- On 24 April 2009, Janis Karklins delivered a letter to Paul Twomey stating that: (1) countries should not have to use objection process and should instead wait for the IDN ccTLD PDP to delegate country names; (2) the names contained on three lists be reserved at the second level at no cost for the government; and (3) ICANN should notify registries and request the suspension of any name if the government notifies ICANN that there was a misuse of a second level domain name.
http://www.icann.org/correspondence/karklins-to-twomey-24apr09.pdf

- On 29 May 2009, Janis Karklins delivered a letter to Paul Twomey. The letter that stated that: (1) the proposed changes to Version 2 in relation to geographic names at the second level were acceptable to the GNSO; and (2) the GNSO and the GAC were not in agreement with regard to other issues relating to Geographic names at the top level. http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf

- On 31 May, 2009, ICANN published an analysis of the public comments received concerning draft version 2 of the Applicant Guidebook.
  http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf

- On 26 June 2009, the Board discussed proposed changes to the geographic names section of the Applicant Guidebook. These proposed changes were intended to provide greater specificity on the scope of protection at the top level for the names of countries and territories and greater specificity in the support requirements for continent or region names. The changes also provided additional guidance to applicants for determining the relevant government or public authority for the purpose of obtaining the required documentation.
  http://www.icann.org/en/minutes/resolutions-26jun09.htm

- On 18 August 2009, Janis Karklins delivered a letter to Peter Dengate Thrush that stated that (1) strings that were a meaningful representation or abbreviation of a country name or territory name should not be allowed in the gTLD space; and (2) government or public authority should be able to initiate the redelegation process in limited circumstances.
  http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf

- On 22 September 2009, Peter Dengate-Thrush delivered a letter to Janis Karklins, responding to GAC comments on draft version 2 of the Applicant Guidebook and describing the rationale for the proposed treatment of country names, as well as the Board's general intention to provide clear rules for applicants where possible with reference to lists.
  http://www.icann.org/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf

- On 04 October 2009, ICANN published Version 3 of the new gTLD Applicant Guidebook ("Version 3").
  http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-04oct09-en.pdf

- On 21 November 2009, ccNSO delivered a letter to the Board, raising concerns about the treatment of country and territory

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

- On 15 February 2010, ICANN published an analysis of the public comments received. http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf

- On 12 March 2010, the Board resolved that ICANN should consider whether the Registry Restrictions Dispute Resolution Procedure or a similar post-delegation dispute resolution procedure could be implemented for use by government supported TLD operators where the government withdraws its support of the TLD. http://www.icann.org/en/minutes/resolutions-12mar10-en.htm

- On 31 May 2010, ICANN published Version 4 of the new gTLD Applicant Guidebook ("Version 4"). Version 4 excluded country and territory names from the first gTLD application round, continuing with the existing definition of country and territory names in Version 3. http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm

- On 23 September 2010, Heather Dryden delivered a letter to Peter Dengate Thrush that stated that that Version 4 still did not take fully into consideration GAC's concerns regarding the definition of country/territory names. http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf

- On 25 September 2010, the Board met in Trondheim, Norway and decided: (1) not to include translations of the ISO 3166-1 sub-national place names in the Applicant Guidebook, and (2) to augment the definition of Continent or UN Regions in the Applicant Guidebook to include UNESCO's regional classification list. At the same meeting, the Board resolved that ICANN staff should determine if the directions indicated by the Board regarding geographical names and other issues are consistent with GAC comments, and recommend any appropriate further action in light of GAC's comments. http://icann.org/en/minutes/resolutions-25sep10-en.htm

- On 28 October, 2010, the Board discussed the scope, timing and logistics of a consultation needed with GAC regarding remaining geographic names issues in the new gTLD program. The Board agreed that staff should provide a paper on geographic names to GAC. http://www.icann.org/en/minutes/prelim-report-28oct10-en.htm

- On 12 November 2010, ICANN posted the proposed final version of the Applicant Guidebook (the "Proposed Final Guidebook"). http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf

- On 23 February 2011, the GAC released its Indicative Scorecard on New gTLD Outstanding Issues. This scorecard included advice from the GAC on the topics of Post-Delegation Disputes and Use of Geographic Names. http://gac.icann.org/system/files/20110223_Scorecard_GAC_outstanding_issues_20110223.pdf

- On 28 February – 1 March 2011, the Board met with GAC representatives at a meeting in Brussels to discuss the issues raised by the GAC.

- On 4 March 2011, the Board published its notes on the GAC Indicative Scorecard. The Board provided an indication of whether each component of the GAC's advice was consistent (fully or partially) or inconsistent with the Board's position on each of the issues. http://gac.icann.org/system/files/2011-03-04-ICANN-Board-Notes-Actionable-GAC-Scorecard.pdf

- On 12 April 2011, the GAC published comments on the Board's response to the GAC Scorecard. http://gac.icann.org/system/files/20110412_GAC_comments_on_the_Board_response_to_the_GAC_scorecard_0.pdf

- On 15 April 2011, ICANN posted a discussion draft of the Applicant Guidebook (the "Discussion Draft Guidebook"). This version expanded the definition of country names to include "a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization" as well as providing clarification to applicants that in the event of a dispute between a

government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, ICANN will comply with a legally binding order from a court in the jurisdiction of the government or public authority that has given support to an application. http://www.icann.org/en/topics/new-gtlds/draft-rfp-redline-15apr11-en.pdf

- On 26 May 2011, the GAC provided comments on the 15 April 2011 Discussion Draft. http://gac.icann.org/system/files/GAC%20Comments%20on%20the%20new%20gTLDs%20-%2026%20May%202011.pdf

- On 30 May 2011, ICANN posted another version of the Applicant Guidebook, taking into account public comment and the additional comment from the GAC. This version includes some clarifications but no significant changes from the 15 April 2011 Discussion Draft. http://icann.org/en/topics/new-gtlds/comments-7-en.htm

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

### A. Brief Introduction to Geographic Names

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

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

- An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard;
- An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name;
- An application for any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard; and
- An application for a string which represents a continent or UN region appearing on the "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" list.

  - Applications for strings that are country or territory names will not be approved, as they are not available under the new gTLD program in this application round.
  - The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds, under which applications may be rejected based on objections showing substantial opposition from the targeted community.

- Section 2.3.1 of the Draft Discussion Guidebook provides additional guidance:

  - If an application has been identified as a geographic name requiring government support, but the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the initial evaluation period, the applicant will have additional time to obtain and submit this information in the extended evaluation period.

B. Why the Board Addressed Geographic Names

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

C. Who the Board Consulted

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

D. What Significant Non-Privileged Materials the Board Reviewed

- **Communications from GAC**

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

- On 29 May 2009, Janis Karklins delivered a letter to Paul Twomey http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf

- On 24 June 2009, GAC issued a communiqué http://gac.icann.org/communiques/gac-2010-communique-38

- On 18 August 2009, Janis Karklins delivered a letter to Peter Dengate http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf

- On 22 September 2009, Peter Dengate-Thrush delivered a letter to Janis Karklins http://www.icann.org/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf

- On 10 March 2010, Janis Karklins delivered a letter to Peter Dengate-Thrush http://www.icann.org/correspondence/karklins-to-dengate-thrush-10mar10-en.pdf

- On 23 September 2010, Heather Dryden delivered a letter to Peter Dengate-Thrush http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf

  On 23 February 2011, the GAC delivered its Indicative Scorecard on New gTLD Outstanding Issues http://gac.icann.org/system/files/20110223_Scorecard_GAC_outstanding_issues_20110223.pdf

- **GNSO Policy Recommendations**

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

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

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

- **ccNSO Comments**

  - On 28 December 2008, ccNSO commented on Version 1 http://forum.icann.org/lists/gtld-evaluation/msg00015.html

  - On 9 April 2009, ccNSO commented on Version 2 http://forum.icann.org/lists/2gtld-guide/pdfc3uGsuV7CG.pdf

  - On 6 July 2009, ccNSO commented on an excerpt from Version 3 http://forum.icann.org/lists/e-gtld-evaluation/msg00006.html

  - On 21 November 2009, ccNSO commented on Version 3 again http://www.icann.org/correspondence/disspain-to-dengate-thrush-21nov09-en.pdf

- **Public Comments**

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

E. What Concerns the Community Raised

- There is a need for clarification of the geographic names process in the Application Guidebook.

- The new gTLDs should respect the sensitivity regarding terms with national, cultural, geographic and religious significance.

- The enumerated grounds for objection might not provide sufficient grounds to safeguard the interest of national, local and municipal governments in the preservation of geographic names that apply to them.

- Delegation and registration of country and territory names is a matter of national sovereignty.

- There is concern over the fees involved in the dispute resolution process, particularly for governments.

- There is concern over perceived inconsistencies with the GNSO policy recommendations.

F. What Factors the Board Found to Be Significant

- The balance of retaining certainty for applicants and demonstrating flexibility in finding solutions;

- The goals of providing greater clarity for applicants and appropriate safeguards for governments and the broad community;

- The goal of providing greater protections for country and territory names, and greater specificity in the support requirements for the other geographic names;

- The goal of respecting the relevant government or public authority's sovereign rights and interests;

- The risk of causing confusion for potential applicants and others in the user community; and

- The risk of possible misuse of a country or territory name or the misappropriation of a community label.

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

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

- The Board has accepted GAC advice to require government approval in the case of applications for certain geographic names.

- The Board intended to create a predictable, repeatable process for the evaluation of gTLD applications. Thus, to the extent possible, geographic names are defined with respect to pre-existing lists.

- The Board recognized that the community objection process recommended by the GNSO to address misappropriation of a community label would be an additional avenue available to governments to pursue a case where a name was not protected by reference to a list.The Board discussed this topic extensively with the GAC. As a result of the consultation on this and other topics, the Applicant Guidebook was revised to incorporate an Early Warning process which governments could use to flag concerns about a gTLD application at an early stage of the process. These procedures could also help address any concerns from governments about geographic names not already protected in the process.

- The Board also confirmed that the GAC has the ability to provide GAC Advice on New gTLDs concerning any application. Thus, governments would not be required to file objections and participate in the dispute resolution process, but rather, may raise their concerns via the GAC. This process could be used, for example, for governments to object to an application for a string considered by a government to be a geographic name.

- The formal objection and dispute resolution process does remain available to governments as an additional form of protection. Limited funding support from ICANN for objection filing fees and dispute resolution costs is available to governments.

- The Board adopted GAC recommendations for protections of geographic names in second-level registrations.

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

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

## I. Introduction

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

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

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

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

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

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

- On 26 June 2008, the Board adopted the Generic Names Supporting Organization's ("GNSO") policy recommendations for the introduction of new gTLDs, and directed ICANN staff to continue to develop a detailed implementation plan.
  See Board Resolution at http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171; see Board Meeting Transcript at https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt

- On 16 May 2009, the Board participated in a workshop on issues related to the new gTLD program, including the security and stability of the Internet generally and the potential risk of malicious conduct in particular.Rationale-all -final-20110609.doc

- On 20 June 2009, the Board participated in another workshop on issues related to the new gTLD program, including the risk of malicious conduct on the Internet.

- On 26 June 2009, the Board resolved that new gTLDs be prohibited from using Domain Name System ("DNS") redirection and synthesized DNS responses; directed ICANN staff to amend the draft Applicant Guidebook accordingly; and further directed ICANN staff to educate the community about the harms associated with DNS redirection and synthesized DNS responses and how to stop them.
  See Board Resolution at https://icann.org/en/minutes/resolutions-26jun09.htm; see Board Meeting Transcript at http://syd.icann.org/files/meetings/sydney2009/transcript-board-meeting-26jun09-en.txt

- During its study of malicious conduct, ICANN staff solicited and received comments from multiple outside sources, including the Anti Phishing Working Group (APWG), Registry Internet Safety Group (RISG), the Security and Stability Advisory Committee (SSAC), Computer Emergency Response Teams (CERTs) and members of the banking/financial and Internet security communities. These parties described several potential malicious conduct issues and encouraged ICANN to consider ways these might be addressed or mitigated in new gTLD registry agreements.

- On 1 October 2009, ICANN announced the launch of the Expedited Registry Security Request ("ERSR") process. ICANN intends that

gTLD registries will use the ERSR process for security incidents that require immediate action by the registry in order to avoid adverse effects upon DNS stability or security. The ERSR, a web-based submission procedure, reflects the result of a collaborative effort between ICANN and existing gTLD registries to develop a process for quick action in cases where gTLD registries: (1) inform ICANN of a present or imminent security threat to their TLD and/or the DNS; and (2) request a contractual waiver for actions they may take or already have taken to mitigate or eliminate the threat. http://www.icann.org/en/announcements/announcement-01oct09-en.htm

- On 3 October 2009, ICANN published an Explanatory Memorandum on Mitigating Malicious Conduct, part of a series of documents published by ICANN to assist the global Internet community in understanding the development of the new gTLD program and the requirements and processes presented in the Applicant Guidebook. https://icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-04oct09-en.pdf

- On 24 November 2009, ICANN announced that it was soliciting members for two new temporary expert advisory groups to study issues related to the risk of malicious conduct: (1) the establishment of a high security TLD designation; and (2) centralized zone access. https://icann.org/en/announcements/announcement-03dec09-en.htm

- On 3 December 2009, ICANN announced that it had formed the High Security Zone Advisory Group and the Centralized Zone File Access Advisory Group. http://www.icann.org/en/announcements/announcement-03dec09-en.htm

- On 22 February 2010, ICANN published papers by the High Security Zone Advisory Committee and the Central File Access Advisory Committee and solicited public comments. As the result of the latter paper, a uniform method of accessing registry data is now incorporated into the Guidebook. http://www.icann.org/en/announcements/announcement-22feb10-en.htm

- On 28 May 2010, ICANN published an Updated Explanatory Memorandum of Mitigating Malicious Conduct. The paper described specific malicious conduct mitigation measures that were recommended by recognized experts in this area that were subsequently incorporated into the Applicant Guidebook. http://www.icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-memo-update-28may10-en.pdf

- On 16 June 2010, ICANN solicited comments on the High Security Zone Advisory Committee's Policy Development Snapshot #2. http://www.icann.org/en/topics/new-gtlds/hstld-program-snapshot-2-16jun10-en.pdf

- On 22 September 2010, ICANN published a Request for Information on the proposed High Security Zone program and requested that all submissions be made by 23 November 2010.

- On 23 September 2010, the GAC outlined to the Board its concerns and recommendations for the new gTLD program and its comments on version 4 of the Draft Applicant Guidebook. http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf

- On 24-25 September 2010, the Board participated in another workshop on issues related to the new gTLD program, including discussions on background screening, orphan glue records, and the High-Security Top-Level Domain (HSTLD) concept. http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.8

- On 12 November 2010, ICANN published a second Updated Explanatory Memorandum of Mitigating Malicious Conduct. https://icann.org/en/topics/new-gtlds/explanatory-memo-mitigating-malicious-conduct-12nov10-en.pdf. This memo noted ICANN's adoption of the Zone File Access Advisory Group's Strategy Proposal for a recommendation to create a mechanism to support the centralization of access to zone-file records. This centralized approach is intended to streamline the access and approval process and standardize the format methodology for zone file consumers (e.g. anti-abuse and trademark protection organizations, researchers, academia, etc.). The Centralized Zone Data Access Provider pilot program was deployed for testing in June 2011 and a

production version program is anticipated to be deployed before any new gTLDs are delegated in the root. Rationale-all -final-20110609.doc

- On 9 December 2010, the GAC provided ICANN with a list of issues it considered to be "outstanding" and requiring further consideration, including consumer protection/the risk of malicious conduct.
  http://gac.icann.org/system/files/Cartagena_Communique.pdf

- On 10 December 2010, the Board resolved that ICANN had addressed the issue of the risk of increased malicious conduct in new gTLDs by adopting and implementing various measures, including centralized zone file access. The Board further stated that these solutions reflected the negotiated position of the ICANN community, but that ICANN would continue to take into account public comment and the advice of the GAC.
  See Board Resolution at https://icann.org/en/minutes/resolutions-10dec10-en.htm; see Board Meeting Minutes at https://icann.org/en/minutes/minutes-10dec10-en.htm

- On 21 February 2011, ICANN published a briefing paper on issues the GAC had identified as "outstanding" in September 2010, including certain issues related to the risk of increased malicious conduct.
  http://www.icann.org/en/announcements/announcement-6-21feb11-en.htm

- On 28 February 2011 and 1 March 2011, the GAC and the Board conferred about remaining outstanding issues related to the new gTLD program, including certain issues related to the risk of increased malicious conduct.
  http://www.icann.org/en/announcements/announcement-23feb11-en.htm

- On 4 March 2011, the Board published its comments on the GAC Scorecard.
  http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-04mar11-en.pdf

- On 15 April 2011, ICANN posted a discussion draft of the Applicant Guidebook (the "Discussion Draft Guidebook").

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

- On 26 May 2011, the GAC provided comments on the 15 April 2011 Discussion Draft. http://gac.icann.org/system/files/GAC%20Comments%20on%20the%20new%20gTLDs%20-%2026%20May%202011.pdf

- The GAC-Board discussions resulted in additional forms of background checks and requirements for new registries to cooperate with law enforcement.

- On 30 May 2011, ICANN posted another version of the Applicant Guidebook, taking into account public comment and the additional comment from the GAC. http://icann.org/en/topics/new-gtlds/comments-7-en.htm

## III. The Board's Analysis of the Risk of Increased Malicious Conduct Associated with the New gTLD Program

### A. Why the Board is Addressing This Issue Now

- ICANN's mission statement and one of its founding principles is to promote competition. The expansion of TLDs will allow for more innovation and choice in the Internet's addressing system. The ICANN Board seeks to implement the new gTLD program together with measures designed to mitigate the risk of increased malicious conduct on the Internet.

- ICANN committed to the U.S. Department of Commerce that it would address the risk of malicious conduct in new gTLDs prior to implementing the program.

- The ICANN Board is committed to making decisions based on solid factual investigation and expert analysis.

### B. Who the Board Consulted

- The GNSO

- The GAC

- The At-Large Community and ALAC

- The ICANN Implementation Recommendation Team ("IRT")
- The Anti-Phishing Working Group
  http://www.antiphishing.org/
- The Registry Internet Safety Group
  http://registrysafety.org/website/
- The ICANN Security and Stability Advisory Committee
  http://www.icann.org/en/committees/security/
- Computer Emergency Response Teams ("CERTs")
  See, e.g., http://www.us-cert.gov/
- The ICANN Zone File Access Advisory Group
  http://www.icann.org/en/topics/new-gtlds/zone-file-access-en.htm
- The ICANN High Security Zone TLD Advisory Group
  http://www.icann.org/en/topics/new-gtlds/hstld-program-en.htm
- The Registration Abuse Policies Working Group
  https://st.icann.org/reg-abuse-wg/
- The Registrar Stakeholder Group
  http://www.icannregistrars.org/
- The Registries Stakeholder Group
  http://www.gtldregistries.org/
- Members of the banking and financial community, including the BITS Fraud Reduction Program, the American Bankers Association, the Financial Services Information Sharing and Analysis Center ("FS-ISAC"), and the Financial Services Technology Consortium ("FSTC")
  See, e.g., www.icann.org/en/correspondence/bell-to-beckstrom-11aug09-en.pdf; and
  http://www.icann.org/en/correspondence/evanoff-to-beckstrom-13nov09-en.pdf
- Members of the Internet security community, including the Worldwide Forum of Incident Response and Security Teams ("FIRST"), which consists of computer and network emergency response teams from 180 corporations, government bodies,

universities and other institutions spread across the Americas, Asia, Europe, and Oceania; as well as various law enforcement agencies

- Other stakeholders and members of the community
- Legal counsel

**C. What Significant Non-Privileged Materials the Board Reviewed**

- Reports and Comments from Committees and Stakeholders
    - Centralized Zone File Access:
        - 18 February 2010 gTLD Zone File Access in the Presence of Large Numbers of TLDs: Concept Paper https://icann.org/en/topics/new-gtlds/zfa-concept-paper-18feb10-en.pdf
        - 12 May 2010 gTLD Zone File Access For the Future: Strategy Proposal http://www.icann.org/en/topics/new-gtlds/zfa-strategy-paper-12may10-en.pdf
    - Wild Card Resource Records:
        - 10 November 2006 ICANN Security and Stability Advisory Committee Paper: Why TLDs Should Not Use Wild Card Resource Records http://www.icann.org/en/committees/security/sac015.htm
    - Phishing Attacks:
        - 26 May 2008 ICANN Security and Stability Advisory Committee Paper: Registrar Impersonation Phishing Attacks http://www.atlarge.icann.org/files/atlarge/ssac-registrar-impersonation-24jun08.pdf
        - 17 June 2009 Anti-Phishing Working Group Paper https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/potential_for_malicious_conduct:

20090619162304-0-3550/original/DRAFT%20Potential%20malicious%20use%20issues%2020090617.pdf

- DNS Response Modification:
  - 20 June 2008 ICANN Security and Stability Advisory Committee Paper: DNS Response Modification https://par.icann.org/files/paris/PiscitelloNXDOMAIN.pdf
- Centralized Malicious Conduct Point of Contact:
  - 25 February 2009 ICANN Security and Stability Advisory Committee Paper: Registrar Abuse Point of Contact http://www.icann.org/en/committees/security/sac038.pdf
- High Security Zone:
  - 18 November 2009 A Model for High Security Zone Verification Program: Draft Concept Paper https://icann.org/en/topics/new-gtlds/high-security-zone-verification-04oct09-en.pdf
  - 17 February 2010 High Security Zone TLD: Draft Program Development Snapshot https://icann.org/en/topics/new-gtlds/hstld-program-snapshot-18feb10-en.pdf
  - 13 April 2010 High Security TLD: Draft Program Development Snapshot https://st.icann.org/hstld-advisory/index.cgi?hstld_program_development_snapshot_1
  - 16 June 2010 High Security Zone TLD: Draft Program Development Snapshot http://www.icann.org/en/topics/new-gtlds/hstld-program-snapshot-2-16jun10-en.pdf
- Redirection and Synthesized Responses:

- 10 June 2001 ICANN Security and Stability Advisory Committee Paper: Recommendation to Prohibit Use of Redirection and Synthesized Responses (*i.e.*, Wildcarding) by New TLDs http://www.icann.org/en/committees/security/sac041.pdf

- Thick vs. Thin WHOIS:

  - 30 May 2009 ICANN Explanatory Memorandum on Thick vs. Thin WHOIS for New gTLDs http://www.icann.org/en/topics/new-gtlds/thick-thin-whois-30may09-en.pdf

- Trademark Protection:

  - 29 May 2009 Implementation Recommendation Team Final Draft Report to ICANN Board http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf

  - See the Board Rationale Memorandum on Trademark Protection for a more detailed summary of non-privileged materials the Board reviewed on this topic.

- Malicious Conduct Generally:

  - 15 April 2009 ICANN Plan for Enhancing Internet Security, Stability and Resiliency http://www.icann.org/en/topics/ssr/ssr-draft-plan-16may09-en.pdf

  - 19 May 2009 Registry Internet Safety Group's Paper: Potential for Malicious Conduct in New TLDs https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/potential_for_malicious_conduct:20090519220555-0-2071/original/RISG_Statement_on_New_TLDs-20090519.pdf

  - 19 August 2009 ICANN Security and Stability Advisory Committee Paper: Measures to Protect Domain

Registration Services Against Exploitation or Misuse http://www.icann.org/en/committees/security/sac040.pdf

- 3 October 2009 ICANN's Explanatory Memorandum on Mitigating Malicious Conduct https://icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-04oct09-en.pdf
- 30 November 2009 Online Trust Alliance's Comments on the New gTLD Program http://www.icann.org/en/correspondence/spiezle-to-pritz-30nov09-en.pdf
- 28 May 2010 ICANN's Updated Memorandum on Mitigating Malicious Conduct http://www.icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-memo-update-28may10-en.pdf
- 29 May 2010 Registration Abuse Policies Working Group Final Report http://www.gnso.icann.org/issues/rap/rap-wg-final-report-29may10-en.pdf
- 13 September 2010 ICANN's Updated Plan for Enhancing Internet Security, Stability and Resiliency http://icann.org/en/topics/ssr/ssr-draft-plan-fy11-13sep10-en.pdf
- 12 November 2010 ICANN's Second Updated Memorandum on Mitigating Malicious Conduct https://icann.org/en/topics/new-gtlds/explanatory-memo-mitigating-malicious-conduct-12nov10-en.pdf
- 21 February 2011 ICANN briefing paper on issues the GAC had identified as "outstanding" in September 2010, including certain issues related to the risk of increased malicious conduct http://www.icann.org/en/announcements/announcement-6-21feb11-en.htm

- Comments from the Community

**D. What Concerns the Community Raised**

- There was concern expressed that the new gTLD program will lead to an expansion of crime on the Internet, including look-alike domains, drop catching, domain tasting, domain hijacking, malware distribution, identity theft and miscellaneous deceptive practices.
- Wrongdoers may apply to operate registries.
- Wrongdoers may exploit technical weaknesses in the Internet, including automated registration services.
- End user confusion about new gTLDs may lead to increased fraud. For example, end users may be confused about TLDs whose mere names raise expectations of security.
- Certain new gTLDs may not comply with some national laws.
- There is a need for an enhanced control framework for TLDs with intrinsic potential for abuse, including those involving e-service transactions requiring a high confidence infrastructure (such as electronic financial services or electronic voting) and those involving critical assets (such as energy infrastructures or medical services).
- There is a need for better and more efficient identification of domain name resellers.
- There is a need to ensure the integrity and utility of registry information.
- The new gTLD program should safeguard the privacy of personal and confidential information.
- New gTLDs may adversely affect trademark owners.
- ICANN and others should better enforce provisions in agreements with registries and registrars.
- ICANN should impose new requirements on TLD operators.

- There is a need for systemic processes to combat abuse on the Internet.

**E. What Steps the Board Resolved to Take to Mitigate Malicious Conduct**

The Board believes the following measures will greatly help to mitigate the risk of increasing malicious conduct arising from new gTLDs. ICANN has incorporated the majority of these measures in the current version of the Applicant Guidebook and/or the registry agreement, and its efforts to implement the remaining measures are ongoing. http://www.icann.org/en/topics/new-gtlds/dag-en.htm

- Required vetting of registry operators: The application process includes standardized, thorough background and reference checks for companies and individuals (key officers) to mitigate the risk that known felons, members of criminal organizations or those with histories of bad business operations (including cybersquatting) will become involved in registry operations or gain ownership or proxy control of registries.

- Required demonstrations of plans for Domain Name System Security Extensions ("DNSSEC") deployment: DNSSEC is designed to protect the Internet from most attacks, including DNS cache poisoning. It is a set of extensions to the DNS which provide: (1) origin authentication of DNS data; (2) data integrity; and (3) authenticated denial of existence.

- Prohibition on wildcarding: The prohibition on wildcarding bans DNS redirection and synthesized DNS responses to reduce the risk of DNS redirection to a malicious site.

- Required removal of orphan glue records: Removal of orphan glue records destroys potential name server "safe havens" that abusers can use to support criminal domain registrations. Registry operators will be required to remove orphan glue records when presented with evidence in written form that such records are present in connection with malicious conduct.

- Mandatory thick WHOIS records: Registry Operators must maintain and provide public access to registration data using a thick WHOIS data model. Thick WHOIS will help mitigate malicious conduct and

trademark abuse by ensuring greater accessibility and improved stability of records.

- Centralization of zone file access: Central coordination of zone file data will allow the anti-abuse community to efficiently obtain updates on new domains as they are created within each zone, and to reduce the time necessary to take corrective action within TLDs experiencing malicious activity. The program is designed to reduce differences in and complexities of contractual agreements, standardize approaches and improve security and access methods.

- Mandatory documentation of registry level abuse contacts and procedures: Registry operators will provide a single abuse point of contact for all domains within the TLD who is responsible for addressing and providing timely responses to abuse complaints received from recognized parties, such as registries, registrars, law enforcement organizations and recognized members of the anti-abuse community. Registries also must provide a description of their policies to combat abuse.

- Required participation in the Expedited Registry Security Request ("ERSR") process: ICANN developed the ERSR process in consultation with registries, registrars and security experts, based on lessons learned in responding to the Conficker worm, to provide a process for registries to inform ICANN of a present or imminent "security situation" involving a gTLD and to request a contractual waiver for actions the registry might take or has taken to mitigate or eliminate the security concerns. "Security situation" means: (1) malicious activity involving the DNS of a scale and severity that threatens the systematic security, stability and resiliency of the DNS; (2) potential or actual unauthorized disclosure, alteration, insertion or destruction of registry data, or the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards; or (3) potential or actual undesired consequences that may cause or threaten to cause a temporary or long-term failure of one or more of the critical functions of a gTLD registry as defined in ICANN's gTLD Registry Continuity Plan.

- Framework for High Security Zones Verification: The concept of a voluntary verification program is a mechanism for TLDs that desire

to distinguish themselves as secure and trusted, by meeting additional requirements for establishing the accuracy of controls for the registry, registrar and registrant processing, as well as periodic independent audits. A draft framework was created by the HSTLD working group.. The working group's Final Report may be used to inform further work. ICANN will support independent efforts toward developing voluntary high-security TLD designations, which may be available to gTLD applicants wishing to pursue such designations.

### F. What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of the potential for malicious conduct associated with the new gTLD program. The Board found the following factors to be significant:

- the principle that the Board should base Policy on solid factual investigation and expert analysis;
- whether new gTLDs would promote consumer welfare;
- certain measures intended to mitigate the risk of malicious conduct may raise implementation costs for new gTLD registries;
- the creation of new TLDs may provide an opportunity for ICANN to improve the quality of domain name registration and domain resolution services in a manner that limits opportunities for malicious conduct;
- most abuse takes place in larger registries because that is where abusive behavior "pays back,"; a more diverse gTLD landscape makes attacks less lucrative and effective;
- the risk of increasing exposure to litigation; and
- the lack of reported problems concerning increased criminal activity associated with ICANN's previous introductions of new TLDs.

## IV. The Board's Reasons for Proceeding with the New gTLD Program While Implementing Measures to Mitigate the Risk of Malicious Conduct

- Modest additions to the root have demonstrated that additional TLDs can be added without adversely affecting the security and stability of the domain name system.

- ICANN's "default" position should be for creating more competition as opposed to having rules that restrict the ability of Internet stakeholders to innovate. New gTLDs offer new and innovative opportunities to Internet stakeholders.

- Most abuse takes place in larger registries. A more diverse gTLD landscape makes attacks less lucrative and effective.

- New gTLD users might rely on search functions rather than typing a URL in an environment with many TLDs, lessening the effectiveness of forms of cyber-squatting.

- Brand owners might more easily create consumer awareness around their brands as a top-level name, reducing the effectiveness of phishing and other abuses.

- ICANN has worked with the community to address concerns relating to potential malicious conduct in the new gTLD space. New and ongoing work on these issues in the policy development arena may provide additional safeguards recommended as a result of the bottom-up process, and ICANN will continue to support these efforts.

- Data protection is best accomplished by data protection tools, including audits, contractual penalties such as contract termination, punitive damages, and costs of enforcement, as well as strong enforcement of rules.

- The measures adopted by ICANN, including centralized zone file access, and other mechanisms, address the principal concerns raised by stakeholders about the potential for proliferation of malicious conduct in the new gTLD space. A combination of verified security measures and the implementation of DNSSEC will

allow users to find and use more trusted DNS environments within the TLD market.

- Revised applicant procedures and agreements reflecting the measures to mitigate the risk of malicious conduct will permit ICANN to address certain risks of abuse contractually and also will permit ICANN to refer abuses to appropriate authorities. ICANN can amend contracts and the applicant guidebook to address harms that may arise as a direct or indirect result of the new gTLD program.

# 6. ICANN Board Rationale on Objection Process Associated with the New gTLD Program

# 6. ICANN Board Rationale on Objection Process Associated with the New gTLD Program

## I. Introduction

Recommendation 12 of the Generic Names Supporting Organization (GNSO) Final Report on the Introduction of New gTLDs (http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm), and approved by the Board in June 2008 (http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171) states that, "[D]ispute resolution and challenge processes must be established prior to the start of the process." Further, Implementation Guideline H, also set forth by the GNSO, states "External dispute providers will give decisions on objections."

Based on the GNSO Policy and implementation planning, it was determined that four of the GNSO recommendations should serve as a basis for an objection process managed by external providers. Those include the following:

(i) Recommendation 2 "Strings must not be confusingly similar to an existing top-level domain or a Reserved Name" (String Confusion Objection);

(ii) Recommendation 3 "Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law" (Legal Rights Objection);

(iii) Recommendation 6 "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law" (Limited Public Interest Objection); and

(iv) Recommendation 20 "An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted" (Community Objection).

Thus, a process allowing third parties to object to applications for new gTLDs on each the four grounds stated above was developed.[2]

Subsequent to the development and refinement of the original Objection Procedures based on the GNSO recommendations and set out in Module 3 of the Applicant Guidebook (*see* http://www.icann.org/en/topics/new-gtlds/objection-procedures-clean-30may11-en.pdf) a separate process has been established for the GAC. That process is also set out in Module 3 of the Applicant Guidebook. In short, there is now a formal process for the GAC to provide advice in relation to the approval of an application.

## II. History of the Development of the Objection Processes and Procedures Associated with the New gTLD Program

This section sets forth a history of significant actions taken on the subject of the objection process associated with the new gTLD program.

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

- In August 2007, the GNSO issued its final report regarding the introduction of new gTLDs. Recommendation 12 of the report ("Recommendation 12") states that "[d]ispute resolution and challenge processes . . . must be established prior to the start of the process" and Implementation Guideline H states that "External dispute providers will give decisions on objections." http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

- In December 2007, ICANN posted a call for expressions of Interest from potential Dispute Resolution Service Providers (DSRP) for the new gTLD Program. http://www.icann.org/en/announcements/announcement-21dec07.htm

[2] The International Centre for Dispute Resolution (ICDR) has agreed to administer disputes brought pursuant to String Confusion Objections. The Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO) has agreed to administer disputes brought pursuant to Legal Rights Objections. The International Center of Expertise of the International Chamber of Commerce (ICC) has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

- Throughout 2008, external dispute resolution service providers were evaluated and selected. As noted above in footnote 1, the ICDR will administer disputes brought pursuant to String Confusion Objections, WIPO will administer disputes brought pursuant to Legal Rights Objections and the ICC will administer disputes brought pursuant to Limited Public Interest and Community Objections.

- Also throughout 2008, ICANN conducted public consultations, as well as thorough and global research to help define the standing requirements and standards to be used by dispute resolution panels to resolve the disputes on the various Objection grounds.

- In October 2008, ICANN published draft version 1 of the Applicant Guidebook, including Module 3, which laid out the Dispute Resolution Procedures. At that same time, ICANN posted a paper for community discussion entitled "Morality and Public Order Objection Considerations in New gTLDs," which summarized the implementation work that had been accomplished in response to Recommendation 6 (now called Limited Public Interest Objection). http://www.icann.org/en/topics/new-gtlds/morality-public-order-draft-29oct08-en.pdf

- In February 2009, the Board discussed who would have standing to object to an applied-for string on the basis of morality and public order. There was a sense that an objection-based dispute resolution process was the appropriate method for addressing possible disputes. There was also a sense that any injured party would have standing to object. Limiting standing to governments or other official bodies might not address the potential harm. http://www.icann.org/en/minutes/minutes-12feb09.htm

- Also in February 2009, with the second draft version of the Applicant Guidebook, ICANN posted the separate "New gTLD Dispute Resolution Procedure". http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedure-18feb09-en.pdf

- Also in February 2009, ICANN posted a paper for community discussion entitled "Description of Independent Objector for the New gTLD Dispute Resolution Process," which explored the potential benefits of

allowing an "Independent Objector" to object within the dispute resolution process.
http://www.icann.org/en/topics/new-gtlds/independent-objector-18feb09-en.pdf

- In May 2009, along with revised excerpts of the Applicant Guidebook, ICANN posted a paper for community discussion entitled "Standards for Morality and Public Order Research," which summarized the research relating to the development of standards for morality and public order (now Limited Public Interest) objections.
http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf

- In May 2010, ICANN posted a paper entitled "'Quick Look' Procedure for Morality and Public Order Objections," which summarized a procedure requested by community members by which morality and public order objections could be dismissed if they are determined to be "manifestly unfounded and/or an abuse of the right to object."
http://www.icann.org/en/topics/new-gtlds/morality-public-order-quick-look-28may10-en.pdf

- In August 2010, Heather Dryden, Chair of the GAC, delivered a letter to Peter Dengate Thrush, Chairman of the Board, requesting that the proposed procedure for morality and public order objections be replaced with an alternative mechanism.
http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf

- Also in August 2010, the Board considered Submission No. 2010-08-05-15, which discussed the feedback received by the GAC with regard to the proposed procedure for morality and public order objections.
http://www.icann.org/en/minutes/board-briefing-materials-2-05aug10-en.pdf

- In September 2010, the cross-stakeholder group known as the New gTLD Recommendation 6 Cross-Community Working Group ("Rec6 CWG") published a report on the Implementation of the Recommendation (the "Rec6 CWG report"). The report provided guidance to the Board with regard to procedures for addressing culturally objectionable and/or sensitive strings, while protecting internationally recognized freedom of expression rights. This report

was posted for public comment. *See* link at http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm

- Also in September 2010, the Board met in Trondheim, Norway and stated that they would "accept the [Rec6 CWG] recommendations that are not inconsistent with the existing process, as this can be achieved before the opening of the first gTLD application round, and [would] work to resolve any inconsistencies." At the same meeting, the Board agreed that it had "ultimate responsibility for the new gTLD program … however, [that it wished] to rely on the determination of experts on these issues." http://www.icann.org/en/minutes/resolutions-25sep10-en.htm

- In October 2010, the Board again discussed the Rec6 CWG report, indicating that several of the working group recommendations could be included in the Guidebook for public discussion and that the working group recommendations should be discussed publicly at ICANN's upcoming meeting in Cartagena. http://www.icann.org/en/minutes/resolutions-28oct10-en.htm

- In November 2010, ICANN posted the proposed final version of the Applicant Guidebook (the "Proposed Final Guidebook"), which adopted several of the recommendations set forth in the Rec6 CWG report. http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf

- Also in November 2010, ICANN posted an explanatory memorandum entitled "'Limited Public Interest Objection," which described the recommendations set forth in the Rec6 CWG report, ICANN's responses to those recommendations and ICANN's rationale for its responses. http://www.icann.org/en/topics/new-gtlds/explanatory-memo-morality-public-order-12nov10-en.pdf

- In December 2010 in Cartagena, Columbia, the Board had two separate sessions with the Rec6 CWG to help achieve further understanding of the working group's positions.

- On 23 February the GAC issued the "GAC indicative scorecard on new gTLD issues listed in the GAC Cartagena Communique" ("Scorecard")

identifying the Objection Process as one of twelve areas for discussion. http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf

- On 28 February and 1 March 2011, the Board and the GAC had a two-day consultation in Brussels, Belgium to discuss the issued raised in the Scorecard, including the suggestion that the GAC should not be subject to the Objection Procedures for Limited Public Interest Objections. Instead, a process was discussed by which the GAC could provide public policy advice on individual gTLD applications directly to the Board

- On 12 April 2011, the GAC issued "GAC comments on the ICANN's Board's response to the GAC Scorecard" that also addressed the Objection Procedures. http://www.icann.org/en/topics/new-gtlds/gac-comments-board-response-gac-scorecard-12apr11-en.pdf

- On April 15 2011, ICANN posted the April 2011 Discussion Draft of the Applicant Guidebook, containing a new "GAC Advice" section detailing the procedure by which the GAC could provide advice to the Board concerning gTLD applications. http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-redline-15apr11-en.pdf

- Also on 15 April 2011, ICANN posted an Explanatory Memorandum entitled 'GAC and Government Objections; Handling of Sensitive Strings; Early Warning" to describe details of the new procedures. http://www.icann.org/en/topics/new-gtlds/gac-objections-sensitive-strings-15apr11-en.pdf

- Also on 15 April 2011, ICANN posted "Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response" discussing its response to the GAC's concerns on the Objection Process. http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf

- On 20 May the Board and GAC had further consultations that included discussion on the Objection Process. http://www.icann.org/en/topics/new-gtlds/transcript-board-gac-20may11-en.pdf

- On 30 May, ICANN posted the current version of the Applicant Guidebook with additional refinements to the Objection Process as it relates to the GAC. http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm

- On 19 June 2011, the Board and the GAC had additional consultations.

## III. The Board's Analysis of the Objection Process Associated with the New gTLD Program

### A. Brief Introduction to the Objection Process

1. Brief Overview of the Objection Process for all except the GAC.

- The new gTLD process is an objection-based process, in which parties with standing may file with an identified independent dispute resolution provider a formal objection to an application on certain enumerated grounds (see footnote 1 for list of providers). The grounds for filing a formal objection to an application are:

  - the gTLD string is confusingly similar to an existing TLD or another applied-for gTLD string in the same round of applications ("String Confusion Objection")

  - the gTLD string infringes the existing legal rights of the objector ("Legal Rights Objection")

  - the gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law ("Limited Public Interest Objection")

  - there is substantial opposition to the application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted ("Community Objection").

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

- If the objectors have standing, their objections will be considered by a panel of qualified experts, that will issue a Determination.

- Specific standards under which each of the four types of objections will be evaluated are set forth in detail in Module 3 of the current Applicant Guidebook.

- There will be objection fees (fixed for String Confusion and Community Objections and hourly for Limited Public Interest and Community Objections) that will be refundable to the prevailing party.

2. Brief Overview of the GAC Advice Process.

- The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

- For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period

- Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

- ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.

- The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

**B. Why the Board Addressed the Objection Process as it has**

- The GNSO Policy Recommendations called for the creation of a dispute resolution or objection process in the new gTLD program.

- The GNSO also provided implementation guidelines suggesting that external dispute resolution providers should be utilized.

- A fully established objection process, with uniform standing requirements and standards available to the dispute resolution service providers, ensures that a reasonably objective process is in place. It further ensures that experts in dispute resolution make any determinations on the disputes after considering all of the evidence.

- A fully established dispute resolution process provides parties with a cost-effective alternative to initiating action in court, if there is a valid objection.

- The GAC advised the Board that it was not amendable to utilizing the standard Objection Process established for the new gTLD program. Accordingly, the Board worked closely with the GAC to develop a mutually acceptable "objection" mechanism, in the form of GAC Advice.

**C. Who the Board Consulted**

- Legal Counsel

- International arbitration experts

- Judges from various international tribunals such as the International Court of Justice

- Attorneys who practice in front of international tribunals such as the International Court of Justice

- The GNSO

- The GAC

- The ALAC

- The ccNSO

- The SSAC

- All other Stakeholders and Community Members

**D. Significant Non-Privileged Materials the Board Reviewed**

- GAC Principles Regarding New gTLDs. http://gac.icann.org/system/files/gTLD_principles_0.pdf
- GNSO "Final Report – Introduction of new generic top-level domains." http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm
- Report on Implementation of GNSO New GTLD Recommendation #6. *See* link to Report from http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm
- All materials related to the Board/GAC consultation. *See* http://www.icann.org/en/topics/new-gtlds/related-en.htm
- All relevant GAC letters and Communiques. *See* http://www.icann.org/en/correspondence/ and http://gac.icann.org/communiques.
- Applicant Guidebook, related explanatory memoranda, other related documents and related comment summaries and analyses:
    - Each version of the Applicant Guidebook, including all ICANN created explanatory memoranda and the specific proposals for trademark protections, along with numerous pages of public comment summaries and analysis related to the Objection Procedures. *See* (i) http://www.icann.org/en/topics/new-gtlds/comments-en.htm; (ii) http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm#expmem; (iii) http://www.icann.org/en/topics/new-gtlds/comments-e-en.htm; (iv) http://www.icann.org/en/topics/new-gtlds/comments-3-en.htm; (v) http://www.icann.org/en/topics/new-gtlds/gnso-consultations-reports-en.htm; (vi) http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm; (vii) http://www.icann.org/en/topics/new-gtlds/summaries-4-en.htm; (viii) http://www.icann.org/en/topics/new-gtlds/comments-5-en.htm; (ix)

http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm; (x) http://www.icann.org/en/topics/new-gtlds/dag-en.htm; (xi) http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm; and (xii) http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm

**E. Significant Concerns the Community Raised**

- What will be done if there is an application for a highly objectionable name, but there are no objectors within the process?
- There is a need for clarification on what type of string would be considered to be "contrary to generally accepted legal norms relating to morality and public order . . . recognized under international principles of law."
- Are the standards set out for each objection appropriate?
- How will fees be determined?
- Will ICANN fund certain stakeholders' objections?
- Should it be a dispute process rather than a mere objection process?
- Are the independent dispute resolution providers the rights ones to handle the specific objections?
- Neither Governments nor the GAC should be required to utilize the Objection Procedures.

**F. Factors the Board Found to Be Significant**

- The Dispute Resolution Process is designed to protect certain interests and rights, those interests identified by the GNSO in their policy recommendations that were approved by the ICANN Board.
- The Dispute Resolution Process will be more cost effective and efficient than judicial proceedings. Fees will be paid directly to the dispute resolution providers.

- The Dispute Resolution Process should be independent as possible so that the applicants, the community and ICANN have the benefit of neutral expert opinion.

- It is critical to address risk to the established processes and to ICANN by providing a path for considering controversial applications that might otherwise result in litigation or attacks to the process or to the ICANN model.

- Governments have a particular interest in having an unencumbered process to provide advice to the Board without having to utilize the formal independent objection process.

**G. The Board's Reasons for Supporting the Two-pronged Objection Process Established for the New gTLD Program**

- The Dispute Resolution Process complies with the policy guidance provided by the GNSO.

- The Dispute Resolution Process provides a clear, predictable path for objections and objectors.

- The Dispute Resolution Process provides clear standards that will lead to predictable, consistent results.

- The Dispute Resolution Process provides for an independent analysis of a dispute.

- The Dispute Resolution Process provides a bright line between public comment and a formal objection process so parties understand the manner in which a challenge to a particular application should be brought (a lesson learned from previous rounds).

- The Dispute Resolution Process appropriately limits the role for the Board.

- The Dispute Resolution Process limits involvement to those who truly have a valid objection.

- The Dispute Resolution Process provides for a more efficient and cost effective approach to dispute resolution than judicial proceedings.

- The Dispute Resolution Process, which provide for an "Independent Objector" to object is an important step to achieving the goal of independence and ensuring the objectionable strings are challenged.

- The GAC Advice process provides an avenue for the GAC to provide public policy advice to the Board on individual applications in a relatively timely fashion and consistent manner.

- The GAC Advice process was developed after close consultations with the GAC and provides a prescribed manner and time frame in which the Board will be able to consider GAC advice with respect to a particular string or applicant.

# 7. ICANN Board Rationale on Root Zone Scaling in the New gTLD Program

# 7. ICANN Board Rationale on Root Zone Scaling in the New gTLD Program

## I. Introduction

When ICANN was formed in 1998 as a not for profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, its primary purpose was to promote competition in the domain name system ("DNS") marketplace while ensuring internet security and stability. ICANN's Bylaws and other foundational documents articulate that the promotion of competition in the registration of domain names is one of ICANN's core missions. See ICANN Bylaws, Article 1, Section 2.6.

One part of this mission is fostering competition by allowing additional Top Level Domains ("TLDs") to be created. ICANN began this process with the "proof of concept" round for a limited number of new gTLDs in 2000, and then permitted a limited number of additional "sponsored" TLDs in 2004-2005. These additions to the root demonstrated that TLDs could be added without adversely affecting the security and stability of the domain name system.

After an extensive policy development process, in August 2007, the GNSO issued a lengthy report in which it recommended that ICANN permit a significant expansion in the number of new gTLDs. The report recognized that the introduction of new gTLDs would require the expansion of the top-level DNS zone in the DNS hierarchy known as the DNS root zone ("root zone"). This expansion of the root zone, along with ICANN's recent and concurrent implementation of other changes to the root of the DNS, caused some members of the community to ask ICANN to review how the expansion of the root zone could impact root zone stability. http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm.

Between 2004 and 2010, the root of the DNS underwent significant changes, both in content as well as support infrastructure. These changes included the addition of Internationalized Domain Names ("IDNs") to the root, the deployment of IPv6 and implementation of Domain Name System Security

Extensions ("DNSSEC"). The broad scope of these changes was unprecedented. Now with new gTLDs on the horizon, further substantive changes in the root of the DNS are expected.

In response to comments from members of the community, ICANN commissioned a number of studies to address the capacity and scaling of the root server system with the goal of ensuring the stable and secure addition of new gTLDs. The studies improved ICANN's understanding of the scalability of the root zone as it pertains to new gTLDs, and they reinforced confidence in the technical capability and stability of the root zone at the projected expansion rates. The studies also helped to inform and improve ICANN's approach to monitoring the scalability and stability of the root zone.

## II. Brief History of ICANN's Consideration of Root Zone Scaling Associated with the New gTLD Program

This section sets forth a brief history of significant Board actions on the subject of root zone scaling associated with the new gTLD program.

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

- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO's policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues. http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880

- On 6 February 2008, ICANN published a paper entitled DNS Stability: The Effect of New Generic Top Level Domains on the Internet Domain Name System which addressed TLD Strings, technical stability and the capacity of the root zone. http://www.icann.org/en/topics/dns-stability-draft-paper-06feb08.pdf

- On 6 February 2008, in response to ICANN's publication of the paper entitled DNS Stability: The Effect of New Generic Top Level Domains in the Internet Domain System, the Board requested public comments and community feedback regarding technical issues relevant to the addition of new gTLDs. The Board also requested guidance on how best to facilitate transparency in implementing the recommendations of the paper. http://www.icann.org/en/announcements/announcement-06feb08.htm

- In February 2009, the Board resolved that the Security and Stability Advisory Committee ("SSAC") and the DNS Root Server System Advisory Committee ("RSSAC") should jointly conduct a study analyzing the aggregate impact of the proposed implementation of various changes to the root zone and any potential effects on the security and stability within the DNS root server system. These changes include the still-recent addition of IPv6 access to the root servers, the planned addition of IDNs at the root level, signing the root zone with DNSSEC, and the provisioning of new country code IDN TLDs and new gTLDs.

- On 7 September 2009, the Root Zone Scaling Team ("RSST") released its study entitled Scaling the Root. http://www.icann.org/en/committees/dns-root/root-scaling-study-report-31aug09-en.pdf

- On 17 September 2009, the DNS Operations Analysis and Research Center ("DNS-OARC") released the "L" Root Study entitled Root Zone Augmentation and Impact Analysis.

http://www.icann.org/en/topics/ssr/root-zone-augementation-analysis-17sep09-en.pdf

- On 29 September 2009, the Netherlands Organization for Applied Scientific Research ("TNO") released a report directed by the RSST to develop a quantitative model of the DNS Root Server System to analyze the impact of the addition of new gTLDs, IDN TLDs, IPv6 and DNSSEC. That study is entitled Root Scaling Study: Description of the DNS Root Scaling Model. http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf

- On 14 October 2009, the Chair of the Internet Architecture Board ("IAB"), Olaf Kolkman, sent a letter to ICANN's Board in response to the publication of the RSST Study. He stated that the report's recommendations were accurate and that security, stability and resiliency are the most important properties of the system and they need to continue to be monitored and safeguarded by ICANN. http://www.icann.org/en/correspondence/kolkman-to-ceo-board-14oct09-en.pdf

- On 3 March 2010, ICANN released its Draft Delegation Rate Scenarios for New gTLDs, laying out the plan for limiting delegation rates and outlining expected demand for new gTLDs based on: (1) current participation in the new gTLD process; (2) brand and famous mark holders; and (3) regional, national and other geographic regions that are not currently participating. http://www.icann.org/en/announcements/announcement-03mar10-en.htm

- On 25 September 2010, the Board adopted a resolution approving a model and a rationale for the maximum rate of applications. It set the number at 1,000 applications per year. The Board noted that the initial survey of the root server operator's ability to support growth was successful and directed ICANN staff to revisit that estimate on a regular basis. The Board directed ICANN to consult with root zone operators

to define, monitor and publish data on root zone stability. http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.3

- On 6 October 2010, ICANN released its Delegation Rate Scenarios for New gTLDs, laying out in final form the plan for limiting delegation rates for new gTLDs.

- On 5 November 2010, the ICANN Board received a letter from the Chair of ICANN's Board Risk Committee, Bruce Tonkin, stating that the Risk Committee is seeking advice from RSSAC on the capability of the root server system to support the planned introduction of new gTLDs in 2011/2012. http://www.icann.org/en/correspondence/tonkin-to-murai-05nov10-en.pdf

- On 25 November 2010, the ICANN Board received a letter from the Chair of RSSAC, Jun Murai, stating that the recent successful implementation of DNSSEC in the root zone was a good example of how to proceed with new capabilities. He further stated that in the case of the proposed gradual expansion of no more than 1,000 new gTLD entries per year for the next several years, the RSSAC expected the system to remain stable and robust. http://www.icann.org/en/correspondence/murai-to-board-25nov10-en.pdf

- On 10 December 2010, the Board indicated that the overarching issue of root zone scaling had been addressed through expert consultation and study. The studies indicate that rate-limited addition of TLDs can be implemented without any expected impact on the stability of the root zone system. The Board also agreed to implement communications and monitoring systems to oversee the new gTLD program. http://www.icann.org/en/minutes/minutes-10dec10-en.htm

## III. Major Root Zone Scaling Studies Commissioned by the Board

On 3 February 2009, the ICANN Board unanimously directed the RSSAC and SSAC to jointly study "the impact to security and stability within the DNS root server system of [the IPv6, IDN TLDs, DNSSEC and new gTLDs] proposed implementations." The Board resolution stated that the joint studies should: (1) address the implications of the initial implementation of these changes occurring during a compressed time period; (2) address the capacity and scaling of the root server system to address a wide range of technical challenges and operational demands that might emerge as part of the implementation of proposed changes; and (3) ensure that the process for establishing the study terms, design and implementation will address technical and operational concerns regarding expanding the DNS root zone. http://www.icann.org/en/minutes/minutes-03feb09.htm.

In response to the Board's 3 February 2009 Resolution, ICANN commissioned two studies. The "L" Root Study focused on the impact of the scaling of the root on one server. The RSST Study modeled the processes in the root management system and analyzed the results of scaling the system.

The studies made important observations about possible limits to the root system, including limits to the pace of scaling and limitations other than purely technical, e.g. in processing TLD applications through ICANN, NTIA and VeriSign. Neither study found meaningful technical limitations in system scaling. The RSST Study recommended ongoing system modeling and monitoring, and encouraged improved communication with ICANN staff on gTLD forecasts and plans. To follow up on the RSST Study, the TNO put together a modeling contribution in conjunction with the RSST Study to transform the information and findings in the RSST Study into a quantitative model and simulation software.

### A. The "L" Root Study

The DNS-OARC released the "L" Root Study on 17 September 2009. The DNS-OARC conducted the study pursuant to a contract with ICANN. The study focused specifically on the impact of adding IPv6, DNSSEC and new TLDs to a laboratory simulation of the "L" Root Server. See

http://www.icann.org/en/topics/ssr/root-zone-augementation-analysis-17sep09-en.pdf.

The DNS-OARC performed a number of simulations and measurements with BIND and NSD server software and varying zone sizes to better understand how the new gTLD program changes may affect the performance of, and resource requirements for, the root DNS server infrastructure. The analysis looked at five key areas that would have an impact on operations: (1) zone size; (2) name server reload and restart times; (3) DNS response latency; (4) inter-nameserver bandwidth utilization; and (5) potential increases in Transmission Control Protocol usage.

The "L" Root Study concluded that at least that one root server could easily handle both the deployment of the new technologies as well as the new gTLD program.

**B. The RSST Study**

The RSST released their study on 7 September 2009. It undertook to determine if, how, and to what extent "scaling the root" will affect the management and operation of the root system. The RSST Study considered the "L" Root Study as part of its input and outsourced the development of a simulation of root management processes and conducted interviews with root server operators, IANA staff, VeriSign, NTIA and others. The RSST Study reviewed the impact on the root servers, and on the provisioning systems that lead up to the root zone being propagated to the root servers. See http://www.icann.org/en/topics/ssr/root-zone-augementation-analysis-17sep09-en.pdf.

The study provided qualitative and quantitative models of the root system that show how the root zone's different parts are related and how the root zone responds to changes in the parameters that define its environment. The RSST Study's conclusions assume that the estimate of less than 1,000 new gTLDs being added to the root zone per year is accurate. The study also assumes that other parameters relating to the management of the DNS root will not be substantively

altered. With these assumptions in mind, the RSST Study concluded that normal operational upgrade cycles and resource allocations will be sufficient to ensure that scaling the root, both in terms of new technologies as well as new content, will have no significant impact on the stability of the root system.

The principal results of the study are qualitative and quantitative models. These models enable the static simulation of popular "what-if" scenarios—*e.g.*, "what would happen if the size of the root zone increased by three orders of magnitude (assuming that everything in the system remained as it is today)?"—but also a far more useful dynamic analysis of the way in which the system responds and adapts to changes in the DNS environment over time. The analysis allows the community to anticipate the consequences of scaling the root, identify and recognize "early warning signs" of system stress, and plan ahead for any mitigating steps that may be necessary to keep the system running smoothly if and when signs of stress appear. The RSST Study also recommended that the Board call on ICANN's staff to take on a monitoring role in collaboration with other system partners as an element of the new gTLD program rollout.

### C. The TNO Report

To follow up on the RSST Study, the TNO put together a modeling contribution in conjunction with the RSST Study to transform the information and findings in the RSST Study into a quantitative model and simulation software. The TNO Report was able to simulate several cases for the purpose of model validation and to illustrate typical use of the simulation model. More specifically, this study was directed by the RSST to apply quantitative modeling expertise to develop a quantitative model of the DNS Root Server System to analyze ways it responds to the addition of new gTLDs, IDN TLDs, IPv6 and DNSSEC. The TNO suggested that the model be fine-tuned as the new gTLD program is implemented, and that the model be used as a tool by ICANN in order to give ICANN more accurate boundaries for the scalability of the root. See http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf.

## IV. The Board's Analysis of Root Zone Scaling

## A. Why the Board Commissioned Studies on Root Zone Scaling

- ICANN's mission statement and one of its founding principles is to promote user choice and competition. ICANN has created significant competition at the registrar level that has resulted in enormous benefits for consumers. To date, ICANN has not created meaningful competition at the registry level. Based upon the report and recommendation from the GNSO to introduce new gTLDs, the Board decided to proceed with the new gTLD program.

- Both the Board and members of the community have commented that the introduction of new gTLDs would require the expansion of the root zone and could impact root zone stability. To address these comments, on 3 February 2009, the Board adopted a resolution approving the SSAC/RSSAC Stability Studies which led to the commissioning of the "L" Root Study and RSST Study.

## B. Who the Board Consult Regarding Root Zone Scaling

- Legal Counsel
- The GNSO
- The GAC
- DNS-OARC
- The SSAC
- The RSSAC
- The TNO

- All other Stakeholders and Community members through public comment forum and other methods of participation.

### C. What Significant Non-Privileged Materials the Board Reviewed

In evaluating the issue of root zone scaling, the ICANN Board reviewed various materials to determine the stability of the root zone: (1) Deployment Experience; (2) Studies and Models; and (3) Public Comments.

#### 1. Deployment Experience

In order to determine the stability of the root zone with the implementation of the new gTLD program, the Board closely evaluated the impact of the significant changes that had already been implemented or were in the process of being implemented into the root zone. Since February 2008, there have been significant additions to the root zone with the adoption and implementation of IDNs, IPv6 and DNSSEC. In fact, during the period between July 2004 when the first IPv6 addresses were added to the root zone for TLD name servers, until July 2010 when the root was DNSSEC-signed and Delegation Signer Records were inserted, the root DNS service continued with no reported or publicly visible degradation of service. The Board evaluated the impact of each individual addition to the root zone to date, and determined that the addition of IPv6 to the root system, IDN TLDs and the deployment of DNSSEC had no significant harmful effects that were observed by or reported to ICANN's Board. Below is a timeline of the various additions to the root zone since July 2004:

| Date | Technology | Event |
|---|---|---|
| July 2004 | IPv6 | First IPv6 addresses added to the root zone for top-level domains (KR and JP). |
| November 2005 | DNSSEC | First top-level domain (.SE) signed. |
| June 2007 | DNSSEC | IANA DNSSEC-signed root test bed made available. |

| | | |
|---|---|---|
| August 2007 | IDNs | Test IDN top-level domains added to the root. |
| February 2008 | IPv6, gTLDs | First IPv6 addresses added for root servers (A, F, J, K, L and M). A limit of a maximum of less than 1,000 new gTLDs per year is derived from estimates of gTLD processing times. |
| January 2010 | DNSSEC | Deliberately Unvalidatable Root Zone (DURZ) published on first root server ("L"). |
| May 2010 | IDNs, DNSSEC | First production IDNs added to the root (for Egypt, Saudi Arabia and United Arab Emirates). DURZ deployed on all 13 root servers. |
| June 2010 | DNSSEC | First DS records are published in the root zone (for .UK and .BR). |
| July 2010 | DNSSEC | Root is DNSSEC-signed and the root trust anchor is published. |

http://icann.org/en/topics/new-gtlds/summary-of-impact-root-zone-scaling-06oct10-en.pdf

The deployment of new technologies continues without any significant impact to root zone stability. Deployment of IPv6 in the root, which began in 2004, caused no significant harmful effects. Insertion of IDNs into the root in 2007 similarly was a non-event from the perspective of stability of the DNS, and deployment of DNSSEC in the root starting in January 2010 resulted in no observable or reported negative consequences. The empirical data drawn from the deployment of these new technologies can be used to validate the observations. Furthermore, the Board looked at this data, and the continued stability of the root zone throughout the implementation of these programs, as a demonstration that the introduction of the new gTLD program at the proposed max rate of 1,000 applications per year would similarly not impact the stability of the root zone.

### 2. Studies and Models

As previously mentioned, the ICANN Board commissioned two studies in order to analyze any impact the new gTLD program might have on the root zone. Both of these studies took a different approach to evaluate the possible impact the new gTLD program might have on root zone stability. Along with the TNO Report, the studies concluded that if the proposed new gTLD program is implemented pursuant to the adopted model of a maximum of 1,000 applications per year, the program will have no significant impact on the stability of the root system.

### 3. Public Comments and the Board's Response

Throughout the Board's analysis of the new gTLD program, in particular with respect to its possible impact to root zone stability, the Board considered public comments made by individuals both in public comment forums and in direct response to the release of the two root zone stability studies. The universe of comments pertaining to root zone scaling is still available. See http://forum.icann.org/lists/scaling/index.html.

The ICANN Board's responses to those comments made in response to the RSST Study were published for the public. See http://icann.org/en/committees/dns-root/summary-analysis-root-scaling-study-tor-04oct09-en.pdf.

## D. What Factors the Board Found to Be Significant

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

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

- the continued security, stability and resiliency of the root zone; and
- the continued monitoring of the root zone system.

## V. The Board's Reasons for Concluding the Introduction of New gTLDs Will Not Harm the Root Zone

The overarching issue of root zone scaling has been addressed through conversations with the public, expert consultation and expert analysis of the impact of the new gTLD program. These studies, consultations and interactions with the community facilitated the Board's study of the possible impacts the introduction of new gTLDs may have on root zone stability. The Board concluded that the additional gTLDs may be delegated without any significant impact on the stability of the root zone system.

The Board will continue to closely monitor the stability of the root zone and will call on its staff to take on a monitoring regime along with other system partners as an element of the new gTLD program roll-out. Furthermore, the Board will ensure that ICANN staff and system partners establish effective communication channels with root zone operators and RSSAC to ensure a timely response to any changes in the root zone environment.

# 8. ICANN Board Rationale on String Similarity and String Contention Associated with the gTLD Program

# 8. ICANN Board Rationale on String Similarity and String Contention Associated with the gTLD Program

## I. Introduction

Through the development of the new gTLD program, the Board has given consideration to issues of potential user confusion resulting from the delegation of many similar TLD strings, as well as to creating procedures for resolving contention cases (i.e., where there is more than one qualified applicant for a TLD).

The foundational policy guidance for the program contains the principle that strings likely to cause user confusion should be avoided. Additionally, policy guidance recommended that there should be a preference for community applications in contention situations.

This memorandum focuses on the Board's review of these issues in implementing these principles in the new gTLD program. The memorandum summarizes the Board's consideration of these issues, and the Board's rationale for implementing the new gTLD program with the provisions on string contention and string similarity.

## II. Brief History of ICANN's Analysis of String Similarity and String Contention Associated With the gTLD Program

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

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

- In February 2007, Bruce Tonkin sent an email to the GNSO Council, describing the type of contention resolution methods under discussion for the gTLD process, including self-resolution, among the parties, third-party mediation, a bidding process, auctions, and testing for community affiliations.

http://forum.icann.org/lists/gtld-council/msg00358.html;
http://forum.icann.org/lists/gtld-council/msg00359.html

- In March 2007, the Governmental Advisory Committee issued its GAC Principles regarding New gTLDs. This included: 2.4: In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains, no two letter gTLDs should be introduced.
  http://gac.icann.org/system/files/gTLD_principles_0.pdf

- In August 2007, the GNSO issued its final report regarding the introduction of new gTLDs, including Recommendation 2, which stated that "strings must not be confusingly similar to an existing top-level domain or a Reserved Name."
  http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

- The GNSO's Final Report also included Implementation Guideline F, which stated: If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe; ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and; iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

- In March 2008, ICANN reported on preliminary work with SWORD to develop a potential algorithm that could help to automate the process for assessing similarity among proposed and existing TLD strings. http://www.icann.org/en/minutes/prelim-report-27mar08.htm

- On 26 June 2008, the Board adopted the Generic Names Supporting Organization's ("GNSO") policy recommendations for the introduction of new gTLDs, and directed ICANN staff to continue to develop a detailed implementation plan.
  See Board Resolution at
  http://www.icann.org/en/minutes/resolutions-

26jun08.htm#_Toc76113171; see Board Meeting Transcript at https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt

- In August 2008, ICANN considered the use of auctions as a tie-breaking mechanism within the new gTLD process. https://www.icann.org/en/topics/new-gtlds/program-updates-2008.htm

- Also in August 2008, ICANN posted a paper for community discussion, entitled "The Economic Case for Auctions," which explores the potential benefits of auctions as a tie-breaking mechanism. https://www.icann.org/en/topics/economic-case-auctions-08aug08-en.pdf

- Also in August 2008, ICANN considered the use of a string similarity algorithm to help automate the process for assessing similarity among the proposed and existing TLD strings. SWORD completed a beta algorithm and reviewed several test cases with ICANN staff to refine the parameters and discuss how the algorithm could be successfully integrated as a tool to help implement the GNSO's recommendation that new gTLD strings should not result in user confusion. https://www.icann.org/en/topics/new-gtlds/program-updates-2008.htm; http://www.icann.org/en/announcements/announcement-08aug08-en.htm

- In October 2008, the Board passed a resolution, authorizing the CEO, COO and/or General Counsel of ICANN to enter into an agreement for algorithm related services with SWORD. https://www.icann.org/en/minutes/prelim-report-01oct08.htm

- On 24 October 2008, ICANN published Version 1 of the new gTLD Applicant Guidebook ("Version 1"), as well as an explanatory memorandum, "Resolving String Contention,", http://www.icann.org/en/topics/new-gtlds/string-contention-22oct08-en.pdf, describing the reasons for the contention procedures found in the draft Guidebook. The Guidebook included a preliminary establishment of contention sets based on similarity between strings, opportunities for applicants to self-resolve such contention, a comparative evaluation process, and an objective

mechanism as a last resort. http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf

- These procedures have been continually revised, updated, and posted for comment through successive drafts of the Guidebook. In February 2009, auctions were identified as an objective mechanism of last resort for resolving string contention, included in an updated memorandum, http://www.icann.org/en/topics/new-gtlds/string-contention-18feb09-en.pdf, and beginning in draft version 2 of the Guidebook. http://www.icann.org/en/topics/new-gtlds/draft-string-contention-clean-18feb09-en.pdf

- Comments on successive drafts of the Guidebook expressed a desire for greater clarity around the standards to be used for comparative evaluation, including requests for examples of applications that would and would not meet the threshold. In response to these comments, ICANN developed detailed explanatory notes for each of the scoring criteria to give additional guidance to applicants. These were included beginning in draft version 3 of the Guidebook. http://www.icann.org/en/topics/new-gtlds/draft-string-contention-clean-04oct09-en.pdf

- In May 2010, ICANN issued draft version 4 of the Guidebook. The comparative evaluation was renamed the Community Priority Evaluation, to more accurately convey the purpose and nature of the evaluation (i.e., not comparing applicants to one another but comparing each against a common set of criteria). Version 4 also included definitions for terms used in the explanatory notes as well as clarifications and expanded guidance in several areas. http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm

- In June 2010, the GNSO Council and the Registries Stakeholder Group requested that exceptions be granted from findings of confusing similarity. The reason for granting an exception would be that a string pair that was found to be confusingly similar constituted a case of "non-detrimental confusion." http://gnso.icann.org/mailing-lists/archives/council/msg09379.html; http://forum.icann.org/lists/string-similarity-

amendment/msg00002.html;
http://www.icann.org/en/minutes/board-briefing-materials-1-25sep10-en.pdf

- In September 2010, the Board discussed the subject of string similarity and resolved to encourage policy development as needed to consider any exceptions from findings of confusing similarity. http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.4

- On 30 May 2011, ICANN posted the Applicant Guidebook for consideration by the Board. http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm

## III. The Board's Analysis of String Similarity and String Contention

### A. Brief Introduction to String Similarity and String Contention

1. String Similarity

This section sets forth an overview of the string similarity determination:

- What is the Concern over String Similarity?
  - The Board determined that delegating highly similar TLDs in the new gTLD program created the threat of detrimental user confusion.
- How Is It Determined that String Similarity Exists?
  - The preliminary similarity review will be conducted by a panel of String Similarity Examiners, who will use the following standard to test for whether string confusion exists:

> String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

- The examination will be informed by human judgment assisted by criteria and an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs. http://icann.sword-group.com/algorithm/

- What Happens Once the Determination is Made that String Similarity Exists?

  - In the simple case in which an applied-for TLD string is identical to an existing TLD, the application system will not allow the application to be submitted.

  - An application that fails the string confusion review and is found too similar to an existing TLD string will not pass the Initial Evaluation stage of the evaluation process, and no further reviews will be available.

  - An application that passes the string similarity review in the Initial Evaluation is still subject to challenge regarding string similarity in the current application round. That process requires that a specific string similarity objection be filed by an objector having the standing to make such an objection. Such category of objection is not limited to visual similarity. Rather, confusion based on any type of similarity may be claimed by an objector, visual, phonetic, and semantic similarity.

  - An application that passes the string similarity review and is not subject to a string confusion objection would proceed to the next relevant stage of the process.

2. String Contention

This section sets forth an overview of the string contention process:

- What is String Contention?

  - String contention is said to occur when the strings of two or more applications are identical or found to be so similar that delegation of both will create a threat of user confusion.

- What Components Are Involved in the String Contention Process?

- Identifying gTLD strings that are likely to deceive or cause user confusion in relation to either existing TLDs or reserved names or applied-for gTLDs; and

- Resolving the string contention.

- How is a Contention Set Identified?

  - In the initial evaluation of an applied for gTLD, a string similarity panel, using the procedures described above, will determine whether two or more applications for gTLDs are in direct string contention. The applications that are determined to be in direct string contention will be marked for later resolution of the contention and proceed to the subsequent process steps. Applications that are not part of a contention set can proceed to the next stage of the evaluation process without further action.

    - Applications are in direct string contention if their proposed strings are identical or so similar that string confusion would occur if both were to be delegated as TLDs. The determination is based on human judgment assisted by an algorithmic test performed on applications.

    - Two applications are in indirect string contention if they are both in direct string contention with a third application, but not with each other.

  - During the objection process, an applicant may file a string confusion objection to assert string confusion. If the objection is upheld by the panel adjudicating the objection, the applications will be deemed to be in a direct string contention and the relevant contention sets will be modified accordingly.

  - The final contention sets are established once the extended evaluation and objection process have been concluded, because some applications may be excluded in those steps.

- How is a Contention Set Resolved?

- Voluntary settlements or agreements can occur between applications that result in the withdrawal of one or more applications. These can occur at any stage of the process, once ICANN has posted the applications received. However, material changes to an application may require a re-evaluation.

- Community priority evaluation can be used only if at least one of the applications involved is community-based and has expressed a preference for community priority evaluation. A panel will receive and score the community-based applications against the established criteria for: (1) community establishment; (2) nexus between the proposed string and community; (3) dedicated registration policies; and (4) community endorsement. If one application is a "clear winner" (i.e., meets the community priority criteria), the application proceeds to the next step and its direct contenders are eliminated. If there is no "clear winner," the contention set will be resolved through negotiation between the parties or auction. It may occur that more than one application meets the community priority criteria, in which case time will be allowed for resolving the remaining contention by either applicant withdrawing, otherwise an auction between those applicants will resolve the contention.

- A community application that prevails in a community priority evaluation eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria. Arriving at the best outcome in a contention situation requires careful balancing of several variables, and this is the reason that a number of factors are included in the analysis.

- Auction is available as a last resort mechanism for resolving string contention when (1) contending applicants successfully complete all evaluations; (2) contending applicants elect not to use community priority evaluation, were not eligible for community priority evaluation, or

community priority evaluation did not provide a "clear winner"; and (3) contending applications have not resolved the contention among themselves.

**B. Why The Board Addressed String Similarity and String Contention**

- The new gTLD program will increase the number of domain names available, implying a risk that "confusingly" similar strings will appear.
- It is in the interests of consumer confidence and security to protect against the threat of user confusion and to avoid increasing opportunities for bad faith entities who wish to defraud users.
- Measures should be in place to protect internet users from the potential harm in delegating confusingly similar strings in the new gTLD program.
- The Board wants to create greater certainty in the domain name marketplace by crafting a fair and practical approach on how to identify and how best to resolve contention sets.
- The Board adopted the GNSO policy recommendations, including the implementation guideline implying that a community-based TLD application could be given a priority in cases of contention.

**C. Who the Board Consulted**

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

**D. What Significant Non-Privileged Materials the Board Reviewed**

- **GNSO Policy Recommendations**

  - Recommendation 2: Strings must not be confusingly similar to an existing top-level domain or a Reserved Name http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

  - Implementation Guideline F: If there is contention for strings, applicants may:

  i) resolve contention between them within a pre-established timeframe

  ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and

  iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

- **GAC Principles**

  - Recommendation 2.4: In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains, no two letter gTLDs should be introduced http://gac.icann.org/system/files/gTLD_principles_0.pdf

- **Comments from the Community**

  - http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm

**E. What Concerns the Community Raised**

- There is a need for clarification on the definition of "confusing similarity."

- There are questions about the definitions for "standard" vs. "community-based" TLD types.

- There is a need for objective procedures and criteria for the community priority evaluation.

- A special form of resolution should be considered for a contention set involving two community-based applicants of equal strength, so that such a contention set is not required to go to auction.

- There is concern over using the auction process (and the receipt of auction proceeds) as a means to resolve contention for TLDs.

- There is concern that the string similarity algorithm only accounts for visual similarity, and does not accurately gauge the human reaction of confusion.

- Proceeds from auctions may be used for the benefit of the DNS and be spent through creation of a foundation that includes oversight by the community.

### F. What Factors the Board Found to Be Significant

- There should be a consistent and predictable model for the resolution of contention among applicants for gTLD strings;

- The process should be kept as straightforward as possible to avoid unnecessary risks;

- There is potential harm in confusingly similar TLD strings that extends not only to the interests of existing TLD operators, but also to Internet users; and

- The protections set forth in the current string similarity process will safeguard both user and operator interests;

## IV. The Board's Reasons for Supporting the String Contention Process Contemplated in the new gTLD Program

- The Algorithm is a tool to aid the string similarity analysis.

  - The algorithm will be a consistent and predicable tool to inform the string confusion element of the new gTLD program. The algorithm will provide guidance to applicants and evaluators;

  - The role of the algorithm is primarily indicative; it is intended to provide informational data to the panel of examiners and expedite their review.

- The algorithm, user guidelines, and additional background information are available to applicants for testing and informational purposes

- Human judgment will be the determining factor in the final decisions regarding confusing similarity for all proposed strings.

- Contending applicants should be given the opportunity to settle contention among themselves – this will result in innovative and economic solutions.

- The community priority evaluation stage of the string contention process features sufficient criteria to: (a) validate the designation given to community-based applications; and (b) assess a preference for community-based applications in a contention set. Both the GNSO Final Report and GAC Principles encourage the special consideration of applications that are supported by communities. http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm; http://gac.icann.org/system/files/gTLD_principles_0.pdf

- The GAC Principle that two-letter TLDs should not be delegated to avoid confusion with ccTLDs was adopted.

- There are advantages to an auction as a resolution mechanism of last resort.

  - It is an objective test; other means are subjective and might give unfair results, are unpredictable, and might be subject to abuses.

  - It assures the round will finish in a timely way.

  - It is thought than few auctions will actually occur. A negotiated settlement will be a lower-cost solution for the parties than an auction. The availability of auctions will encourage parties to settle. Even if there are proceeds from auctions, these will be expended in a process that includes independent oversight.

  - Ascending clock auctions typically employ an "activity rule," where a bidder needs to have been "in" at early prices in the auction in order to continue to stay "in" at later prices. This is useful because in an ascending clock auction, bidders are

informed of the number of contending applications that have remained "in" after each round, but not their identities. With the specified activity rule, this demand information has real significance, as a competitor who has exited the auction cannot later re-enter.

- The auctioneer in ascending clock auctions has the ability to pace the speed at which prices increase. This facet has greatest importance if related items are auctioned simultaneously, as their prices can then be paced to increase together in relation to the level of demand. This has the advantage of providing bidders with information about the level of demand for other new gTLDs—and hence the value of a new gTLD—while the auction is still in progress.

# 9. ICANN Board Rationale On Trademark Protection in the New gTLD Program

# 9. ICANN Board Rationale On Trademark Protection in the New gTLD Program

## I. Introduction

One of ICANN's core values is "[i]ntroducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest." http://www.icann.org/en/general/bylaws.htm. In furtherance of this core value, ICANN is committed to ensuring that the concerns of all community members, including trademark holders, are considered and addressed to the extent practicable before launching the new generic top level domain ("gTLD") program.

ICANN has long recognized the importance of ensuring that the introduction of new gTLDs is conducted consistently with the protection of the rights of trademark holders, communities and other rights holders from abusive registration and infringement. In each previous expansion to the domain name system ("DNS"), the protection of legal rights of third parties was a feature of the application and evaluation process. For the new gTLD Program, ICANN has sought input from numerous stakeholders, including trademark holders, trademark lawyers, businesses, other constituencies and governments, to devise a multi-layered approach to protecting the rights of third parties. The approach includes a pre-delegation dispute resolution process for protecting existing legal rights at the top level. Also included in this approach are numerous rights protection mechanisms at the second level such as: (i) the establishment of a trademark clearinghouse to support both sunrise and trademark claims processes, a trademark post-delegation dispute resolution procedure (PDDRP), the Uniform Rapid Suspension System (URS) and the requirement for registries to maintain a thick Whois database. Of course, also available to all is the existing, long-standing and tested Uniform Domain Name Dispute Resolution Policy (UDRP).

## II. History of the Board's Consideration of Trademark Protection

This section contains a brief history of significant actions taken to address trademark protection in the new gTLD program.

- On 1 February 2007, the Generic Names Supporting Organization ("GNSO") Council approved a request to form a Working Group on

Protecting the Rights of Others.
http://gnso.icann.org/meetings/minutes-gnso-01feb07.html

- On 15 March 2007, the GNSO Council ratified a Statement of Work for the newly-formed GNSO Working Group on Protecting the Rights of Others. http://gnso.icann.org/meetings/minutes-gnso-15mar07.html

- On 26 June 2007, the GNSO Working Group on Protecting the Rights of Others published its Final Report. gnso.icann.org/drafts/pro-wg-final-report-26jun07.pdf

- On 8 August 2008, the GNSO issues its "Final Report – Introduction of New Generic Top-Level Domains," including a recommendation that "Strings must not infringe the existing legal rights of others". http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

- On 21 December 2007, ICANN requested "expressions of interest from potential dispute resolution service providers for the new gTLD program." http://www.icann.org/en/topics/drsp-call-for-expressions-of-interest.pdf

- On 26 June 2008, the Board adopted the GNSO's Policy recommendations for the introduction of new gTLDs. See Board Resolution at http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171; see Board Meeting Transcript at https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt

- On 22 October 2008, ICANN published an Explanatory Memorandum on Protection of Rights of Others in New gTLDs and solicited comments. http://www.icann.org/en/topics/new-gtlds/protection-rights-22oct08-en.pdf

- After receiving significant community input, on 6 March 2009, the Board recognized trademark protection in the new gTLD program as an issue requiring additional input and analysis, the resolution of which would benefit the new gTLD program. The Board requested that the GNSO's Intellectual Property Constituency convene an Implementation Recommendation Team ("IRT") to solicit input,

analyze the issue, and prepare draft and final reports. http://www.icann.org/en/minutes/resolutions-06mar09.htm#07

- On 24 April 2009, the IRT published its Preliminary Report for public comment. http://www.icann.org/en/topics/new-gtlds/irt-draft-report-trademark-protection-24apr09-en.pdf; see public comments at http://forum.icann.org/lists/irt-draft-report/

- On 16 May 2009, the Board participated in a workshop on issues related to the new gTLD program, including trademark protections in particular.

- On 29 May 2009, the IRT published its Final Report and an "Open Letter from the IRT Introducing our Work." ICANN and the IRT recognized that a significant intersection exists in between strategies to facilitate trademark protection and strategies to mitigate the risk of increased malicious conduct on the Internet. http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf

- On 20 June 2009, the Board participated in another workshop on issues related to the new gTLD program, including trademark protection.

- On 21 June 2009, the IRT presented its Final Report to the ICANN Board at the ICANN Sydney Open Meeting and provided briefings to the GNSO, interested constituencies and others. http://syd.icann.org/full-sched

- On 26 June 2009, the Board acknowledged and thanked the IRT for its "intensive engagement" and its "detailed and articulate proposals." http://www.icann.org/en/minutes/resolutions-26jun09.htm

- Also on 26 June 2009, the Board acknowledged that ICANN staff had posted material on the new Draft Applicant Guidebook for public comment; thanked the community; and requested that all further comments be submitted by the close of the comment period on 20 July 2009. The Board also requested that the ICANN staff prepare a comprehensive set of implementation documents before the Board's meeting on 30 October 2009. See Board

Resolution at https://icann.org/en/minutes/resolutions-26jun09.htm; see Board Meeting Transcript at http://syd.icann.org/files/meetings/sydney2009/transcript-board-meeting-26jun09-en.txt

- On 12 September 2009, the Board continued its discussion about trademark protection in new gTLDs at a Board Retreat.

- On 12 October 2009, the Board sent a letter to the GNSO, requesting that it review trademark protection policy for the new gTLD program as described in the Draft Applicant Guidebook and accompanying memoranda, including the proposals for a Trademark Clearinghouse and a Uniform Rapid Suspension System. http://www.gnso.icann.org/correspondence/beckstrom-to-gnso-council-12oct09-en.pdf

- On 28 October 2009, the GNSO adopted a resolution creating the Special Trademarks Issues review team ("STI"), which included representatives from each stakeholder group, the At-Large community, nominating committee appointees, and the Governmental Advisory Committee ("GAC"). http://gnso.icann.org/resolutions/#200910

- On 30 October 2009, the Board issued a resolution encouraging additional comments on the Draft Applicant Guidebook and new gTLD program.
  See Board Resolution at https://icann.org/en/minutes/resolutions-30oct09-en.htm; see Board Meeting Transcript at https://icann.org/en/minutes/index-2009.htm

- On 11 December 2009, the STI published its Report.
  See link to Report in http://gnso.icann.org/resolutions/#200912

- On 18 December 2009, the GNSO unanimously approved the recommendations contained in the STI's report. http://gnso.icann.org/resolutions/#200912

- On 15 February 2010, ICANN published for public comment proposals for trademark protection in the new gTLD program, including the Trademark Clearinghouse, a Uniform Rapid Suspension System, and a post-delegation dispute resolution procedure.

http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm

- On 10 March 2010, the GAC outlined to the Board some concerns and recommendations for the new gTLD program and its comments on version 3 of the Draft Applicant Guidebook. http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-10mar10-en.pdf

- On 12 March 2010, the Board acknowledged the community recommendations for trademark protections in the new gTLD program, including the development of a Trademark Clearinghouse and a Uniform Rapid Suspension System; resolved that the proposals for both be incorporated into version 4 of the Draft Applicant Guidebook; and directed ICANN staff to review any additional comments and develop final versions of the proposals for inclusion in the Draft Applicant Guidebook. http://www.icann.org/en/minutes/resolutions-12mar10-en.htm

- Also on 12 March 2010, the Board approved the concept of a post-delegation dispute resolution procedure; and directed ICANN staff to review any additional comments and synthesize them, as appropriate, into a final draft procedure, and include the procedure in version 4 of the Draft Applicant Guidebook. http://www.icann.org/en/minutes/resolutions-12mar10-en.htm

- On 28 May 2010, in response to further comments from the community, ICANN published for public comment revised proposals for the Trademark Clearinghouse, Uniform Rapid Suspension System, and a post-delegation dispute resolution procedure. http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm

- On 5 August 2010, the Board responded to the GAC's comments on version 3 of the Draft Applicant Guidebook and described the steps it took to protect trademarks in version 4 of the Draft Applicant Guidebook. http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-05aug10-en.pdf

- On 23 September 2010, the GAC outlined to the Board its concerns and recommendations for the new gTLD program and its comments on version 4 of the Draft Applicant Guidebook.

http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf

- On 24-25 September 2010, the Board participated in another workshop on issues related to the new gTLD program, including trademark protections and passed some resolutions specifically addressing trademark protections. http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.6

- On 12 November 2010, ICANN posted for public comment version 5 of the Draft Applicant Guidebook, incorporating a number of protections for the rights of others, and a series of papers explaining certain aspects of the current proposals for the Trademark Clearinghouse, the Uniform Rapid Suspension System and related comments and analysis. http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf

- On 10 December 2010, the Board resolved that ICANN had addressed the issue of trademark protection in new gTLDs by adopting and implementing various measures, including the establishment of a Trademark Clearinghouse, the Uniform Rapid Suspension System and the Post-Delegation Dispute Resolution Procedure. The Board further stated that these solutions reflected the negotiated position of the ICANN community, but that ICANN would continue to take into account public comment and the advice of the GAC.
  See Board Resolution at https://icann.org/en/minutes/resolutions-10dec10-en.htm; see Board Meeting Minutes at https://icann.org/en/minutes/minutes-10dec10-en.htm

- On 21 February 2011, ICANN published numerous briefing papers on the trademark issues the GAC had identified as "outstanding" in September 2010. http://www.icann.org/en/announcements/announcement-6-21feb11-en.htm

- On 23 February 2011, the GAC issued it "Indicative Scorecard" which included 30 specific recommendations relating to trademark protections on which it intended to consult with the.

http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf

- On 28 February 2011 and 1 March 2011, the GAC and the Board participated in a special two-day consultation to address the remaining outstanding issues related to the new gTLD program, including certain issues related to trademark protection. http://www.icann.org/en/announcements/announcement-23feb11-en.htm

- On 4 March 2011, the Board published its comments on the GAC Scorecard. http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-04mar11-en.pdf

- On 15 April 2011, ICANN published an Explanatory Memorandum on Trademark Protection in the new gTLD program. http://www.icann.org/en/topics/new-gtlds/trademark-protection-claims-use-15apr11-en.pdf

- Also on 15 April 2011, ICANN posted for comment version 6 of the Draft Applicant Guidebook, incorporating additional protections for the rights of others. http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm

- Also on 15 April 2011, ICANN issued "Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response" http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf

- On 19 April 2011, the GAC issued "Remaining points of difference between the ICANN Board and the Governmental Advisory Committee on New gTLD Rights Protection Mechanisms" http://gac.icann.org/system/files/20110419-GAC_comments_on_NewgTLD_Rights_Protection.pdf

- On 26 May 2011, the GAC issued "GAC comments on the Applicant Guidebook (April 15th, 2011 version)" http://www.icann.org/en/topics/new-gtlds/gac-comments-new-gtlds-26may11-en.pdf

- On 30 May 2011, ICANN posted the current version of the Applicant Guidebook.
  http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm

## III. The Board's Analysis of Trademark Protection in the New gTLD Program

### A. Why the Board is Addressing This Issue Now

- ICANN's mission statement and one of its founding principles is to promote competition. The expansion of gTLDs will allow for more innovation and choice in the Internet's addressing system. The ICANN Board seeks to implement the new gTLD program together with measures designed to protect the rights of others on the Internet.
  http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm

- The Board endorsed GNSO policy recommendation states that gTLD strings should not infringe the rights of others. The Board took that recommendation as an emphasis on the need to protect intellectual property rights.

- ICANN committed to the Internet community and governments, including the U.S. Department of Commerce that it would address trademark protection in new gTLDs prior to implementing the program.

- The ICANN Board is committed to making decisions based on solid factual investigation and expert analysis.

### B. Who the Board Consulted

- The GNSO
  http://gnso.icann.org/

- The GAC
  http://gac.icann.org/

- The ICANN Implementation Recommendation Team ("IRT")
  https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090407232008-0-9336/original/IRT-Directory.pdf

- The GNSO's Special Trademark Issues Working Team ("STI")
- The At-Large Advisory Committee ("ALAC") http://www.icann.org/en/committees/alac/
- All other stakeholders and members of the community
- Legal counsel

**C. What Significant Non-Privileged Materials the Board Reviewed**

- In addition to all public comments received on all versions of the Applicant Guidebook, as well as all relevant GAC Communiqués (*see* http://gac.icann.org/communiques), the ICANN Board reviewed the following reports from Stakeholders:
    - 1 June 2007 GNSO Working Group on Protecting the Rights of Others' Final Report http://www.gnso.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf
    - 8 August 2007 GNSO Final Report – Introduction of New Generic Top Level Domains. http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm
    - 24 April 2009 IRT Draft Report and Public Comment Summary http://forum.icann.org/lists/irt-draft-report/pdfuyqR57X82f.pdf
    - 24 April 2009 IRT Preliminary Report, and public comment thereon http://www.icann.org/en/topics/new-gtlds/irt-draft-report-trademark-protection-24apr09-en.pdf; see public comments at http://forum.icann.org/lists/irt-draft-report/
    - 29 May 2009 IRT Final Report http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf
    - 29 May 2009 Implementation Recommendation Team Final Draft Report to ICANN Board

http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf

- 4 October 2009 ICANN Comment and Analysis on IRT Report: Post-Delegation Dispute Mechanism and Other Topics http://www.icann.org/en/topics/new-gtlds/summary-analysis-irt-final-report-04oct09-en.pdf

- 11 December 2009, STI Report
  See link to Report in
  http://gnso.icann.org/resolutions/#200912

- 12 December 2009 letter from the members of the former IRT to ICANN unanimously supporting the work of the STI process and recommendations concerning a trademark clearinghouse and a mandatory Uniform Rapid Suspension system http://www.icann.org/en/correspondence/irt-group-to-dengate-thrush-15dec09-en.pdf

- 23 February 2011 GAC "Indicative Scorecard" http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf

- 19 April 2011 GAC issued "Remaining points of difference between the ICANN Board and the Governmental Advisory Committee on New gTLD Rights Protection Mechanisms" http://gac.icann.org/system/files/20110419-GAC_comments_on_NewgTLD_Rights_Protection.pdf

- 26 May 2011, the GAC issued "GAC comments on the Applicant Guidebook (April 15th, 2011 version)" http://www.icann.org/en/topics/new-gtlds/gac-comments-new-gtlds-26may11-en.pdf

• ICANN prepared materials

- Each version of the Applicant Guidebook, including all ICANN created explanatory memoranda and the specific proposals for trademark protections, along with hundreds of pages of public comment summaries and analysis related to trademark protections.
  (i) http://www.icann.org/en/topics/new-gtlds/comments-

en.htm; (ii) http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm#expmem; (iii) http://www.icann.org/en/topics/new-gtlds/comments-e-en.htm; (iv) http://www.icann.org/en/topics/new-gtlds/comments-3-en.htm; (v) http://www.icann.org/en/topics/new-gtlds/gnso-consultations-reports-en.htm; (vi) http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm; (vii) http://www.icann.org/en/topics/new-gtlds/summaries-4-en.htm; (viii) http://www.icann.org/en/topics/new-gtlds/comments-5-en.htm; (ix) http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm; (x) http://www.icann.org/en/topics/new-gtlds/dag-en.htm; (xi) http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm; and (xii) http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm

**D. What Concerns the Community Raised**

- There is a need for adequate protection of intellectual property rights in new and existing gTLDs.
- If the introduction of new gTLDs leads to increased malicious conduct on the Internet, then trademark owners may pay a disproportionate percentage of costs associated with enforcing standards of behavior.
- Defensive domain name registrations in new gTLDs generate substantial costs for trademark owners.
- Registry behavior may cause or materially contribute to trademark abuse, whether through a TLD or through domain name registrations in the TLD.
- Legal rights that a party seeks to protect through Rights Protection Mechanisms should be capable of being authenticated, at least if the authenticity of such rights is challenged.

- Administrative dispute resolution procedures provide trademark owners with relatively swift and inexpensive alternatives to arbitration and litigation.

- Recurring sanctions may not be a sufficient remedy for wrongful conduct; suspension and termination may be necessary remedies.

- Policies developed to prevent and remedy trademark abuses in the DNS are expected to build upon the framework of existing intellectual property laws to minimize burdens on trademark owners and contribute to the orderly functioning of the DNS.

- The introduction of new gTLDs may lead to consumer confusion if one trademark owner registers its mark in one gTLD while another registers an identical or similar mark in another gTLD. To the extent that Internet users are unable (or become unaccustomed) to associate one mark with a specific business origin, the distinctive character of the mark will be diluted.

### E. What Steps ICANN Has Taken or Is Taking to Protect the Rights of Others in New gTLDs

The Board believes the following measures will significantly help to protect the rights of others on the Internet. ICANN has incorporated the majority of these measures into the current version of the Applicant Guidebook and the registry agreement, and its efforts to implement the remaining measures are ongoing:

- Pre-delegation objection procedures.

- Mandatory publication by new gTLDs of policy statements on rights protection mechanisms, including measures that discourage registration of domain names that infringe intellectual property rights, reservation of specific names to prevent inappropriate name registrations, minimization of abusive registrations, compliance with applicable trademark and anti-cyber squatting legislation, protections for famous name and trademark owners and other measures.

- Mandatory maintenance of thick Whois records to ensure greater accessibility and improved stability of records.

- The establishment of a Trademark Clearinghouse as a central repository for rights information, creating efficiencies for trademark holders, registries, and registrars

- The requirement for all new registries to offer both a Trademarks Claims service and a Sunrise period.

- Post-delegation dispute resolution procedures that allow rights holders to address infringing activity by a registry operator that may be taking place after delegation.

- Implementation of the Uniform Rapid Suspension System that provides a streamline, lower-cost mechanism to suspend infringing names

- The continued application of the Uniform Domain Name Dispute Resolution Policy on all new gTLDs.

### F. What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of trademark protection in the new gTLD program. The Board found the following factors to be significant:

- The GNSO's Working Group on Protecting the Rights of Others was not able to reach consensus on "best practices" for Rights Protection Mechanisms;

- While economic studies revealed that there will be both benefits and cost to trademark holders associated with new gTLDs, no determination could be made that the costs outweigh the benefits.

- New gTLDs would promote consumer welfare.

- The availability and efficacy of dispute resolution mechanisms and appropriately-designed modifications of ICANN procedures for protecting intellectual property.

- The need for dispute resolution mechanisms to be comprehensive enough to expand with the addition of new gTLDs.

- The need to balance the protection of trademark rights with the practical interests of compliant registry operators to minimize operational burdens and the legitimate expectations of good faith domain name registrants.

- The risk of increasing exposure of participants to litigation.

- The lack of reported problems with ICANN's previous introductions of new TLDs.

## IV. The Board's Reasons for Proceeding to Launch the New gTLD Program While Implementing Measures to Protect Trademarks and Other Rights

- ICANN's "default" position should be for creating more competition as opposed to having rules that restrict the ability of Internet stakeholders to innovate.

- New gTLDs offer new and innovative opportunities to Internet stakeholders.

- Brand owners might more easily create consumer awareness around their brands as a top-level name, reducing the effectiveness of phishing and other abuses.

- Revised applicant procedures and agreements reflecting the measures to mitigate the risk of malicious conduct will permit ICANN to address certain risks of abuse contractually and also will permit ICANN to refer abuses to appropriate authorities. ICANN can amend contracts and the applicant guidebook to address harms that may arise as a direct or indirect result of the new gTLD program.

- ICANN has addressed the principal concerns raised by stakeholders about the potential for proliferation of malicious conduct in the new gTLD space by implementing measures to mitigate that risk, including centralized zone file access, a high security TLD designation and other mechanisms. A combination of verified security measures and the implementation of DNSSEC will allow users to find and use more trusted DNS environments within the TLD market.

- ICANN has addressed the principal concerns raised by stakeholders about the protection of trademarks in the new gTLD space by

implementing other measures to enhance protections for trademarks and other rights, including pre-delegation dispute resolution procedures, a trademark clearinghouse, and post-delegation dispute resolution procedures.

- To the extent that there are costs to trademark owners or others, ICANN has worked with the community to address those concerns, and ICANN pledges to continue that effort.

# R-77

RESPONDENT'S EXHIBIT

**Rationale: Remaining areas of difference between ICANN's Board and Governmental Advisory Committee regarding implementation of the New gTLD Program**

**20 June 2011**

The GAC Indicative Scorecard <http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf> identified twelve issue areas for discussion between ICANN's Board and GAC; those were sub-divided into 80 topics. Each topic represented a potential difference between the then-proposed implementation of new gTLDs and the GAC position. Each topic required at least discussion and clarification. In many cases substantive changes in the program were requested.

A remarkable amount of work and compromise (more than a good faith effort) has reduced the areas of disagreement down to a few. This document is intended to capture those differences and explain the ICANN Board reasons for deciding on implementation characteristics that differ from the GAC advice.

It is important to note the complexity associated with the number of issues and the amount of nuance involved, combined with many face-to-face consultations and teleconferences. In this document, the Board identifies the key differences with the intent to identify them all but recognizes there might remain other differences in detail. Additionally, the Board recognizes that the Board and GAC agree there is work left to do on certain implementation items. These are not areas of disagreement; they are areas where the Board and GAC agree on future work, either prior to launch or post-launch. These areas are listed below.

The rationale summarizes and builds on earlier documents from the Board to the GAC <http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-04mar11-en.pdf>.

**Remaining areas of difference and Board rationale for decision:**

1. Trademark protections:

   Brief Statement of Difference
   The GAC wishes to: (a) eliminate the requirement proof of "use" of the trademark for users of Sunrise, URS and PPDRP; (b) change the burdens of proof in URS and PDDRP from clear & convincing evidence to preponderance of the evidence; (c) grant the IOC and Red Cross requests for specific names reservation at the second level; and (d) eliminate the need for the complainant in a PDDRP case to show affirmative conduct on the part of the registry. The Board has declined to accept this advice for the reasons below and in previous papers and statements.

a. Requirement for evidence of trademark "use"

GAC Communication: Letter of 26 May 2011

"The GAC maintains its advice to the Board that the requirement to provide evidence of use should be removed because it is inconsistent with trademark law in many jurisdictions, burdensome for business, disproportionate and discriminatory. The GAC notes that the principal reason the Board disagrees … is that this requirement would in its view deter gaming.

"In view of the Board's concern about this as an overriding risk that outweighs the concerns raised by the GAC if this requirement were to be imposed, the GAC asks the Board to provide a written document for the GAC's consideration by 8 June 2011, so that there is opportunity for GAC review before meeting in Singapore, which:

"a) provides a detailed, evidence-supported analysis of the gaming threat at the second level;

"b) explains why the Board believes that this requirement is the only practicable solution for addressing this threat and would successfully deter the practice of gaming;

"c) provides an analysis of the likely impact of this requirement on legitimate mark holders who would be rendered ineligible for inclusion in the Clearinghouse if this requirement is imposed;

"d) assesses the costs to business of having to furnish evidence of proof;

"e) explains the resources which ICANN will expect to be deployed by the Clearinghouse for the rigorous examination of proof of evidence.

"The GAC requests a discussion of this paper with the Board at the meeting in Singapore before finalizing its advice to the Board on the proposal to require evidence of proof."

Board rationale

The requested document, Requirement for Evidence of Trademark Use http://www.icann.org/en/topics/new-gtlds/trademark-protections-evidence-use-07jun11-en.pdf, has been submitted to the GAC. The rationale for retaining the use requirement is described in that paper.

b. Burdens of proof for URS and PDDRP

GAC Communication: Letter of 26 May 2011
"The GAC's advice to the Board that it reduce the burden of proof to the standard usual applicable to civil law (iv) is unchanged on the grounds that the GAC believes that this would constitute a significant reduction in the burden on business without compromising the effectiveness of the URS and the PDDRP."

Board rationale
The Board understands the GAC's clear advice. Both standards, preponderance of the evidence and clear and convincing evidence, are, contrary to the GAC claim, civil standards, not criminal standards and the Board believes that each applied as conditions warrant. In these cases, after significant balancing and consideration of public comment on both sides, it was decided to apply the higher standard. URS provides an extraordinary remedy – to take down names rapidly in clear-cut cases of abuse only. Similarly, the seriousness of the potential remedy in the PDDRP, potential termination of a registry agreement, warrants additional scrutiny beyond a 51% certainty of registry liability. This seriousness of the allegation involved in the PDDRP, addressing the egregious and systematic nature of the registry behavior supports the need for the clear and convincing burden of proof.

c. IOC / Red Cross requests

GAC Communication: Letter of 26 May 2011
"The GAC supports ICANN's continued application of very tightly drawn criteria for inclusion on the reserved names list, and the GAC is unaware of any other international non-profit organization that enjoys the level of special legislative protection across the world afforded to the IOC and the Red Cross and Red Crescent movement that justifies inclusion on the Reserved Names List."

Board Rationale
The Board agrees that the names requested by the IOC and Red Cross should not be delegated at the top-level during the first round until the GNSO and GAC can develop policy advice for future rounds based upon the global public interest. The Board decided that the extraordinary step of blocking the requested names at the second level should not be taken as it would deny those with a legitimate interest or rights in registering those names at the

second level, e.g., olympic.taxis and redcross.salt.

The Board asked and received answers on this issue and the topic was discussed. The Board agrees that no other organization (or very few others) would qualify under the proposed criteria. Many organizations face these same issues. There are protections in the Guidebook that both organizations may utilize: objections and GAC Advice at the top level; URS, Sunrise, Trademark Claims, thick Whois, and PDDRP at the second level. Even with the extraordinary recognition these renowned organizations have earned, the Board is not sure a separate set of protections should be afforded them. In addition, such a reservation would unfairly penalize many entities with legitimate interests in these names: Olympic Paint, Olympic Airlines, Red Cross Salt, among many others.

There is a concern that what is being requested is creation of rights protection mechanisms on an ad hoc basis without addressing policy concerns. There has been a tremendous amount of work and community discussion about the rights protection mechanism to be included in the new gTLD program. And, while these two organizations have asked for special reserved protection, no community discussions have involved such a level of protection for special cases.

d. Need to show "affirmative" conduct in PDDRP

GAC Communication: Letter of 26 May 2011
"In PDDRP paragraph 6.1, the GAC advises that the word 'affirmative' be ***deleted***.

"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:

i. taking unfair advantage of the distinctive character or the reputation of the complainant's mark; or

ii. impairing the distinctive character or the reputation of the complainant's mark; or

iii. creating a likelihood of confusion with the complainant's mark."

Board Rationale
The Board believes that removal of the word would markedly change the standard; this change is not a mere clarification. Including the word "affirmatively" requires a showing that the registry was actively involved in the

malicious activity. Given the penalties in PDDRP can be severe and are directed at the registry and not the registrant, the standard was written to require affirmative conduct.

2. Post delegation disputes: effect of administrative decisions

Brief Statement of Difference

The GAC wants ICANN to respect any "final legally binding decision", which the GAC notes would include "an administrative decision." ICANN has committed to respect orders of Courts only.

GAC Communication: Letter of 26 May 2011

"According to the GACs previous input, the GAC also wants ICANN to respect a legally binding administrative decision. The reason for this is that in some jurisdictions it is not possible for the Government or Public Authority to have their administrative decision confirmed by a court. Only the other party (i.e. the applicant) can take the decision of the Government or Public Authority to court.

"If ICANN will not include the obligation to comply with a legally binding administrative decision in the Applicant Guidebook, you will have a situation where some Governments or Public Authorities will not have the possibility to give a letter of support or non-objection. In those cases, ICANN must be willing to comply with a legally binding administrative decision made by the Government or Public Authority which provided the initial letter of support or non-objection. This commitment from ICANN should be included in the final version of the Applicant Guidebook, or at least ICANN should signal that they are willing to accept this as an amendment in the registry agreement on a case-by-case basis."

Board Rationale

As noted previously, the GAC is essentially asking ICANN to expand the respect afforded to court orders to also include any "final legally binding decision", which the GAC notes would include "an administrative decision." ICANN is concerned that such a provision could have a very broad scope (including "decisions" from multiple overlapping or competing local and national governmental agencies). (For example, agencies from the governments of the City of Los Angeles and the County of Los Angeles might theoretically issue inconsistent administrative decisions regarding the operation of a TLD registry operating in Los Angeles.) ICANN is not equipped to sort out what constitutes a "final legally binding decision" in every jurisdiction in the world, and will be on much clearer ground working with orders from courts. Courts would presumably be available to confirm any legally binding decisions, and as noted above ICANN has committed to respect such orders. If courts are not available in some cases then governments might want to consider alternative means of directly ensuring registry operator compliance with such administrative decisions,

perhaps for example through a bilateral agreement between the operator and the government.

3. Applicant support levels

Brief Statement of Difference

The GAC calls for a 76% fee reduction for applicants from developing countries. The Board has not agreed to that figure and is developing a program, based on JAS and other advice, to identify sources of funding for needy applicants and processes to distribute them.

GAC Communication: Letter of 26 May 2011

"The GAC urges the Board to coordinate and implement as a matter of urgency the decisions relating to the process and timeline issues on the support programme in order to provide equal opportunities to all applicants, particularly from developing countries.

"For support to developing countries, the GAC is asking for a fee waiver, which corresponds to 76 percent of the US$ 185,000 application fee requirement. Further, there will be instances where additional costs will be required: for example, for auction, objections, and extended evaluation. In such events, the GAC proposes fee reduction and waivers in these processes/instances where additional costs are required. The GAC would further like to propose an additional waiver of the annual US$ 25,000 fee during the first 3 years of operation."

Board Rationale

The Board is committed to implementing a program to aid deserving applicants, particularly those from developing countries. The Board is working toward developing a solution for the first round. In order to get a workable program in place, in time, the Board, after listening to community input through the JAS and other places, will develop solutions for funding and distributing funds.

The Board will include: (a) consideration of the GAC recommendation for a fee waiver corresponding to 76 percent of the USD 185,000 evaluation fee, (b) consideration of recommendations of the ALAC and GNSO as chartering organizations of the Joint Applicant Support (JAS) Working Group, (c) designation of a budget of up to USD $2 million for seed funding, and creating opportunities for other parties to provide matching funds, and (d) the review of additional community feedback and advice from ALAC and recommendations from the GNSO following their receipt of a Final Report from the JAS Working Group..

**Areas of agreement: remaining work**

The GAC comments on the Applicant Guidebook (15 April 2011 version) also described additional work to be done: some as a prerequisite to accepting new gTLD applications and some as post-launch study; some as joint GAC-Board work and some for the ICANN Board to take on or facilitate. In each case, the Board essentially agrees and will undertake the following work:

1. Handling of sensitive strings

   "Further discussions are needed between the GAC and the ICANN Board to find a mutually agreed and understandable formulation for the communication of actionable GAC consensus advice regarding proposed new gTLD strings."

2. Communications: Government objection processes

   "The GAC cannot determine whether the Board's commitment to fund at least one objection per individual national government will be sufficient, in view of the as-yet-unknown number of new gTLD strings that may be considered controversial, objectionable, or to raise national sensitivities. The GAC therefore advises the Board that its Communication Outreach program should specifically identify the options available to governments to raise objections to any proposed string."

3. Root scaling: complete documentation

   "The GAC looks forward to the final implementation of GAC advice and to the publication by ICANN of a single authoritative document describing the monitoring system and reporting mechanisms. This document should be ready before the launch of the new gTLD program."

4. Operating practices for Community TLDs

   "The GAC requests information from the Board regarding how the GAC's concerns can be effectively taken into account in the course of the GNSO's deliberations of a new procedure for determining the circumstances under which a Community TLD registry may (or may be required to) amend its registration policies."

5. Trademark protections

   a. Post-launch study

      "The GAC … proposes that a comprehensive post-launch independent review of the Clearinghouse be conducted one year after the launch of the 75th new gTLD in the round. The GAC advises that this review should examine whether

the aims, functionality and operation of the Clearinghouse would benefit from incorporating the current GAC proposals as well as any unforeseen questions and issues that may arise following the launch of the round.

"The post-launch review should establish whether the automated IP Claims system should be enhanced to include key terms associated with the goods or services identified by the mark, and typographical variations identified by the rights holder.

"The GAC advises that the review should include:

a) a consultation with registry providers, registrants and rights holders on the benefits or otherwise of extending the period of the Clearinghouse notifications beyond 60 days;
b) an analysis of the impact of the operation of the Clearinghouse notifications on the commercial watch services market;
c) an assessment of the likely resource requirements for extending the operation of the Clearinghouse notifications to potential registrants for the life of each new registry."

b. The Clearinghouse tender or request for proposals

"With regard to the issue of non-exact matches … the GAC … recommends that the request for proposal (RFP) that ICANN will issue to potential Clearinghouse providers includes a requirement that the candidate assess whether domain names that include a mark at the beginning or the end of an applied for second level domain could be included in the services."

# R-78

RESPONDENT'S EXHIBIT

Exhibit R-78

# Intergovernmental Negotiations and Decision Making at the United Nations: A Guide

Second Updated Edition

UNITED NATIONS

NGLS

Exhibit R-78

# Intergovernmental Negotiations and Decision Making at the United Nations: A Guide

## Second Updated Edition

**UN Non-Governmental Liaison Service (NGLS)**
**with Gretchen Sidhu**

UNITED NATIONS
New York and Geneva, 2007

II

Gretchen Sidhu, who collaborated with NGLS on this publication, has worked as a journalist and NGO activist covering the United Nations and an array of intergovernmental negotiations since 1994. She currently writes and edits publications on development issues for international institutions including the United Nations, the United Nations Development Programme, the United Nations Children's Fund, and the Inter-American Development Bank.

The views expressed in this publication do not necessarily represent those of the United Nations Non-Governmental Liaison Service (NGLS), or any other part of the United Nations system.

The designations used do not imply the expression of any opinion whatsoever on the part of NGLS or any part of the United Nations system concerning the legal status of any country, area or territory or its authorities, or concerning the delimitation of its frontiers.

This publication is published for non-governmental and civil society organizations and others interested in the institutions, policies, and activities of the UN's agenda, including development, human rights, peace and disarmament. It and all other NGLS publications can be found on the NGLS website: *www.un-ngls*. Organizations are welcome to use NGLS publications in their own work and information activities. Please credit NGLS and provide a copy.

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## Preface

In its work on the UN system-NGO interface, NGLS has witnessed at first-hand the bewilderment of many NGO and civil society representatives at the seeming complexity of the intergovernmental negotiating and decision-making process in which the United Nation's Member States engage. Time after time, countless non-governmental representatives have asked NGLS: What is a "non-paper?" What does "*ad-referendum*" mean? Who are the "Friends of the Chair?," and other questions. Many UN staff have also posed the same questions.

Originally published by NGLS in 2004, this second revised edition of the *Decision-Making Guide* presents updated information on how key participants engage in intergovernmental negotiations; new trends in civil society engagement over the past few years, whether it be through interactive hearings or online consultations; and a list of NGO focal points across the UN system.

This publication responds to an ongoing and widely-articulated need for a volume that, in a concise way, explains the governance and decision-making fora and processes of the United Nations system. Chapter one of Section One explains the principal UN organs of intergovernmental decision making in the ongoing work of the system. Another chapter explains the negotiating blocs of Member States at the UN while another describes the various types of documentation that constitute the lifeblood of the decision-making system. The final chapter of this section of the book looks at the nature of UN decisions and the weight they carry internationally. It must be borne in mind, however, that despite strict legal definitions, the nature and weight of UN decisions are often subject to interpretation by UN Member States in its deliberative processes.

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Today, the international community has, by and large, accepted that the promotion of good governance at the national and international level benefits from the participation of independent groups and organizations of civil society in deliberative governance processes and systems. Section Two of this volume, written by Gretchen Sidhu, provides practical knowledge, advice and guidance to non-governmental representatives who wish to constructively and effectively engage with the UN system, ranging from accreditation to the preparatory process, to networking, and engaging in follow-up activities after a meeting.

Given the breadth and complexity of the subject matter of this publication, NGLS considers it a work in progress to be developed and amplified in future editions. NGLS welcomes, therefore, comments, observations and suggestions from readers.

Tony Hill
Coordinator
UN Non-Governmental Liaison Service (NGLS)
September 2007

## Introduction

The United Nations, from its inception, has served as the primary international arena for governments to come together, discuss common global concerns, and make decisions on collective actions to take in response. Nearly every government in the world is now a UN Member State, and can offer its voice on subjects from poverty to peace and security, from disputed borders to women's rights to the protection of fish in the sea. Despite the often complex interplay of differing political perspectives, Member States work together to reach consensus decisions in the belief that strong collective support can help transform written agreements into effective action.

While only governments actually make decisions at the UN, in the form of resolutions, treaties, plans of action and so on, the decision-making process itself has increasingly opened to an array of non-state players, including non-governmental organizations, the private sector, trade unions, foundations, think tanks, local authorities and academic researchers. This was particularly striking during the series of world conferences and summits in the 1990s where civil society and other groups came to be seen both as sources of expertise that can inform decisions, and as partners that can help carry them out.

NGOs have successfully advocated for major shifts in policy related to human rights, sustainable development and disabilities, raised important proposals such as a global currency transaction tax, and worked nationally and locally to change laws and offer services in areas such as health and education. They now address plenary meetings of UN Member States contribute alternative reports and strategic information to treaty bodies, brief the Security Council on occasion "Arria Formula"—on topics such as women, peace and security—and sometimes sit on government delegations at UN meetings.

The 1945 UN Charter itself calls upon the UN to work with non-governmental organizations. In the intervening years, as the door to multilateral government debate opened on many of these subjects, the number and strength of NGOs flourished as well, with organizations forming and forging links across countries and regions. According to the Union of International Associations, the number of international NGOs alone has grown to over 50,000 in 2003. Countless thousands more work regionally, nationally and locally.

NGO involvement in the UN expanded considerably through the series of UN world conferences and summits held during the 1990s. These large-scale events on key issues such as the environment, population and women, sometimes drew as many as 40,000 participants. With some exposure to the mechanisms and possibilities of intergovernmental decision making, many NGOs took a new interest in the UN as an arena for policy dialogue and advocacy. Others came forward through intensive organizing around emerging issues such as the creation of the International Criminal Court, the critical problems of landmines, child soldiers and the devastating worldwide pandemic of HIV/AIDS.

More recently, civil society movements have mobilized hundreds of thousands of people around a number of issues. The Make Poverty History campaign, launched in January 2005, has seen an unprecedented level of global campaigning and mobilizing of public support to bring about a fundamental rethink of the rules of the relationship between the developing and the developed world. Working for the development of an international Arms Trade Treaty that would ease the suffering caused by irresponsible weapons transfer, Control Arms, a consortium of NGOs working on arms issues, gathered the support of over one million people worldwide in its Million Faces Campaign Petition, which was presented to the UN

Secretary-General in October 2006 during the Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

Another recent trend has been online mobilization where global online networks connect and help educate people working on similar issues through e-learning, advocacy and training. This process has been particularly evident during preparations and the two summit phases of the World Summit on the Information Society as well as its follow up. Such networks have provided a forum for policy discussions and governance of the Internet, communication rights and empowerment.

Member States of the UN have responded to this upsurge of non-governmental actors both with encouragement and some measure of caution. Several years ago, the Economic and Social Council (ECOSOC) revised its guidelines for NGO consultative status—the main avenue for making regular contributions to ECOSOC decision-making processes— to foster more diverse participation, especially from developing countries (Resolution 1996/31 *Consultative relationship between the United Nations and Non-Governmental Organizations*).

Another step has been the introduction of innovative meeting formats that enlarge the scope of participation, such as hearings, multi-stakeholder dialogues, and roundtables where NGOs and governments sit side by side and present their views to each other. The use of "online consultations" has risen as well where UN entities ask for input from civil society on working methods, reports, resolutions and even treaties. Subjects of online consultations have been equally diverse—ranging from migration and development to the environment to the recently adopted Convention on the Rights of Persons with Disabilities.

Since June 2005, the General Assembly has held four informal interactive hearings with representatives of non-governmental organizations, civil society organizations and the private sector. The first one was held during the lead-up to the 2005 World Summit, and three additional ones were held in 2006 as inputs to the High-level Meetings to review the Declaration of Commitment on HIV/AIDS; on the midterm comprehensive global review of the implementation of the Programme of Action for the Least Developed Countries for the Decade 2001-2010; and on international migration and development. These hearings have been an important innovation for interaction between civil society and the Assembly as they have created an opportunity for civil society representatives, from both the developing and the developed world, to dialogue with representatives of Member States.

At the close of the UN General Assembly's Special Session on HIV/AIDS in 2006, the President of the sixtieth session of the General Assembly, Jan Eliasson (Sweden), remarked, "What I did not know that we would see was the unprecedented level of constructive and substantive interaction between Member States and civil society…we come from different backgrounds and have different tactics, but we need each other…The impact of this interaction has been evident in the negotiations on the Political Declaration which we have just adopted…I know that none of you got all that you wanted in this Declaration. That is the nature of negotiations. But I know that, thanks in part to the influence brought to bear by civil society, the draft got stronger—not weaker—in the final days and hours."

Despite this greater openness, the UN remains an institution governed by its Member States and is structured primarily to support opportunities for governments to debate and make decisions. Not all

governments have readily or in some cases consistently embraced a wider role for civil society. Strict rules protect government prerogatives and procedures, while the guidelines for NGO access remain fairly general, which allow for differing interpretations across different forums. Depending on how they have been accredited, NGOs can also be held accountable to abide by certain stipulations, such as filing reports confirming the relevance of their work to the UN.

In the 2000 Millennium Declaration, Member States agreed to give greater opportunities to the private sector, NGOs and civil society to contribute to realizing UN goals and programmes. Two years later, UN Secretary-General Kofi Annan, in his report on reforming the UN, addressed a number of issues that have arisen as a result of the "explosive growth" of civil society involvement, including physical resources and accreditation procedures. To achieve "greater coherence, consistency and predictability" in policies and procedures governing civil society interaction, the Secretary-General set up a high-level panel of eminent persons to discuss practical recommendations. The panel (commonly known as the "Cardoso Panel") reaffirmed the United Nations role as a convener of diverse constituencies—with civil society being an important aspect. While Member States have not taken any formal action on the report, a number of actions have been taken such as the strengthened capacity of UN resident coordinator's ability to engage with local civic groups and to the establishment of a Trust Fund to support UN country teams work with civil society is underway.

Recent reform efforts throughout the UN system – including the establishment of the Human Rights Council (A/RES/60/251) and the Peacebuilding Commission (A/RES/60/180 and Security Council Resolution 1645)—have included negotiations to determine the

functioning of these bodies and the structures and mechanisms that will be put in place for civil society participation. As this book went to press, negotiations were still underway regarding the exact modalities of the aforementioned entities.

The Secretary-General, in his 2005 report "In larger freedom: towards development, security and human rights for all," wrote that the goals of the United Nations can only be achieved if civil society and governments are fully engaged. Moreover, the Secretary-General's report on the work of the Organization for the sixty-first session of the GA (A/61/1) included—for the first time—a section dedicated to reviewing the Organization's work with civil society. There he reaffirmed civil society's important role at the UN noting that, "today it would be unthinkable to stage such [intergovernmental meetings and conferences] without the policy perspectives, unique advocacy and mobilization of civil society. The engagement of civil society has clearly enhanced the legitimacy, accountability and transparency of intergovernmental decision- making."

The relationship between non-State actors and the United Nations is an ever-evolving one; and, what the future holds for access and input by civil society remains unclear. However, it is clear that no matter the modalities, civil society will be involved. Ban Ki-moon, the eighth Secretary-General of the UN, noted in his first address to ECOSOC that "today, no UN development effort—whether advocacy for a broad cause or support for specific goals—can make real headway without support from civil society."

## About This Book

The purpose of the following chapters is not to assess and analyze the place and role of NGOs in UN decision-making processes, but to provide basic, practical information to organizations that are interested in participating in concrete ways. The UN can seem a vast and bewildering place, full of undecipherable language, meetings behind closed doors, strange regulations and unwieldy organizational structures. However, understanding how it all works is the critical first step to make in order to be able to participate effectively, whether advocating a position at a world conference or the regional monitoring of an international body or global programme of action. This book does not address operational cooperation between the UN and NGOs, in humanitarian crises and emergencies, in development projects and programmes and other jointly engaged activities, although this too is an area where interaction between the UN and civil society has intensified greatly over the past decade or so.

In its first section, the book presents the bare bones of UN decision making, and how it functions. Chapter one provides essential information on key UN bodies and processes, while chapter two details the lifecycle of a decision, different types of meetings, the system that supports negotiations and how new processes begin. Chapter three chronicles the government blocs that form the negotiating system at the UN, and the way they work. Chapter four lists different kinds of UN documents—the lifeblood of the system—and explains how they are numbered and where to find them. The last part of the section, chapter five, offers definitions of different UN decisions, including how they are commonly used and the level of their political significance.

Section Two is a guide to NGO participation, starting with chapter one on the basics of accreditation for groups that decide to attend

meetings, or want to maintain a regular presence at UN Headquarters or with one of the UN funds, programmes or specialized agencies. Chapter two makes suggestions for preparing for meetings. Chapter three explores strategies for participation and follow-up during and after a meeting, looking at how to approach governments, decode language, collaborate with other organizations and tap the power of the press. The chapter closes with a description of some of the forums where NGOs have been most active in the past, touches upon emerging arenas for attention, and provides some general ideas for follow-up, including through monitoring at the local, national and regional levels.

The Annexes provide a list of NGO Focal Points of the UN system, a list of institutional resources, an excerpt from ECOSOC Resolution 1996/31, a description of the DPI Accreditation Process and Criteria, as well as a look at the evolution of civil society engagement over more than 20 years.

# Section One

# Intergovernmental Negotiations and Decision Making at the United Nations

## How it works

# Chapter 1
# The UN: Who Makes Decisions?

The primary role of the United Nations is to serve as an international forum for addressing a wide range of global concerns. Its work includes intergovernmental negotiations resulting in collective decisions that both guide the work of the United Nations and shape new international, regional and national policies and actions. Aside from governments, a wide variety of stakeholders, including non-governmental and civil society organizations and other actors, attend and in some cases contribute to UN decision-making processes. They do this through formal and informal, direct and indirect advocacy efforts. Only governments can vote and affirm or reject official UN agreements.

Nearly every nation in the world belongs to the UN, with membership totaling 192 countries by the end of June 2006 with the addition of the Republic of Montenegro. States that become Members remain

sovereign countries, but they also agree to uphold the UN Charter, the international treaty that established the UN after World War II. Currently, the Holy See is the only Non-Member State that maintains a permanent mission at UN Headquarters in New York, reflecting its observer status at the General Assembly and its presence at many UN bodies.

More than 40 other "entities" and intergovernmental organizations—such as Palestine, the Commonwealth Secretariat, the International Committee of the Red Cross and the International Tribunal for the Law of the Sea—have a standing invitation to participate as observers in the GA. Most recently, the Hague Conference on Private International Law was granted observer status in November 2005 [A/RES/60/27]. A full list of organizations that have been granted observer status with the United Nations is available online: *http://lib-unique.un.org/lib/unique.nsf/Link/R02020*.

**Principal Organs**

The UN has three principal decision-making bodies: the General Assembly, the Economic and Social Council (ECOSOC) and the Security Council. While the decision-making process is essentially the same across the three, each serves a distinct function and is structured and governed differently. The abiding principle in United Nations decision making is, whenever possible, to reach consensus amongst all participating governments. This is, however, not always possible, and in these cases, a range of mechanisms, such as voting and entering reservations, enables decisions to move forward.

**The General Assembly**

As the UN's main deliberative body, the General Assembly has the right to discuss and make recommendations on any matter that falls under the scope of the Charter. These include peace and security,

except when the Security Council is already discussing a situation; political cooperation; international law; human rights; and international collaboration on economic, social, cultural, education and health issues. The General Assembly cannot legally compel governments to act on its decisions, although its recommendations carry the weight of world opinion. How seriously this opinion is taken depends on the perceptions and aims of individual governments, as well as an array of political considerations.

General Assembly decisions also guide much of the year-round work of the UN system. They determine policies and programmes for the UN Secretariat; set goals for development activities; approve the UN and peacekeeping budgets; call for world conferences on major issues; admit new Member States; and appoint the Secretary-General upon the recommendation of the Security Council.

**Membership and Voting:** All Member States belong; each is allowed one vote. Decisions on particularly critical questions, such as peace and security, require a two-thirds majority. Other decisions are made with a simple majority.

**Annual sessions:** At the start of each annual General Assembly session, Member States elect a president, 21 vice-presidents and the chairs of the Assembly's six committees. The presidency rotates annually among five regional groups of States: African, Asian, Eastern European, Latin American and Caribbean, and Western European and other States. The General Assembly meets throughout the year, but it convenes its main session at UN Headquarters in New York from early September through mid-December. The main session starts with a two-week general debate attended by Heads of State or Government and ministers. Each year the General Assembly addresses over 150 agenda items, considered either in a plenary session or in one its six committees.

**GA Committee Issues**
The six committees of the General Assembly focus on specific sets of agenda items. Recent examples include:

**First Committee** (Disarmament and International Security): Reduction of military budgets, developments in information and telecommunications in the context of international security, the relationship between disarmament and development, small arms, and review of the Comprehensive Nuclear-Test-Ban Treaty.

**Second Committee** (Economic and Financial): The international financial system and development, women and development, implementation of Agenda 21, high-level dialogue on strengthening international economic cooperation for development through partnership, international migration, and globalization and interdependence.

**Third Committee** (Social, Humanitarian and Cultural): Follow-up to the International Year of Older Persons, crime prevention, report of the UN High Commissioner for Refugees, children's rights, elimination of racism, implementation of human rights instruments, and alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms.

**Fourth Committee** (Special Political and Decolonization): Effects of atomic radiation, peaceful uses of outer space, comprehensive review of peacekeeping operations, information from Non-Self-Governing Territories, and the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

**Fifth Committee** (Administrative and Budgetary): Review of the efficiency of the administrative and financial functioning of the UN, proposed programme budgets, assessments, human resources management, the UN Common System, improving the financial situation of the UN, and the financing of the International Criminal Tribunal for Rwanda.

**Sixth Committee** (Legal): Consideration of the report of the International Law Commission, establishment of the International Criminal Court, measures to eliminate international terrorism, and the scope of legal protection under the Convention on the Safety of UN and Associated Personnel.

**The Six Committees:** The large number of items on the General Assembly agenda has required that most be delegated for discussion in six specialized committees. The six committees then meet concurrently to debate specific sets of issues on the agenda, harmonize the points of view of different governments, and draft resolutions for final adoption by the plenary of the General Assembly. The committees include: the First Committee, on disarmament and international security; the Second Committee, on economics and finance; the Third Committee, on social, humanitarian and cultural concerns; the Fourth Committee, on special political and decolonization issues; the Fifth Committee, on administrative and budgetary affairs, and the Sixth Committee, on legal subjects (see box on opposite page).

**Special and Emergency Sessions:** The General Assembly can call special sessions, which may be held at any time of the year, on specific topics requiring debate as it deems necessary. Special sessions meet at the request of the Security Council, a majority of Member States or one Member State with backing from the majority of Member States. An emergency session of the General Assembly may be called to convene within 24 hours of the emergency to be addressed in the following ways: by any nine members of the Security Council, the majority of Member States, or one Member State with majority Member State backing (see box on page 8).

**NGO Participation:** NGOs do not enjoy official consultative status with the General Assembly, although they are allowed to participate in its activities by invitation. It is common practice to invite NGOs to participate in the special sessions of the General Assembly, especially when the special session is undertaking the review of a major conference. In practice, NGOs are actively involved in following the work of some of the six committees. They conduct many forms of advocacy, including meeting regularly with delegates and offering position papers.

**Special Sessions of the General Assembly**
Up to January 2005, the General Assembly has held 28 special sessions on subjects ranging from apartheid to drug abuse to international economic cooperation to HIV/AIDS. Nearly one-third of them have taken place in the last four years, serving mainly as a way for the General Assembly to review the progress of implementing agreements made at world conferences five and ten years after they took place. The +5 and +10 reviews, as they have become known, have followed up on the 1990 World Summit for Children, the 1992 Conference on Environment and Development, the 1994 Global Conference on the Sustainable Development of Small Island Developing States, the 1994 International Conference on Population and Development, the 1995 World Summit for Social Development, the 1995 Fourth World Conference on Women, and the 1996 Conference on Human Settlements. The most recent special session, held in January 2005, commemorated the sixtieth anniversary of the liberation of the Nazi concentration camps (A/RES/59/26).

## The Economic and Social Council

The UN Charter established the Economic and Social Council (ECOSOC) as the principal organ to coordinate the economic and social work of the United Nations and the specialized agencies and bodies, collectively referred to as the UN system (see Annex II). ECOSOC's activities include formulating policy recommendations, conducting studies, calling for international conferences and coordinating the UN's specialized agencies.

Under the Charter, it is responsible for promoting higher standards of living, full employment and economic and social progress; identifying solutions to international economic, social and health problems; facilitating international cultural and educational cooperation; and encouraging universal respect for human rights and freedoms. Article 71 of the Charter designates ECOSOC as having the responsibility of granting consultative status to NGOs. As of January 2007, more than

**New UN Entities**

*Human Rights Council*

The Human Rights Council was established on 15 March 2006 by resolution A/60/251, replacing the Human Rights Commission. The 47-member Council is mandated to meet regularly throughout the year for at least three sessions, including a main session, for a total duration of no less than ten weeks. For further information: *www.ohchr.org/english/bodies/hrcouncil*.

*Peacebuilding Commission*

The Peacebuilding Commission aims to propose integrated strategies for post-conflict peacebuilding and recovery; help to ensure predictable financing for early recovery activities and sustained financial investment over the medium- to longer-term; extend the period of attention by the international community to post-conflict recovery; and develop best practices on issues that require extensive collaboration among political, military, humanitarian and development actors. It was established by resolution A/RES/60/160 in December 2005. For further information: *www.un.org/peace/peacebuilding/docs.htm*.

Negotiations are still underway in both the Human Rights Council and the Peacebuilding Commission to determine the functioning of these bodies and the structures and mechanisms that will be put in place for civil society participation.

2,870 NGOs have been granted consultative status with ECOSOC. Forty-one NGOs were first granted status in 1948.

**Governance:** Each year ECOSOC members elect a Bureau, comprising a president and four vice-presidents. The presidency rotates among the five regional groups.

**Membership and Voting:** The General Assembly elects 54 Member States to serve three-year terms in ECOSOC. While seeking decisions based on consensus, each member has one vote; voting is by simple majority. Seats are allotted based on geographical representation: 14 for African States, 11 for Asian States, six for Eastern European

States, ten for Latin American and Caribbean States, and 13 for Western European and other States. Some Member States also serve on ECOSOC's array of commissions; they are elected by ECOSOC for three- or four-year terms. While every ECOSOC-related meeting is open to all Member States, only those currently serving a term on the Council can vote in Council matters, and, similarly, only those serving a term on one of its commissions can vote in that commission. The year-round work of the Economic and Social Council is carried out in subsidiary and related bodies, which meet at regular intervals and report back to the Council.

**Commissions and Committees:** Much of ECOSOC's work is carried out in its subsidiary bodies *www.un.org/esa/commissions.html*. ECOSOC oversees ten functional commissions, five regional commissions, and a number of standing committees and expert bodies, some composed of government experts and some of persons serving in their individual capacity.

**Programmes and Funds:** In addition, 11 UN programmes and funds that deal with economic and social affairs report to ECOSOC through their Executive Boards. These organizations were created by the General Assembly, and include the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA), the United Nations High Commissioner for Refugees (UNHCR), the United Nations World Food Programme (WFP) and the United Nations Environment Programme (UNEP). The Council negotiates agreements with the programmes and funds that define their relationship with the UN; coordinates their activities through a process of consultation and recommendations to the General Assembly; and accepts their recommendations for its substantive sessions.

**Specialized Agencies:** ECOSOC also serves as a coordination mechanism for autonomously governed specialized agencies, such as the International Labour Organization (ILO), World Health Organization (WHO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Industrial Development Organization (UNIDO), the World Bank and the International Monetary Fund (IMF), which work with the UN and each other. Created separately by member governments, these agencies maintain separate budgets, funding and structures of governance. Under the UN Charter, they are recognized as organizations "brought into agreement" with the United Nations.

**When ECOSOC Meets:** The Council holds one annual four-week substantive session in July, alternating between UN Headquarters in New York and Geneva, and organizational and resumed sessions usually in February, May and October. The substantive session is structured around a series of segments: an operational activities segment, a coordination segment, a humanitarian segment, a general segment, and a high-level segment. During the latter, there is a high-level dialogue at which the heads of the United Nations Conference on Trade and Development (UNCTAD), the World Bank, the IMF and the World Trade Organization (WTO) address the Economic and Social Council members. Since 2001, the Conference on Non-Governmental Organizations in Consultative Relationship with the United Nations (CONGO) has organized annual NGO Forums on the theme of the high-level segment just prior to the high-level segment to allow NGOs to express their recommendations to policy makers *www.ngocongo.org*. The committees and commissions meet annually or, in some cases, once every two years. Since 1998, ECOSOC has held a special high-level meeting each April with finance ministers heading the key committees of the Bretton Woods Institutions—the World Bank and the IMF.

**NGO Participation:** Guided by the UN Charter, ECOSOC is the one UN body that has established rights for NGOs to observe and contribute to its work. The process of approving NGOs for official consultative status with the Council is handled through the ECOSOC Committee on NGOs. Consultative status offers privileges such as access to meetings of ECOSOC and its commissions, as well as requiring the fulfillment of certain obligations, such as filing a report every four years on an organization's contributions to the work of the UN (see section two, chapter one on NGO accreditation, as well as Annex III).

## Security Council

Under the UN Charter, the members of the United Nations have given the Security Council primary responsibility for the maintenance of international peace and security and have agreed to carry out Security Council decisions, making them mandatory on Member States.

When a situation arises that may pose a threat to international peace, the Security Council usually demands that the parties reach a settlement by peaceful means. It can also propose mediation, develop principles for a settlement, or ask the Secretary-General to investigate the situation. If fighting breaks out, the Council will attempt to broker a ceasefire. This can include the use of peacekeeping forces. The Council can enforce its decisions through economic sanctions and collective military action. In 1990, the Council imposed general trade sanctions on Iraq, but since then the Council has imposed more targeted sanctions, including arms embargoes, travel, banks, restrictions on diplomatic relations, and bans on key commodities like petroleum and diamonds on a range of different governments or belligerents in conflicts such as civil wars.

The Security Council also proposes candidates for Secretary-General to the General Assembly, and recommends the admission of new members. It can recommend that the Assembly expel a Member State that has persistently violated the UN Charter, or suspend members against whom the Council has taken preventative or enforcement action.

**Governance:** The presidency of the Council rotates monthly, following the alphabetical order of its members.

**Membership and Voting:** The Council has 15 members. Five are permanent—China, France, the Russian Federation, the United States and the United Kingdom. Ten more are elected by the General Assembly for two-year terms. Each Council member has one vote. Decisions on procedural matters require at least nine affirmative votes. Decisions on substantive matters require at least nine affirmative votes including those of all the permanent members. A negative vote by any one of the permanent members vetoes the decision. If a permanent member does not support a resolution but does not want to block it, it may abstain.

States and non-State actors have put forth a number of proposals concerning potential reform of the size, composition and work of the Security Council. Concerning size and composition, the General Assembly adopted resolution 48/26 in 1993 that established an open-ended working group to consider all aspects of the question of increase in the membership of the Security Council. In 1965 the non-permanent membership of the Security Council was enlarged from six to its present ten. However, any changes in the membership of the Security Council will require an amendment of the Charter, which can only take place with the consent of all the permanent members. During the September 2005 World Summit and the months preceding

it, Member States hotly debated reform of the Security Council, with calls from Member States and civil society for a "democratization" of the Council and the need for more openness in the way the Council works as well as greater transparency in the decision-making procedures. The Outcome Document of the 2005 World Summit calls for "early reform" to make the Council more broadly representative, efficient and transparent.

**Committees:** The Security Council regularly establishes committees to monitor situations involving sanctions. In 1999, it also set up a Working Group on General Issues on Sanctions that is developing recommendations on improving the effectiveness of sanctions. In September 2001, the Security Council, through resolution 1373, established a Counter-Terrorism Committee that consists of all 15 members of the Security Council. The resolution called on Member States to prevent and suppress the financing of terrorism, refrain from providing any support to entities or persons involved in terrorist acts, and deny safe haven to those who finance, plan, support and commit such acts.

**When the Security Council Meets:** The Council is in session throughout the year. A representative of each member is expected to be present at all times at UN Headquarters.

**NGO Participation:** There is currently no formal mechanism for NGO participation in the Security Council's discussions. To contribute information, expertise and knowledge, NGO representatives meet informally with Member States who are on the Security Council. In recent years, however, the Security Council has held a number of informal meetings or briefings to solicit NGO contributions, including under the Arria Formula rules, which allow non-governmental voices to give testimony in relation to specific crises or issues related

to the Council's work. Recent examples have included sessions on the humanitarian situation in a number of countries, small arms, protection of civilians in armed conflict, children and war, and the issue of women, peace and security.

**Special Events: A Focus on an Issue**

Aside from the ongoing discussions held in the main UN organs, Member States may also decide to hold special intergovernmental events focusing on particularly timely or urgent issues. These include world conferences, summits and special sessions of the General Assembly. More recently, since June 2005, these have also included informal, interactive hearings convened by the General Assembly with non-governmental and civil society organizations and other actors in the lead up to high-level meetings or dialogues on a range of subjects.

**Conferences and Summits:** UN world conferences and summits are held when Member States collectively agree that an issue needs widespread political and public attention—women, children, poverty, the environment and financing for development are some prominent examples from the last decade. These gatherings draw high-level political participation, including from Heads of State and Government (summits are designed specifically for this level); they mobilize governments, international institutions, NGOs and civil society to push for action on urgent global problems; and they attract the interest of millions around the world through extensive media coverage.
Specifically, they provide a forum for Member States to introduce emerging issues for debate, and establish internationally agreed standards that can steer international, regional and national policies. They start a process where governments make commitments to actions,

including later reporting back to the UN on progress that they have made. They also provide an opportunity for NGOs and civil society to engage with governments and UN officials, enliven policy debate, and raise issues that might otherwise be ignored. Many of these events in recent years have also included parallel NGO forums. These forums provide a structured meeting place for persons and groups interested in the subject matter of the government conference. While there is no formal interchange between the NGO forum and the delegations to the international conference, the two events can and do influence each other. Over 20,000 participants took part in the Global People's Forum held parallel to the World Summit on Sustainable Development (WSSD) in Johannesburg (South Africa) in August-September 2002.

**High-level Meetings and Interactive Hearings:** Starting in 2005, informal, interactive hearings convened by the General Assembly with non-governmental and civil society organizations and other actors have been held in the lead-up to the high-level meetings or dialogues held on various issues.

In June 2005, informal interactive hearings were held with NGOs, civil society and the private sector, providing the participants to comment on the Secretary-General's report *In Larger Freedom* (A/59/2005) and the draft Outcome Document of the High-Level Plenary of the General Assembly of the September 2005 Summit. This unprecedented event involved over 230 participants, of which 35 delivered statements, with an additional 360 NGO representatives attending the proceedings as observers. The hearings presented a fresh approach in Member State/civil society engagement as it aimed to create an environment for interaction between parties, while showcasing the views of civil society in an organized fashion on multiple sets of issues.

In 2006, a series of General Assembly hearings were held, bringing together non-governmental and civil society organizations and the private sector to: review progress in implementing the 2001 Declaration of Commitment on HIV/AIDS (in the lead-up to a high-level meeting); discuss international migration and development (followed by a high-level dialogue in September 2006); and the midterm review of the implementation of the Programme of Action for the Least Developed Countries for the Decade 2001-2010 (followed by a high-level meeting in September 2006).

**Online consultations and Internet dialogue:** With the spread of access to information communication technologies (ICTs), the United Nations has been using various forms of online consultation, usually in the form of e-mail submission forms or online discussion boards, in a number of different areas. During the lead-up to the World Summit on the Information Society (WSIS) and afterwards, online consultations were held on several topics in the hope of allowing all interested stakeholders to contribute. In the lead-up to the 2005 UN World Summit, NGLS organized an online consultation for civil society to respond to the Secretary-General's report *In Larger Freedom* (A/59/2005) and compiled their comments, making the compilation available to both the June 2005 Informal Interactive Hearings of the General Assembly with NGOs, Civil Society and the Private Sector, and the September 2005 World Summit itself. NGLS carried out a similar exercise ahead of the September 2006 High-level Dialogue on International Migration and Development, with the compilation of NGO responses circulated to the June 2006 General Assembly Informal Interactive Hearings with NGOs, Civil Society and the Private Sector and to the high-level event itself in September 2006. Habitat Jam, a UN-HABITAT Internet event, took place in December 2005 as part of preparations for the World Urban Forum.

During the 72-hour event, tens of thousands of people around the world connected in real time to discuss, debate and collaborate on key urban issues and to work towards finding solutions *www.habitatjam.com/ index.php*.

A four-week-long moderated e-Discussion entitled "Strengthening Efforts to Eradicate Poverty and Hunger" was initiated in March 2007 as part of a larger process of global consultation – ECOSOC's Annual Ministerial Review (AMR) – that assesses the progress in implementation of the internationally agreed development goals, including the Millennium Development Goals (MDGs). Throughout the process views were sought on four priority themes, as well as ideas on how to improve global cooperation, coordination and coherence of efforts to meet development objectives.

# Chapter 2
# Negotiations: How Are Decisions Made?

At the start of any decision-making process, governments propose, individually or collectively, that a particular issue be raised in the appropriate forum, such as the General Assembly, ECOSOC or through a world conference. The participating governments discuss the issue and negotiate the written language of a draft agreement, the decision being adopted in one of a variety of formats. The vast majority of UN decisions appear as resolutions, which are relatively short texts and documents that include preambular background paragraphs followed by a list of operative paragraphs, or agreements on future actions. Other outcomes include declarations, which are fairly concise statements conveying a high level of political concern; programmes of action, which call upon governments to take a series of actions voluntarily; and complex and legally binding conventions and treaties, which may require countries to make changes in their own domestic laws. Governments also make decisions on organizational issues,

which are meant to guide the structure and administration of a negotiating process. These can include the election of officers for a meeting, the adoption of the agenda and the determination of who may attend negotiations aside from Member States.

**The Lifecycle of a Decision**

Whatever format a decision takes, it starts as a draft text that is prepared by one of several sources, generally based on advance inputs from governments. The initial draft can be prepared by the Secretariat, the chair of the negotiations, a group of delegations such as the European Union (EU) or the Group of 77 developing countries and China (G-77/China), an individual delegate or a facilitator specially appointed for the task. In the case of resolutions, one or more "sponsor" governments may draft the text, which the Secretariat then registers and distributes as an official document. Those responsible for drafting will work in close consultations with delegates before the formally scheduled negotiations begin.

The draft text then becomes the focus of discussion and reaction among governments. Delegates go through the text from start to finish, agree on minor adjustments, identify those passages that they cannot easily accept and offer amendments that could be deletions or additions. The Secretariat may produce a compilation of all versions proposed. As the areas of agreement and disagreement become clear, a draft text is prepared denoting areas of disagreement usually in square brackets. Secretariat staff normally monitor and record changes as they occur. A succession of additional sessions is held, under the authority of the chair or a facilitator, where delegates narrow down their differences, eliminating the brackets when a portion of language is agreed. Some check back and forth with officials in

their mission or capital, seeking guidance on how far they may compromise. Sometimes delegates agree to language *ad referendum*, which means they must check with their capital or ministry for final approval.

As negotiations near their conclusion, there may be some "give-and-take" as delegates consider the balance of elements in the "package," and whether they can let go of some pieces in order to retain others. When all the participating governments finally reach agreement on the exact wording of all portions of the text, they adopt it officially. If all Member States are willing to accept the agreement, then it is adopted by consensus. In some cases, however, delegates cannot reach agreement and the Chair may finally call for Member States to vote either for or against the proposal or to abstain. On occasion, a Member State may call for a roll-call vote to place on the record the vote of individual Member States. During a roll-call vote, the chairperson will call each country's name, and the possible response is: Yes, No, or Abstain.

If a Member State wishes to place their views on record, they may offer an explanation of their vote either before or after the vote itself. Another way for Member States to express disagreement with the text or part of a text is by entering a reservation after adoption. This indicates that a Member State does not agree to comply with one or more of the document's provisions. Reservations are intended to be used only temporarily, indicating that States agree with the decision in principle even if they are currently unable to realize it. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Another way for Member States to express disapproval with the text is to issue an "interpretive statement" to define their position and what the language in question means or does not mean to them.

**Evolution of an Agreement**

- Election of officers for the meeting; agreement on organizational issues.
- Preparation and consideration of initial draft outcome text.
- Integration of agreed changes and proposals by the Secretariat, the chair or a facilitator. Proposals for deletions of existing text or additions of new text are marked with square brackets (or equivalent) and a revised text is distributed.
- Additional rounds of negotiations and changes. Square brackets are removed from text as delegates reach agreement.
- The final text, adopted by consensus.
- Notification of any reservations by individual governments.
- For legally binding instruments: ratification.

In the case of legally binding treaties, these have to be signed and then be ratified by each signatory or participating Member State. This allows governments time to seek domestic approval of the agreement, generally through parliamentary or other legislative bodies, since existing domestic law may have to be changed, or new laws created.

**Types of Meetings for Negotiations**

Negotiating processes at the UN usually take place in two sessions a day, in the morning and the afternoon. If the debate becomes protracted, extra evening sessions may be scheduled. It is not uncommon for the final sessions to be extended, possibly throughout the night, to complete the negotiations.

Sessions take place in two formats: open or closed. Open or formal sessions, which are part of the official record, can be attended by everyone with proper accreditation, including NGOs and the media. These usually include plenary sessions, where all delegates participate. Plenary sessions normally open an intergovernmental session, and are where Member States make their individual policy statements. They are also the forums where formal decisions are made,

including the final adoption of an agreed text, by consensus or a vote, or the noting of reservations.

*The Daily Journal*
All formal meetings at the United Nations are listed each day in *The Daily Journal*, a publication that is available throughout UN buildings in New York: at entrances, in press rooms, in NGO centres and at document windows. It can also be found online at *www.un.org/Docs/journal/latest.htm*.

The *Journal*, as it is known, lists all formal meetings and working groups meeting during the day. It notes whether the meeting is open or closed, and contains a list of the relevant UN documents for the meeting, as well as newly issued UN documents.

In Geneva, *UN Geneva on the Wires* is available online: at *www.unog.ch* as part of the United Nations Information Service in Geneva. A calendar of upcoming meetings, press conferences and briefings, as well as press releases are also available.

When governments reach the point in a negotiating process where they need to hammer out agreement on particularly contentious topics, they may break into informal sessions, often called working groups. These can be closed to everyone except delegates and Secretariat staff, although NGOs may also be allowed to attend as observers, depending to some extent on past practice in a given process and the discretion of the Chairperson. The deliberations in informal sessions are not included in the official record. Delegates maintain they will make more progress if they can speak and debate freely among themselves and deal with sensitive issues without the constraints of the public spotlight. A negotiating process that is working on a long document may ask delegations to break into a number of informal working groups, with each taking a specific issue or section of the text. In theory only two working groups can meet at any given time, in order to accommodate smaller delegations.

In some cases, governments form contact groups, or hold informal informals, which are strictly off-limits to anyone except a core group of delegates. These meet outside the main negotiation rooms, generally at a time and place announced in the working group, and bring together only those governments with a strong interest in a particular issue that has caused disagreement. Contact groups seek to bring widely conflicting positions closer together, before presenting the results of the discussions to the meeting at large. They also save time by allowing concerned delegates to have a detailed discussion while the rest of the working group continues its deliberations.

Towards the end of complicated negotiations, when the time pressure is great, delegates may huddle, either in or across the negotiating groups, on the negotiating floor itself to hammer out last minute details. Truly sticky issues often end up being tackled by measures such as the use of a facilitator, an extended Bureau, or "friends of the Chair." The Chair, working with a handful of governments on a particularly contentious subject, may have to use all his or her powers of persuasion or creative suggestions on new language in order to bring about consensus.

**The Bureau**

Most negotiating processes are overseen by a Bureau. Appointed at the outset by the consensus of Member States, it always consists of at least five members from the five regions, and includes a Chair, three Vice-Chairs and a Rapporteur. In some situations, an extended Bureau is deemed necessary. This might include a representative from the host country (for a meeting outside the usual UN venues), the chair of the Group of 77 developing countries and China (G-77/China), a coordinator for the least developed countries (LDCs), and other representatives who are considered particularly important to the process.

Member States used to consider Bureau membership mainly as a position bolstering their prestige. However, in the last decade there has been a shift in favour of more active Bureaus, and there is a growing sense that Bureau members contribute to the success or failure of a process. While Bureaus used to coalesce just for the formal meeting sessions, some now consult regularly in advance of meetings. They may have close contact with Secretariats, and conduct informal briefings and consultations with Member States to prepare for the formal meetings and negotiations.

**The Secretariat**

The various institutional arms of the UN support all intergovernmental negotiations and decisions. Based in New York, Geneva, Vienna and Nairobi, the UN Secretariat manages the administration of the UN as a whole, making the arrangements necessary to allow Member States to meet and do their work. The UN also has five regional commissions: the Economic Commission for Africa (UNECA), the Economic Commission for Europe (UNECE), the Economic Commission for Latin America and the Caribbean (UN ECLAC), the Economic and Social Commission for Asia and the Pacific (UN ESCAP), and the Economic and Social Commission for Western Asia (UN ESCWA).

The Secretariat provides logistical services, coordinates the dissemination of public information, prepares analyses and statistics, and guides delegates through the rules of protocol and procedure that govern intergovernmental negotiations. In some cases, the Secretariat convenes expert groups and prepares questionnaires for Member States to collect national data. Issue experts may also draft initial documents for negotiations.

Headed by the Secretary-General, the Secretariat is responsible for ensuring the UN carries out decisions specified by the General Assembly, the Security Council, ECOSOC and other UN bodies. The Secretary-General carries out two roles: as the chief administrative officer and as the world's senior diplomat who maintains close contact with government delegates and frequently speaks in debates. As an institutional mechanism, the Secretariat makes a direct input into many processes by issuing substantive reports, which are prepared by the appropriate department of the Secretariat. Each year the Secretary-General issues a report on the work of the UN that appraises its activities and outlines future priorities.

For major world conferences or other special events, a separate conference Secretariat may be established and headed by a conference Secretary-General, as was the case for the World Summit on Sustainable Development (WSSD) in 2002 and the World Summit on the Information Society (WSIS), held in two phases in 2003 and 2005.

A range of UN funds and agencies also contribute to and are shaped by the United Nations' political processes. They frequently participate in intergovernmental processes by speaking to delegates and providing reports and other forms of background information. Negotiated decisions may call upon these organizations to carry out specific activities or assist in reaching certain internationally agreed goals.

**How New Negotiating Processes Begin**

The impetus for holding intergovernmental talks outside the routinely scheduled discussions of the main UN forums—such as a conference, summit or special session—always begins with the political initiative of one or more Member States. When political momentum begins to build, sponsoring governments craft a proposed resolution calling for

the meeting; this is then debated, modified and adopted in the General Assembly or ECOSOC. The resolution not only requests that the conference be held, but it also spells out the goals, agenda and the preparatory process. It may denote specific details, such as the number of people who will serve on the meeting's Bureau, when the first global preparatory meeting will be held, and the procedures for the participation of NGOs.

Once the resolution is agreed, a conference Secretariat is set up, either within or separately from the UN Secretariat. It begins preparing documents and circulating them to Member States. National governments may establish national preparatory committees to draw up their own positions and policies, and to prepare reports and collect data on issues related to achievements, obstacles, best practices and so on.

**Anatomy of a Conference**
- Informal Proposals
- Debate Among Governments
- Passing of a Resolution
- National and Regional Preparations
- PrepComs Begin Negotiating an Outcome Document
- The Conference is held, often consensus has been reached on most issues prior to the event and negotiations conclude
- Member States Officially Adopt the Document

Meetings held in preparation for conferences, special sessions and other time-bound processes follow a specific format. Once governments agree to convene in one of these forums, they also initiate the process to prepare for it, often in the form of a Preparatory Committee (PrepCom). In a series of advance sessions, PrepComs handle the bulk of the negotiating required to develop the long and often complex agreements issued by conferences and special sessions. If the work is not completed by the time of the conference or meeting itself, an Ad Hoc Committee of the Whole (COW) is set up to finish it. It may

convene informal working group sessions to continue negotiations, while the conference plenary meets concurrently to hear general debate and make formal decisions. In some cases, the Ad Hoc COW meets formally and separately from the Plenary in order to accommodate long lists of speakers spilling over from the general debate.

A series of regional intergovernmental meetings may also begin—on social and economic issues—and are generally coordinated by the ECOSOC regional economic commissions. They allow Member States to bring their national priorities to a regional forum; to discuss and negotiate common regional objectives; and to make recommendations to the global preparatory meetings.

At the international level, a PrepCom is formed, as is a Bureau for the PrepCom. Its major task is to initiate negotiations on a final outcome document: the majority of recommendations and outcomes are determined during the preparatory process. The PrepCom meets up to four times between the passage of the resolution calling for the meeting and the actual event. These sessions may run from one to four weeks, and are mainly held at UN facilities in New York, Geneva, Vienna or Nairobi.

The first substantive meeting of the PrepCom normally determines the basic elements and form of the final document. In later meetings, the PrepCom begins the concentrated work of negotiating the fine print, going through the outcome document line by line. Generally, the document is more than half finished by the time of the event, with only the most contentious issues outstanding. Reaching consensus on these subjects often requires the presence of the high-level government officials who attend the meeting, as well as the pressure of agreeing on the document before the meeting closes.

# Chapter 3
# The Negotiators: Building "Blocs" of Power

The negotiating system at the UN functions in large part through negotiating blocs, or groups of countries speaking with a common voice. These alliances may be fluid—but some are long institutionalized. Allegiances and antagonisms may shift depending on how the political winds outside the UN are blowing, yet some general rules apply: industrialized, mainly western, countries tend to share similar points of view on subjects such as support for human rights, a free market economy and issues of international development co-operation. Developing countries come together over some common economic issues such as fair access to the global economy and access to markets, while struggling to reconcile different points of view in areas such as environmental protection, and on social and cultural issues such as women's rights.

While Member States are always entitled to speak independently, negotiating blocs allow nations to build on a position of strength in numbers. In some cases, they can help negotiations move forward, because consensus has already been reached among at least the members of the group. However, members also may have their own widely divergent positions. Bridging these can take time and result in general positions of little interest to some of the group members.

Some blocs appear in every set of negotiations. The European Union always speaks with one voice, because it is a legally established formal entity. The Group of 77 and China strive to present the perspectives of the developing world as a whole, although it does not consistently maintain a unified front. Other blocs form just for the duration of a particular set of talks, or emerge over the years. Some permanent groupings are active in UN deliberations only on certain issues. A number of Member States operate independently of negotiating blocs, but may also associate with them on occasion. Below are some of the groups that have been active recently:

• The African Union (AU): formerly the Organization of African Unity was formed to advance stability, development, trade and the wellbeing of the African continent. It includes 53 UN Member States: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Democratic Republic of the Congo, Côte D'Ivoire, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea Bissau, Guinea Conakry (Guinea), Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Saharawi Arab Democratic Republic, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe. More information is available online: *www.africa-union.org*.

• The European Union (EU): EU members, under the terms of their Treaties, must negotiate together. As of January 2007, the EU currently comprises Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. More information is available online: *http://europa.eu*.

• The Group of 77 and China (G-77/China): A longstanding bloc established in 1967, the G-77/China has become the voice of most developing countries, representing the positions of its 130 members, particularly on economic issues. More information is available online: *www.g77.org/doc*.

• Japan, the United States, Canada, Australia and New Zealand (JUSCANZ): A political grouping of the non-EU industrialized countries listed together with Iceland, Mexico and the Republic of Korea.

• Non-Aligned Movement (NAM): NAM was created in 1961 at the height of East-West friction to provide an independent forum for its mainly developing country members. NAM has 117 members from Africa, Asia, Latin America and the Caribbean. In the UN it focuses on political issues, while the G-77/China emphasizes development. More information is available online: *www.nam.gov.za*.

• The Rio Group: Created in 1986 as a permanent mechanism for political consultation and consensus of the countries from Latin and Central America and some Caribbean countries. It sometimes develops positions and negotiates as a group at the UN on issues of human rights, governance and trade to be able to take different stances than those of the G-77/China. The 20 members of the Rio Group include

Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

• Southern African Countries: These countries, all members of the G-77/China, have not created a formal negotiating group, but they occasionally work and speak together on issues when there is not a G-77/China position, e.g. social issues, women's rights.

• The Caribbean Community (CARICOM): Includes all English-speaking countries of the region–Antigua & Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago, with five associate members. More information is available online: *www.caricom.org*.

• The Alliance of Small Island States (AOSIS): AOSIS is an informal alliance of small island and low-lying coastal developing countries formed in 1990 to address member interests in negotiations on climate change and related issues. AOSIS has a membership of 43 States and observers, drawn from all oceans and regions of the world: Africa, Caribbean, Indian Ocean, Mediterranean, Pacific and South China Sea. More information is available online: *www.sidsnet.org/aosis*.

• Organization of Islamic Conference (OIC): The OIC is an intergovernmental organization set up in 1969 with 57 members that include Islamic States as well as countries with a significant Islamic community. It is the only grouping in the UN that recognizes the connection between religion and politics and is active on social and cultural issues and Palestine. More information is available online: *www.oic-oci.org*.

• Western European and Other Groups (WEOG): A geo-political grouping of States that share a Western-Democratic common denominator. It comprises 27 Member States plus the United States, who is not officially in WEOG.

• Regional groups: UN Member States participate in regional groups for the purposes of identifying regional candidates for the UN intergovernmental bodies. The African and Latin American groups also discuss substantive positions.

In addition to negotiating independently or as part of a group, delegates also make alliances that never appear in the public view, as many negotiations take place long before delegates reach the conference room floor. Diplomats huddle in the UN's corridors, meet over coffee or cocktails, gather in the delegates' lounge, and negotiate over the phones at their missions. Those who have served for a long period in any of the main UN locations, such as New York, have long histories together, and know exactly how far they can push their issues and who they can expect to offer support or opposition.

**Tactics and Trade-Offs**

Diplomats, both individually and in negotiating blocs, use many strategies to advance their positions. Here are some common ploys:

• *Never Reveal All Your Positions:* This is standard diplomatic practice. Compromises at the United Nations fit together like a puzzle: delegates offer the pieces one at a time, keeping in mind the need to achieve a handful of their most desired objectives.

• *Offer Hard-line Language:* All government proposals must be considered, so some delegates will offer what they know is an unacceptable position in order to bring other countries closer to what they want, at which point they will trade it in for a compromise.

• *Hold Off Until the End:* The most difficult passages are always finished last. At this point, everyone will have a sense of the compromises everyone else has made, and will be able to assess how much room there is to manoeuvre on the stickiest points.
• *Leave the Room:* Delegates who may not want to speak or vote for the record may simply decide to go out for a break.

**Who Sits on Delegations?**
Most Member States maintain permanent missions to the United Nations in New York (and in some cases to the United Nations in Geneva, Nairobi and Vienna as well). These missions are staffed year round with diplomats who attend to routine and ongoing processes and debates. Since the UN is viewed by most governments as the key international arena to express their foreign policy goals, diplomats often come from the Foreign Ministry.

For special conferences or other events, diplomats and government officials may come in from capitals. These delegations usually comprise one or two top government officials, up to the Head of State or Government; senior ministry representatives; technical experts; representatives from the mission or embassy where the meeting is being held; and sometimes NGOs and members of the private sector, although this is not obligatory.

High-level officials, such as Heads of State, generally do not participate directly in negotiations. They are more likely to be found in closed bilateral or small high-level meetings or delivering plenary speeches that outline their government's position on an issue.

# Chapter 4
# Tracking Negotiations and Decisions Through Documents

Different kinds of documents form the substance and guide every aspect of the UN decision-making process. Each round of negotiation includes the following general categories of documents: those related to organizational issues; government and other statements; information on the issue at hand, such as reports from the Secretary-General; and a draft text or texts that delegates use for negotiations. Many documents carry an official number and appear in the six official languages of the UN: Arabic, Chinese, English, French, Russian and Spanish.

**Organizational Issues**

**The agenda:** The agenda is normally proposed and passed in the first session of a meeting. It outlines the schedule for the negotiations and what will be discussed.

**The report of the meeting:** The report is generally adopted at the last session. It includes a detailed record of who attended, how many sessions were held, what decisions were made on organizational issues and what the final outcome was.

**Negotiations**

The text of a negotiated agreement can travel through many different versions and revisions in the course of a negotiating process. In general, the debate relies most heavily on two kinds of documents: those presented as the foundation for discussion towards an agreement, which are regularly revised and updated, and the various proposals, additions and corrections submitted during the course of the meeting.

**The draft outcome text:** The draft outcome text is the basis on which governments negotiate. The process of writing this document, often drafted by the Secretariat, generally involves the solicitation of views from participating governments and UN agencies concerned with the subject being discussed. In some cases, NGOs and other stakeholders may have been invited to contribute as well.

**Chair's text:** At times, in order to bridge differences on some of the more difficult issues or final compromise text, the chair of the meeting will draft a text, lending political authority to persuade delegates to accept the text without much revision and move forward.

**Facilitator's text:** If a process has appointed a facilitator to assist the negotiations, he or she listens to input from governments and then drafts a new or revised text. This document may be accepted by delegations as expressing their areas of agreement or may become the basis for continuing line-by-line negotiations.

**Government proposals:** Once a text enters negotiations, individual governments or negotiating blocs offer their proposed amendments. Much of this process takes place orally, with governments suggesting changes in their interventions from the floor. More complicated passages, or passages negotiated separately by a small group of governments, are often submitted in written form.

**Compilation text:** Periodically during the negotiations, the Secretariat will issue a compilation text that includes all agreed changes or additional proposals. This document then becomes the basis for continued discussions.

**Working papers:** Prepared by Member States, the Secretariat or chair or president of an intergovernmental body, working papers provide background and substantive information pertinent to the issue at hand.

**Conference room papers:** Those in the room where negotiations are taking place have access to conference room papers, which can include government proposals for changes to the text under deliberation, or additional reports or information on the subject at hand.

**Non-papers:** These are prepared primarily by government representatives to facilitate the negotiating process and contain proposals and amendments on the text under consideration. They often do not bear a document number, and are not considered part of the official record of the meeting.

**Modifications:** These include: addendums; alterations of a portion of adopted text by a competent authority; corrigendums, which may not apply to all language versions; summarized versions; and the reissuance of a document for technical reasons.

**For Information**

**Statements from governments, international organizations and NGOs:** Negotiations generally open in formal sessions where delegates as well as speakers from international organizations and accredited NGOs outline their positions on the issues under discussion. Printed copies of these speeches are often available in the conference room. Increasingly the Internet is being used as a vehicle for distribution.

**Reports from the Secretary-General:** The office of the Secretary-General provides detailed reports on subjects related to the negotiations, including background material, a sense of global perspective and information on impact on the UN system. These reports may incorporate information from governments on situations within individual countries.

**Technical reports:** These elucidate additional details on a topic under consideration.

**Letters from governments:** Used as a way to bring official texts negotiated by organizations outside the UN to the UN's attention.
Reports of commissions, committees, ad hoc bodies and other previous meetings: They include the previous agenda, lists of participants, and a record of what was discussed and agreed.

**Information series:** General information, such as lists of participants.

**Press releases:** The Department of Public Information issues press releases on the same day as most open meetings. It also compiles Daily Highlights, summaries of daily UN-related events around the world.

**Document Symbols**

Documents officially issued by the Secretariat are tracked and identified by type through symbols combining strings of letters and numbers. Several components, separated by vertical slashes, make up each symbol, which remains the same across all language versions of a document.

Generally, the first component of a symbol reflects the main body issuing or accepting the document. These include:

A/- for the General Assembly
S/- for the Security Council
E/- for ECOSOC
ST/- for the Secretariat

However, some subsidiary organs carry their own special symbol:

HRC/- for the Human Rights Council
CRC/C- for the Committee on the Rights of the Child
DP/- for the UN Development Programme
TD/- for the UN Conference on Trade and Development
UNEP/- for the UN Environment Programme
CAT/C/- for the Committee Against Torture
CEDAW/C/- for the Committee on the Elimination of Discrimination Against Women
CERD/C/- for the Committee on the Elimination of Racial Discrimination

Secondary and tertiary components indicate subsidiary bodies:

-/AC. …/- for ad hoc committee
-/C. …/- for standing, permanent or main committee
-/CN. …/- for commission
-/CONF. …/- for conference
-/GC. …/- for governing council

-/PC. …/- for preparatory committee
-/SC. …/- for subcommittee
-/Sub. …/- for subcomission
-/WG. …/- for working group

For the General Assembly, ECOSOC and the Security Council, the second component may indicate the session or year of the meeting that produced the document. ECOSOC commissions are given a number: the Commission on the Status of Women, for example, is designated CN.6.

Additional components reflect the nature of the document:

-/INF/- for information series
-/L. …- for limited distribution, generally of draft documents
-/NGO/- for statements by NGOs
-/PET/- for petitions
-/PRST/- for statements by the president of the Security Council
-/PV. … for verbatim records of meetings
-/R. … for restricted distribution
-/RES/ for resolutions
-/SR. … for summary records of meetings
-/WP. … for working papers

The final component may denote simply the sequence number of a document in a session or process, or describe modifications to the original text, for instance:

-/Add. … for an addendum
-/Amend. … for an alteration
-/Corr. … for a corrigendum
-/Rev. … for a revision
-/Summary for a summarized version
-/_* for re-issuance for technical reasons

Underneath each symbol is a date that refers to the date of issuance of the document from the substantive UN department and its registration with the documents control office. On the lower left-hand corner of the document is the date upon which editing, translating and printing were completed; often, there is a substantial gap between issuance and completion. For GA resolutions, the date of adoption appears at the end of the text.

**How to Find Documents**

Many UN documents can now be found on the Internet—both texts that will be discussed and those that have already been agreed (see United Nations Documentation Research Guide online at *www.un.org/depts/dhl/resguide*). General Assembly resolutions, for example, are listed by session under the GA's section of the UN website. Documents for special conferences or processes may appear on websites specifically organized for the event.

Once a meeting starts, counters for distributing UN documents are usually located in the rooms where negotiations take place, but these are often restricted to delegates or UN staff. If a room has been allocated for NGO use, the relevant documents may be delivered directly there.

Documents that have already been printed help provide background information and distil a general sense of the issues under consideration. But as delegates negotiate, draft texts that appeared on Monday morning may be substantially different by Monday afternoon. Governments regularly submit new proposals. These are then photocopied by the Secretariat and distributed to other delegates.

**Examples of Symbols**
- A/56/1 indicates the first document considered by the General Assembly in its 56th session.
- E/CN.4/1999/SR.60 is the summary record of the 60th meeting of the 54th session of the Commission on Human Rights.
- UNEP/GC.18/29/Corr.1 comes from the 18th session of the UNEP Governing Council, document number 29, corrigendum number one.
- A/C.2/57/L.6 is a document of limited distribution, often a draft resolution, from the 2nd committee of the General Assembly in its 57th session.

Sometimes, extra copies are placed on document tables at the back of the room, which are available for those in attendance at the meeting.

A recent trend has been to project the text of negotiations onto a large screen that is operated by Secretariat staff working on a computer. Governments read out their proposals, which are typed in and appear on the screen, usually in a different color or text style.

# Chapter 5
# Outcomes: The Nature of UN Decisions

The variety of forums in which United Nations negotiations take place may appear to be independently organized, with different diplomats participating and different parts of the United Nations coordinating the logistics of the work. But since UN debates unfurl within a given political climate, different decision-making processes and their outcomes are closely linked. An agreement struck in one forum may rest upon a compromise reached in another. When consensus proves elusive, delegates may refer back to the language of the last consensus on an issue.

Not all United Nations decisions carry the same weight, however. Their importance varies depending on what kind of document they appear in, and which body has issued them. A legally binding treaty has to be taken more seriously than a plan of action articulating a set of political commitments. A General Assembly resolution carries more weight than one from an ECOSOC commission. The type of instrument used to convey a decision is usually determined by an issue's gravity and political implications.

*Some common examples of UN decisions include:*

**Agreements:** In its broadest sense, agreements refer to all consensus decisions made by Member States, whether or not they are legally binding. Under a more narrow definition, an agreement is less formal than a treaty and deals with a more limited range of issues. It is used particularly for technical or administrative instruments that may be signed by government representatives, but are not subject to ratification, the international act whereby a State indicates its consent to be bound to a treaty. Agreements in this sense often deal with economic, cultural, scientific and technical cooperation issues, as well as some financial matters. Most international instruments are now designated as agreements.

**Resolutions:** This is the formal decision used by UN organs, such as the General Assembly, to express an agreement or conclusion. Resolutions include a preamble, which sets forth the basis on which action should be taken, and a series of operative paragraphs that spell out actions or directives.

**Decisions:** This denotes formal action that is not a resolution and that usually deals with organizational matters such as elections, appointments or the place of meetings.

**Treaties:** A treaty refers generically to all instruments that are legally binding under international law. Several criteria apply: the contracting parties must intend to create legal rights and duties; the instrument must be concluded by States or international organizations with treaty-making power; the treaty must be governed by international law; and it must be in writing. Usually, treaties are reserved for matters that require more solemn or politically important agreements. They normally involve ratification by each government in order to go into effect.

**Conventions:** The generic use of the term "convention" is synonymous with the generic use of the term "treaty" —it can cover all legally binding international agreements. It may also refer to a group of laws apart from international customary rules and general principles of international law. As a specific term, convention is now mainly used for formal multilateral treaties with a broad number of parties, such as the 1992 Convention on Biological Diversity. Conventions can also be adopted by an organ of an international organization, such as the General Assembly's 1989 Convention on the Rights of the Child.

**Protocols:** A protocol focuses on specific issues or areas within a treaty or convention. It includes several different instruments. A protocol of signature is subsidiary to a treaty and drawn up by the same parties. It deals with ancillary matters such as the interpretation of particular clauses and is ratified along with the treaty. An optional protocol establishes additional rights and obligations to a treaty; it is subject to independent ratification. This kind of protocol allows some treaty parties to reach beyond the general agreement of all treaty signatories. A prominent example would be the 1999 Optional Protocol to the 1979 Convention on the Elimination of All Forms of Discrimination against Women. Its provisions include allowing individuals or groups of women to formally petition about human rights violations directly to the UN Committee on the Elimination of Discrimination against Women.

A protocol based on a framework treaty specifies substantive obligations in order to implement a previous convention. They have been used particularly in international environmental law, for instance with the 1992 UN Framework Convention on Climate Change. It was followed by the 1997 Kyoto Protocol, which, among other things, sets forth legally binding emissions targets for gases such as carbon

dioxide. A protocol to amend contains provisions that amend one or more former treaties. A protocol as a supplementary treaty contains supplementary provisions to a previous treaty.

**Charters:** This is the most solemn and formal instrument of international agreement, generally reserved for treaties that create new international organizations, such as the 1945 Charter of the United Nations.

**Declarations:** Declarations lie somewhere between resolutions and conventions and some can also carry the weight of customary law, such as the Universal Declaration of Human Rights. They convey a high level of aspiration and political commitment, usually adopted at the Head of State or Government level. A recent example would be the 2000 Millennium Declaration, a compilation of priority actions adopted by a record 189 Heads of State or Government at the Millennium General Assembly of the United Nations in 2000. An interpretative declaration may be annexed to a treaty to explain its provisions.

**Programmes or Platforms for Action:** These are blueprints for a series of actions that governments have agreed should be taken on a specific set of issues at the national, regional and international levels. As statements primarily of political will and commitment, they are not legally binding. Most world conferences have agreed on plans or platforms for action.

**Agreed Conclusions:** In some cases, governments decide to conclude a meeting with a negotiated outcome but without commitments for action by governments. These "agreed conclusions" can set the basis for policy development.

**Chair's Summary:** A chair's summary expresses the sense and direction of a meeting without including commitments for action by governments. It enables views expressed or the deliberations of a special segment to be included in the official record of a meeting.

**Sanctions:** The Security Council may impose sanctions on one or more Member States in situations where it decides that these are the most effective way to maintain international peace and security. Mandatory sanctions generally follow the failure of diplomatic efforts. Sanctions may encompass comprehensive economic and trade measures or specifically target areas such as arms purchases, travel or diplomatic exchanges.

**Memorandum of Understanding:** This is a less formal agreement that often sets out operational arrangements under an international framework agreement. A Memorandum of Understanding (MOU) typically does not require ratification, and can be entered into either by States or international organizations. The UN, for example, establishes an MOU with Member States to organize peacekeeping operations or arrange UN conferences.

# Section 2

# Intergovernmental Negotiations and Decision Making at the United Nations

# A Guide to NGO Participation

# A Guide to NGO Participation

## by Gretchen Sidhu*

NGOs have been active in the United Nations since its founders committed themselves to non-governmental participation. Article 71 of the UN Charter reads: "The Economic and Social Council may make suitable arrangements for the consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned."

This article and the arrangements established by ECOSOC form the basis for NGO engagement with governments at the UN and establish

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guidelines for the UN Secretariat when dealing with NGOs (see Annex III). These procedures and arrangements also govern or guide UN agencies and programmes in their relations with NGOs. Formal ongoing relationships of NGOs with the UN are based on two main activities: consultative status and information outreach. The first type is facilitated by the NGO Section of the Department of Economic and Social Affairs, which handles the process by which NGOs gain consultative status with ECOSOC through its Committee on NGOs. The second relationship is established through the NGO Section of the Department of Public Information (DPI, see Annex IV). The Department associates organizations working on public outreach.

The UN Non-Governmental Liaison Service (NGLS) occupies a unique place and role in relations between the UN system and NGOs. As an inter-agency programme, NGLS is mandated to support the organizations of the UN in developing their relations with NGOs and wider civil society and also to support the constructive engagement of NGOs and CSOs in the work and governance of the UN system. NGLS collaborates with national and regional NGOs from developing and industrialized countries, and with international NGO networks and NGOs in consultative relationship with the UN through information outreach and inreach, and through hands-on advice and other forms of support in order to facilitate and enhance their activities around UN conferences, events and processes.

With NGO activity now at an unprecedented level, NGOs can be found across the UN system, speaking to governments, serving on panels, holding briefings, forming issue caucuses, offering technical expertise, advocating on the national level, and implementing UN-related projects. NGO involvement varies across different subjects, bodies and processes, depending to some degree on the momentum of civil society activism outside the United Nations. NGOs have been

consistently active at some of the UN bodies that meet regularly, primarily the Commission on the Status of Women, the Commission on Sustainable Development and the recently formed Human Rights Council, although modalities for their participation are still being negotiated. They have also played key roles in intergovernmental deliberations on the International Criminal Court, landmines, HIV/AIDS and most recently the Convention on Rights of Persons with Disabilities, adopted in December 2006.

In his first address to ECOSOC in January 2007, the eighth UN Secretary-General, Ban-ki Moon, said, "Today, no United Nations development effort—whether advocacy for a broad cause or support for specific goals—can make real headway without support of civil society."

Former UN Secretary-Generals have also recognized the need of actively engaging with civil society. Secretary-General Kofi Annan (7th UN Secretary-General from 1997-2006) often applauded the many contributions of NGOs to the UN, referring to NGOs as partners in policy and in policy execution. "I see a United Nations keenly aware that if the global agenda is to be properly addressed, a partnership with civil society is not an option; it is a necessity," he said. Mr. Annan also noted that the rise in NGO participation was the "best thing that has happened to our Organization in a long time." Prior to Mr. Annan, Boutros Boutros-Ghali (1992-1996) acknowledged the vibrant role of civil society during the 1992 Earth Summit and at subsequent major conferences, and called for further integration of non-governmental organizations into the daily work of the United Nations (Guest Editorial, *Go Between 53*). For further information on the evolution of civil society engagement with the United Nations, see *Three Generations of UN-Civil Society Relations: A Quick Sketch* (Annex V).

**Panel of Eminent Persons on United Nations-Civil Society Relations**

In 2003, the Secretary-General established a Panel of Eminent Persons on United Nations-Civil Society Relations, chaired by Fernando Henrique Cardoso, the former President of Brazil, to assess and draw lessons from the United Nations' interaction with civil society, and recommend ways to improve it. The Panel presented its report (commonly known as the "Cardoso report") in June 2004 (A/58/817), which contained 30 reform proposals that largely stem from four underlying priorities or principles that the Panel identified:

- The UN must become an outward looking Organization;

- The UN must embrace a plurality of constituencies—many actors may be relevant to an issue;

- The UN must connect the local with the global; and

- The UN must help re-shape democracy for the 21st century by emphasizing participatory democracy and deeper accountability of institutions to the global public.

The Secretary-General presented his response to that report in September 2004 to the General Assembly (A/59/354). While the General Assembly has not taken any formal action on the Cardoso report or the Secretary-General's response, it has, in the "spirit of Cardoso," held a number of informal interactive Hearings with representatives of non-governmental and civil society organizations and the private sector on a wide range of issues on the UN's agenda.

These reports and further information are available online at *www.un.org/reform/civilsociety/index.shtml*.

# Chapter 1
# Accreditation

While Member States make the decisions at the UN, NGOs can contribute to and influence these processes in a variety of ways, even if they do not vote or act as negotiating partners. Participation may be ongoing and touch upon multiple issues and events, or it may be confined to a specific meeting. In either case, NGOs can choose to partake in a wide range of strategies: interacting with Member States and the institutional arms of the UN; monitoring agreements; briefing governments on the concerns of citizens; circulating information in and outside the UN; advocating positions at the national level; underscoring links between national actions and international commitments; organizing caucuses to strengthen advocacy work; forging connections between the UN and NGOs around the world; and drawing the attention of the media to the issues at hand.

Most forms of NGO participation in UN decision making start with applying for accreditation, the formal process that allows organizations

or groups to attend UN meetings. Depending on the meeting and the form of accreditation, NGOs may receive a grounds pass allowing entrance to UN facilities; access to documents; permission to attend formal sessions; the opportunity to deliver written and oral statements; meeting space for some kinds of NGO events; appropriate seating arrangements during public meetings; and the chance to interact with delegates, other NGOs and UN staff.

Accreditation is not an automatic privilege; organizations must meet certain criteria to obtain it and abide by certain guidelines to maintain it. Groups risk losing it when they fail to work within these parameters, or engage in conduct such as a politically motivated act against a Member State or the promotion of activities that violate the spirit of the UN Charter. Under no circumstances may NGOs use the UN logo, claim to represent the UN, receive diplomatic passports or tax exemptions, or consider themselves formally part of the UN system.

There are two basic forms of accreditation to the intergovernmental process: temporary for conference processes or ongoing, which is normally referred to as consultative status.

**Temporary or conference accreditation**

For some major conferences or special sessions, Member States approve a process that enables NGOs to apply for a temporary accreditation to that conference process alone. The accreditation lasts only as long as the process itself. The application process generally requires the following documents: copies of the latest annual report and most recent budget; copies of constitution by-laws and information on governing body composition; proof of non-profit status; a short statement of how the group's activities relate to the meeting; and a description of membership and the location of headquarters.

Deadlines and guidelines for temporary accreditation vary by conference or event, and groups should request information from the meeting's Secretariat far in advance. For world conferences, for example, NGOs must often be accredited to one of the Preparatory Committee meetings in order to gain registration for the final event. Such criteria are determined by the UN resolution on the conference rules, which include those for access of and the participation for NGOs and other non-governmental actors and groups. The Secretariat reviews applications for accreditation in light of their conformity with the resolution and then forwards lists of those who meet the criteria for final approval by governments. To be eligible, NGOs usually have to show relevance and competence in the subject under discussion. NGOs that receive accreditation for conferences and special sessions are obliged to register upon arrival at each preparatory meeting as well as at the conference itself.

**Consultative status or ongoing accreditation**

NGOs that are seeking a regular presence at the UN, or a more permanent relationship, can apply for ongoing status or consultative status with ECOSOC or one of the programmes, funds or autonomous specialized agencies.

**ECOSOC:** NGOs requesting affiliation with ECOSOC must prove that they are active on economic and social issues related to the Council's mandate. This form of accreditation, based on Article 71 of the UN Charter, is the foundation on which UN-NGO relations have been built, allowing access to all formal, routinely scheduled ECOSOC sessions. Organizations and groups with consultative status are usually invited to attend special UN meetings such as world conferences without having to submit to the approval process for accreditation. However, they are required to complete any registration or pre-registration conditions/requirements.

There are three categories of ECOSOC consultative status for NGOs: general, special and roster. General category NGOs are concerned with most of the activities of ECOSOC and its subsidiary organs. These groups tend to be fairly large and have members in many countries and in different regions. They may attend all meetings of ECOSOC and its subsidiaries, as well as speak before delegates, circulate statements and place items on the agenda. Every four years, they must submit quadrennial reports on their contributions to the work and goals of the UN.

Special category NGOs offer expertise on a few ECOSOC-related subjects. Like the general category organizations, they must provide quadrennial reports. They receive many of the same privileges, except they cannot place items on the agenda and their written statements are limited to 500 words, compared with 2,000 words for the general category organizations.

Roster category NGOs are those organizations that may make occasional contributions to ECOSOC's work and provide a specific technical perspective; many also enjoy consultative status with one of the UN's specialized agencies. They may attend meetings, but cannot speak or circulate statements. These groups are not obliged to submit quadrennial reports.

Obtaining ECOSOC consultative status involves writing a letter of intent to the NGO Section of the UN's Department of Economic and Social Affairs, which then sends out an application package, including a questionnaire and additional background information. Completed applications and supporting documentation must be received by June 1 of the year before the NGO wants to be considered by ECOSOC's 19-Member State NGO Committee. The Committee meets twice annually to discuss applications, with recommendations for approval forwarded to ECOSOC.

Requirements for obtaining consultative status:
• The activities of the applying NGO must be relevant to the Economic and Social Council;
• The NGO must have a democratic decision-making mechanism;
• The NGO must have officially registered existence for at least two years;
• The primary source of NGO funding must come from contributions by national affiliates, individual members or NGOs.

**Funds, programmes and autonomous specialized agencies:**
NGOs focusing on a specific subject may seek some form of consultative status with one of the UN's funds, programmes or the autonomous specialized agencies. These relationships vary considerably, from the World Health Organization and the United Nations Food and Agriculture Organization, who cooperate closely with and consider NGOs integral to their work on a variety of fronts, to the

**A Recent Review: ECOSOC Resolution 1996/31**
In the mid-1990s, for the third time in UN history, ECOSOC reviewed its guidelines for NGO participation. The Council appointed an Open-Ended Working Group, which met over the course of nearly three years to consider amendments to the rules (a move first called for by NGOs at the 1992 UN Conference on Environment and Development in Rio).

The result was ECOSOC Resolution 1996/31, which standardized arrangements for accrediting NGOs to UN conferences, streamlined the process of applying for ECOSOC consultative status, and opened the application process to national, subregional and regional NGOs. It offered a right of redress for NGOs who are refused ECOSOC accreditation or who lose their consultative status. It also drew a clear distinction between NGOs and Member States, noting that arrangements for consultation do not accord to NGOs the same rights of participation as member governments. ECOSOC has also encouraged all economic and social bodies in the UN system to review their procedures for NGO participation against the Council's standards. In particular, the Council recommended that the General Assembly begin examining the role of NGOs in all areas of the UN.

International Monetary Fund, which has no formal system of relations with NGOs. NGOs affiliated with the funds and programmes may be able to participate in sessions of the Executive Boards. They may be called upon to address the board, but they do not have any formal role in decision making. The Joint United Nations Programme on HIV/AIDS (UNAIDS) is guided by a Programme Coordinating Board (PCB) which serves as its governing body. The Board includes representatives of 22 governments from all regions of the world, the ten UNAIDS Cosponsors, and five non-governmental organizations, including associations of people living with HIV/AIDS. They have formal terms of reference, can serve for up to three years and have non-voting status. UNAIDS is the first United Nations programme to include NGOs in its governing body.

In the case of the World Trade Organization (WTO), which is completely outside of the UN system, at this point in time there is no formal accreditation procedure other than for its ministerial meetings, which are held every other year.

**DESA NGO Section:** DESA's NGO section acts as the substantive secretariat of the ECOSOC Committee on NGOs. It also acts as a focal point within the United Nations Secretariat for all matters related to the consultative relationship between the United Nations and NGOs. It maintains a website *www.un.org/esa/coordination/ngo* and provides regular mailings of UN information materials.

**Department of Public Information (DPI):** Another avenue for access to the UN is through the NGO Section of the DPI. A central criteria for association is that the NGO possess an information and communications programme capable of providing and disseminating news and information about the United Nations in its thematic area of work. For the over 1,662 NGOs associated with DPI, as well as for those in consultative status with ECOSOC, the NGO Section conducts an extensive information programme that includes, on an annual basis, 30 briefings, three communications workshops, a two-day orientation programme for new NGO representatives, and the annual three-day DPI/NGO Conference, the premier NGO event at UN Headquarters in New York each year.

The NGO Section provides up to three grounds passes for NGO representatives who wish access to the Secretariat building in New York. It operates the DPI/NGO Resource Centre at UN Headquarters where associated NGO representatives can meet and work. It maintains a website *www.un.org/dpi/ngosection*, and provides access to official UN documents system-wide, regular monthly mailings of UN information materials and a monthly calendar of events. The Section publishes a Directory of NGOs associated with DPI every two years. The electronic version of the Directory is available on the NGO Section website. DPI NGOs elect an 18-member Executive Committee that works closely with the Department on events and programmes, including the annual DPI/NGO Conference.

**United Nations Non-Governmental Liaison Service (NGLS):** While NGLS has no formal responsibilities in the UN's accreditation system, many of its activities support the participation of NGOs in UN deliberations. For example, NGLS brings sustainable development, human rights, including women's rights, peace and disarmament, and other issues being addressed by the UN to the attention of

NGOs through its publications, information outreach and communications programme. NGLS publishes a bi-monthly newsletter, entitled the *Go Between*, which covers a range of UN activities, areas of cooperation between the UN and NGOs, and other news. NGLS *Roundups* provide in-depth focus on a particular issue or UN process. NGLS produces a bi-monthly e-bulletin, the *Civil Society Observer*, which pulls together information on, about or by civil society and NGOs; information on civil society in the press; academic literature; and other sources including NGOs and CSOs themselves. NGLS also produces a number of *Guides*, *Handbooks* and *Directories* on the UN system targeted to the NGO community and others wishing to constructively engage with the United Nations. More recently, NGLS has published a Compendium on *UN System Engagement with NGOs, Civil Society, the Private Sector, and Other Actors* (2005), The *Unfinished Story of Women and the United Nations* (2007), and *UN/Civil Society Engagement: Year in Review 2006* (2007). These and other NGLS publications can be found online *www.un-ngls.org* and are also available in hard copy.

In addition to its outreach and publications work, NGLS also organizes and supports different types of meetings and consultations involving the UN system and NGOs. In the past fifteen years, NGLS has enabled over 6,000 developing country NGOs to participate in UN conference processes. NGLS's current work priorities include the Millennium Development Goals, UN reform, supporting the work of the Panel of Eminent Persons on UN System-wide Coherence in the field of humanitarian assistance, development and environment (in the form of online consultations, briefings and other events), discussions around NGO accountability, the preparatory process for the 2008 review of the Financing for Development agenda, the Human Rights Council, the Peacebuilding Commission, among others. NGLS also supported and facilitated the NGO/Civil Society dimension of

preparations for the series of High-level Meetings and Dialogues and the three Informal Interactive Hearings convened by the General Assembly in 2006 on HIV/AIDS; International Migration and Development; and review of the Programme of Action (POA) for the Least Developed Countries adopted at the Brussels Conference in 2001. NGLS is expanding its efforts to reach a wider audience and is translating some of its key publications into both French and Spanish. Efforts are also being made to provide a French and Spanish version of the NGLS website.

# Chapter 2
# Preparing for a Meeting

For NGOs already accredited or who have started the application process, the next step towards constructive and effective participation in a meeting is developing an advocacy strategy and making logistical arrangements. The bottom line: the more prepared the NGO is, the more effective their work will be.

**Be Targeted and Informed:** It is important to begin by defining what is to be achieved at the meeting—subsequent activities can be tailored to meet these goals. Research the meeting by gathering documentation that is available in advance. Such documentation may include previously negotiated resolutions, government statements, and questionnaires sent by the UN to governments to solicit their views. Many UN materials can be found on the Internet, and others can be obtained by being placed on the mailing list of the meeting's Secretariat. Reading these documents carefully will shed insight into the international dimensions of the issue and reveal the positions being taken on the issues of concern. It can also increase awareness of the many different points of view, providing information which could be useful in

the strategic positioning of advocacy efforts. If some subjects are found to be missing, create a list of those that should be proposed for inclusion. It is import to establish priorities for objectives, issues, activities and resources, and to understand, generally speaking, that not everything will be achieved.

**Reach Out:** Preparations could also include making contact with other NGOs working within the specific country or region or on the international level. Some international NGOs have extensive experience working with the UN, and may be willing to share advice and support with those who are new to the field. The Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations (CONGO) monitors issues of NGO participation and access to the UN and works to facilitate NGO participation. Ask other NGOs about their goals and priorities, and see if there are points of common ground. Collaborative preparations often generate political momentum, attract public interest and avoid unnecessary duplication of work. Networking and information-sharing in general can maximize both impact and resources, particularly on the national level, when many NGOs do not have the resources or capacity to participate physically in international meetings. In some cases, organizations pool funds to send one person to the meeting to represent all of them.

Well in advance, begin finding out who will attend the meeting from the home government. Since UN negotiations often start many months and even years before the final meeting, making contact with the appropriate officials, both within the diplomatic team and at the national level, can be an opportunity to begin learning about how the government is positioning itself on different issues, how open it is to altering these positions, and whether it is willing to consider incorporating any NGO proposals. Government delegates may be a mix of mission staff based at UN Headquarters in New York or Geneva, plus

officials from one or more ministries in the capital. Some delegations include NGO members as well, although they are not usually entitled to speak on behalf of the government.

Draw up a list of news media and individual journalists that can receive press releases and other materials before and during the meeting. Start by contacting relevant journalists, alerting them to one or two key issues at the meeting, and keep them updated through press releases. Look at other publications in terms of the audiences they reach, and whether they have covered the meeting's issues in the past. Identify journalists who have covered similar stories; make contact to inform them of the meeting; and put them on a distribution list for press releases.

Finally, establish links with UN staff at the Secretariat who are responsible for liaising with NGOs. Another useful step would be to identify Secretariat staff who are writing reports on substantive issues and enquire how to contribute relevant information. The UN Non-Governmental Liaison Service (NGLS) in Geneva and New York tracks many meetings and can provide information or answer questions about preparations. The NGLS website *www.un-ngls.org* also provides a number of relevant documents and publications, as well as links to the UN system and NGO liaison offices.

**Be Prepared:** Once the background research on the meeting has been carried out, it may be beneficial to make contact with other participants. The next step towards preparation would be to draft position papers. These are best limited to a couple of pages at most, with a clear statement of proposals for actions to be taken by governments and the UN system. Send the position papers in advance to government officials, the meeting's Secretariat and other NGOs. Provide them as well to relevant journalists, suggesting that they write a story

in advance of the meeting. This spreads public awareness and can strengthen support on certain issues.

From a strategic perspective, it is important to determine not only how many representatives can attend the meeting, but who is the best prepared. Aside from issue expertise, a variety of other skills may be required, such as lobbying delegates, organizing NGO caucuses, writing and delivering speeches, and working effectively with the media. It is also important to consider sending representatives to preparatory meetings that are held normally in the year or more before a major world conference, as many negotiations are well on their way to being concluded during the preparatory process for the final event. Intersessional meetings and activities organized by governments are also important parts of the preparatory process and should not be missed.

Those who attend the meeting may want to arrive at least a day or two in advance, as many NGO preparatory events take place in the days before the meeting opens. Likewise, they may want to stay at least a day after the meeting is scheduled to end, as negotiations often run past the official deadline.

Large-scale international meetings, such as UN world conferences and summits, may also be accompanied by an independent NGO Forum, which usually starts a few days in advance of the intergovernmental meeting. Forums include workshops, panel discussions, displays, demonstrations and other activities organized by advocates from around the world. Some form of national NGO organizing and host committee oversees these gatherings; information is usually available from the conference Secretariat on a wide range of subjects, including whom to contact in order to hold an event, meeting logistics, or for other purposes.

**What to Bring:** Bring a copy of all correspondence concerning accreditation. The UN Secretariat often sends a letter identifying the participant as an official representative of the organization. Presentation of this letter will be required, as well as a passport or some other form of official photo identification for the issuing of a grounds pass.

Bring copies of position papers, in multiple UN languages if possible; materials about the organization; business cards; extra letterhead; and other office supplies that may be needed. Bringing electronic equipment—such as a mobile phone or portable laptop and printer—may also prove to be useful. While computer and Internet facilities are generally available at UN conferences, there are usually long waiting lines to use them, or they may be off-limits after certain hours.

# Chapter 3
# Follow-up and Implementation

At every major UN meeting, there are set groups of key participants: governments, the Secretariat, UN agencies, non-governmental and civil society organizations, the private sector and the media. Participation is governed by strict rules that cover everything from who may attend the meeting to the order of speakers. Understanding this protocol is every bit as important as knowledge of the substantive issues. It is important to stress here that not understanding these rules leads quickly to frustration and can impair efforts. Don't be afraid to ask questions. Following protocol allows for a more effective focus on working with governments, collaborating with other NGOs, and exploring the many other opportunities for advancing concerns on the issues. Resolution 1996/31 defines the consultative relationship between the United Nations and NGOs, and urges them "to make positive contributions to the work of the UN."

**How to Approach Governments:** By far, the most important players in UN decision making are the governments. The ability of NGOs to

influence an outcome agreement depends on identifying governments who are sympathetic to their views and willing to work collaboratively. However, it may also be useful to interact with governments who have a differing point of view. As negotiations proceed and particularly as they draw to a close, some positions may be withdrawn or exchanged for concessions in other areas. Viewing the overall picture can prove helpful in thinking about how to advance the relevant issues, whether this could mean holding a press briefing, delivering a speech, or a number of other activities.

**Seeking Access? Whom to Consult:**
While NGOs may not be formally permitted to attend informal sessions of negotiations between governments, they may still be able to observe. In the past, NGOs have been able to gain access through a sympathetic chair, either by approaching him or her directly or through the Secretariat. Another alternative is to work with governments who may be willing to bring the question up with the meeting's Bureau. Final approval must come from the group of delegates at large.

It is also important to have a clear idea of which subjects are so politically sensitive or intractable that the potential for impact may be low. In addition, passages of text that have already been agreed in earlier negotiations are only rarely re-opened. Advocacy efforts should be devoted to the subjects that governments are still negotiating.

With these general guidelines in mind, the first step in working with governments is knowing when and where it is appropriate to approach them. Not all meetings are automatically accessible to NGOs, even to sit in as observers. UN security guards or Secretariat staff members will ask uninvited persons to leave the meeting.

Much of the interaction between governments and NGOs takes place immediately before or after a negotiating session, when delegates are free to talk and tend to mingle on the floor of the negotiating room. In

order to distinguish who is from which government, delegates sit behind their country nameplates during the session. Social functions, such as receptions and lunches, provide other chances for informal discussion. Some delegates may also be willing to present national, regional or negotiating group priorities at special NGO briefings or NGO caucus meetings. All of these forms of exchange can be opportunities to build relationships that can later be transformed into a delegation's willingness to review a position paper or consider suggestions for negotiating the language of the outcome document.

The second step in working with delegations is knowing who to approach. Experts from ministries or capitals are more likely to have a substantive understanding of the issues than professional diplomats based at the UN. On the other hand, these diplomats may have a better understanding of how to manage the political currents and UN procedures in their favour. Individual personalities, preferences and styles can sometimes make a big difference to the course of negotiations. Contact can also be made with other NGOs who sometimes serve on delegations.

Finally, the third step is understanding how to approach governments. Most likely there will not be time for a long, complicated discussion. Therefore it is critical to know the most important priority issue in advance, and focus the message clearly and concisely to support it. Written information about the topic or the organization may be useful, but keep in mind that most delegates will be negotiating all day and attending diplomatic functions in the evening, in addition to writing reports and having to read through the stacks of documents produced by the UN Secretariat itself. The more accessible the information presented is, the more chances there are of it being paid attention to or used.

These same rules apply to submitting suggestions for language and for writing speeches. Offering a language proposal requires tracking the negotiations closely and knowing what the different positions are and who is supporting what. UN language is extremely subtle and highly legalistic; a comma can make a political difference. Delegates must function within these parameters, and so are more likely to accept an NGO proposal if it abides by the same terms. Understand also that progress in adopting language is incremental and based on precedent, and that delegates may go over a passage many times before its final adoption. A radically rewritten suggestion will most likely not be taken seriously.

Before approaching a potentially sympathetic delegate:
- be aware of what language has been previously agreed at the UN on the subject at hand;
- know what has already been discussed at this meeting on the issue;
- incorporate this knowledge in language that follows UN style.

Present a clean copy of the existing text with the amendments clearly underlined or marked in bold. If a delegate does accept the proposal, be sure to express appreciation, and be aware that the contribution will not be publicly acknowledged.

There is more scope to address priorities in written speeches for delivery during open or formal sessions, when NGOs are allowed to speak to all assembled governments. Still, it is important to target the message. Delegates may have already listened to hours of speeches, as NGOs generally speak last. Come up with no more than three key points. State them clearly and concisely, and support them with facts, figures or anecdotes that will grab attention. Make concrete proposals for action that are linked to specific subjects currently being negotiated. Time limits are usually given—find out what this is from the

**Decoding Language: the Power of Verbs**

Thriving in the UN requires not just political skill, but also a finely tuned understanding of the nuances and balance of language. Not all negotiated UN documents are legally binding, but delegates are schooled in containing anything that might later prove politically problematic.

They look at language from several perspectives. One is the position of a word or sentence within the document as a whole. Text appearing in an operative paragraph, which requires action, has a different weight than text in a preambular paragraph, which is meant to provide mainly background information.

A common point of contention is over the choice of a verb—one of the most powerful parts of speech. Verbs determine different levels of commitment to an issue or action, and when delegates disagree with a proposal but sense they won't be able to eliminate it, they often counter by watering down the verbs. Such verbs include: endorse, decide, welcome, call upon, invite, encourage, recognize, acknowledge, reaffirm, express concern, take note with appreciation, and take note. Perhaps almost as important as verbs are adverbs. The use of "as appropriate" can strip a sentence or clause of any meaning or importance.

Secretariat, and then contribute to goodwill by abiding by them. Deliver the speech slowly so that the interpreters can keep up.

Combining efforts with other NGOs to prepare a joint speech, which can be a statement of strength and solidarity, may mean that the speech will be taken more seriously by governments. However, state clearly which NGO(s) are being represented. Have copies of the speech and make them available to delegates, the Secretariat, interpreters, the media and other NGOs.

**Working with the Secretariat:** The UN Secretariat prepares reports on the issues for consideration and provides guidance to delegates on protocol and rules of procedure; provides information on previous agreements and legal issues; handles accreditation; and makes

**Security: Following the Rules**
As a high-profile political organization, the UN must take a variety of security precautions. Since 2001, security regulations have become even stricter. How rigorously they are applied depends to some extent on who is in the building. Heads of State or a large number of high-level officials are reasons for the security system to shift into high gear.

Respecting decisions made by security personnel is part of working at the UN. Don't expect security guards to exercise latitude. Holding demonstrations on UN premises, arguing vehemently with guards or using someone else's identification badge are all reasons for being barred future entry. While a demonstration may achieve short-term publicity, being asked to leave the meeting can prevent the realization of longer-term goals.

logistical arrangements, including setting up facilities for NGOs, briefings with delegations and press conferences. Establishing contact with the Secretariat staff responsible for working with NGOs helps ensure these processes work smoothly. They can also be an important source of information. In advance of a meeting, identify Secretariat staff who are writing reports on substantive issues and enquire about how to submit useful and relevant information.

**Building Momentum with Other NGOs:** Working with other NGOs can be one of the most important strategies for influencing an international or regional UN meeting. Even NGOs who disagree about some priorities may find areas where they can work together. Sometimes this may provide a way to ensure all the work gets done; in other cases it allows groups to learn from each other. Often there is an NGO room where organizations can gather documents and share information. They can also hold meetings, although these cannot be closed if they take place in UN facilities.

Methods for working together vary across meetings, are regularly and creatively modified, and are completely optional. However, some common joint strategies include:

**Organize a daily briefing:** This usually takes place either first thing in the morning, at the end of the day, or at both times. It allows NGOs to share perspectives, exchange information on government positions and coordinate advocacy efforts. If no daily briefing has been scheduled, NGOs might find it useful to speak with other NGOs.

**Create a caucus:** Caucuses can be a highly effective way for like-minded advocates who have similar priorities to work together around issues, by region or by constituency. Building a team allows the members to follow multiple meetings, pool different forms of expertise, and devise common strategies. Caucuses often carry enough weight to be able to deliver a statement or call for a briefing by delegations closely connected to their subjects. These briefings provide a chance to interact with delegates and also hear the delegation's perspectives on the course of the negotiations. Country or regional caucuses can work together to provide proposals to their government delegations.

**Form a monitoring team:** It is labour intensive to track all facets of government negotiations, yet this can be critical to understanding how they are progressing, and which elements are being traded towards consensus. Sometimes, delegates break into two or more working groups that meet all day and late into the evening. A team of NGO monitors ensures that everything can be followed. Team members can then report back to other NGOs at a daily briefing or within a caucus.

**Produce information resources:** A daily newspaper or newsletter on the meeting that is lively, covers a variety of events and offers differ-

ent points of view attracts the attention of participants at all levels. It can also be beneficial to produce and distribute brief information sheets on particular issues, perhaps presenting some key perspectives and statistics. Find out from the meeting Secretariat what the procedures are for making NGO documents available. There are usually specific tables and racks identified for this purpose.

**Work with the Press:** Journalists from national and internationally circulated newspapers, magazines, televisions, radio stations and Internet publications, both mainstream and alternative, cover major UN meetings. Media advocacy can be a useful strategy for mobilizing public support on the positions.

The UN Department of Public Information (DPI) is responsible for managing and coordinating the UN relationship with the press. It organizes a press room, holds daily briefings, distributes press releases and sponsors press conferences. NGOs can work with the Secretariat and DPI to hold press conferences featuring NGO speakers.

Always keep in mind that journalists at the UN will rarely come looking for a story; instead go to them using contacts established before the meeting started. Otherwise, seek out journalists from publications at home or with journalists that share interest in the same issues. Try to think of one or two "angles" in advance. Good examples could be emerging issues that haven't been covered extensively in the past, or a newsworthy breakthrough in the negotiations on the issue being covered. Being able to provide an informed point of view on such issues can generate interest and raise awareness. Prepare a few facts and figures that will help convince journalists they can find a solid story. Don't offer long documents or large quantities of information: most journalists don't have time to sift through it. Many journalists

must file their stories by the end of the day. Old news cannot be used the following morning, so the earlier the information is submitted, the greater the likelihood it may be used. In some cases, momentum could also be built from the UN's press releases as journalists are always seeking multiple perspectives. They may welcome a timely phone call or a short e-mail message with a colourful quote.

**Arenas for Activism**

In the past, NGOs have been particularly active in a handful of UN decision-making processes. These include:

**Conferences:** NGOs wielded considerable influence throughout the cycle of large world conferences that took place during the 1990s, starting with the 1990 World Summit for Children. Tens of thousands of organizations attended the 1992 Conference on Environment and Development, the 1994 International Conference on Population and Development, the 1995 Fourth World Conference on Women, the 1995 World Summit on Social Development, the 1996 Habitat II conference on housing and urban development, and the 1996 World Food Summit. An even wider spectrum of NGOs than ever before participated, including large numbers of national groups. Many saw these events primarily as opportunities for networking on an unprecedented global scale. They exchanged experiences, articulated new and unconventional ideas, and held colourful events that drew international media attention.

However, many NGOs also began to recognize more clearly the need to work with the formal intergovernmental process. The UN itself, starting with the 1992 Rio conference on environment and development, encouraged this trend. A record number of NGOs attended consultative, preparatory and conference processes, and events and fora. At the 1994 International Conference on Population and

Development a well-prepared women's caucus, organized by leading women's groups, helped to shift the international population debate from centering on population control to underscoring the empowerment of women as essential to balancing population and development.

The International Conference on Financing for Development process, which began in 1998 and culminated in a world conference in 2002, encouraged new forms of participation by groups outside the United Nations. The conference preparations relied heavily on input from NGOs and business representatives, who attended a series of hearings and gave presentations that were incorporated into the intergovernmental discussions. In the lead-up to the International Conference to Review the Implementation of the Monterrey Consensus to be held in Doha (Qatar) in the second half of 2008 (A/RES/61/191), active civil society participation is once again strongly encouraged.

**ECOSOC:** Among all the regularly scheduled UN discussions, NGOs are most active in ECOSOC and some of the ECOSOC commission meetings, where they find the widest latitude for participation. Some commissions, like the Commission on Sustainable Development (CSD), consider NGOs as an integral part of their process and have pioneered innovative formats such as multi-stakeholder dialogue sessions. NGOs themselves often view the commissions as connected most closely to their advocacy issues-at least in the social, economic and rights spheres. For the first time at the annual Session of Economic and Social Council, in 2001, an NGO Forum was organized prior, but linked, to the high-level segment in order for NGOs to be able to express their key recommendations. Those accredited to ECOSOC under the general status category may even propose new agenda items, a privilege reserved elsewhere for governments. In addition, language agreed in the commissions may later be

approved without debate in the General Assembly, thus receiving high-level endorsement.

An insistence on focusing exclusively on the commissions, however, does not recognize that commissions carry less political gravitas in the UN system than either ECOSOC or the General Assembly. Many issues originate in ECOSOC or the General Assembly that are not taken up elsewhere, including in the commissions. As well, not all agreements struck within the commissions are endorsed at higher levels.

**New Forms of Participation:** In recent years, the UN has begun to explore the possible benefits of new forms of participatory decision making, including multi-stakeholder dialogues, civil society hearings and roundtables between Heads of State and civil society. These are designed to bring together people who are involved with a particular issue to exchange perspectives and experiences. In general, the different mechanisms aim to promote better decision making through wider input, integrate diverse viewpoints; develop trust and partnership; and mobilize commitment to implementation of decisions.

This new approach has generated substantial interest. Aside from the annual meeting of the CSD, other processes that have incorporated new forms of participation include the 2002 International Conference on Financing for Development and the 2002 World Summit on Sustainable Development. More recently, beginning in June 2005, the General Assembly has convened a series of informal, interactive hearings with NGOs, civil, society and other actors to provide them with an opportunity to submit their views and concerns, share best practices, and dialogue with Member States in the lead-up to high-level meetings on a range of subjects. Three General Assembly hearings took place in 2006 on HIV/AIDS; international migration and devel-

opment; and least-developed countries (LDCs). The Security Council has also increased its Arria Formula meetings on specific topics, which often include NGOs, on topics such as women, peace and security; children and armed conflict; the role of civil society in post-conflict peacebuilding; and humanitarian situations in certain countries.

**Away from the Meeting**

**Local, National and Regional Work:** Not all NGOs can attend a UN meeting, but they can do a great deal of important work without being physically present. In fact, work on the international level counts for little without support at the regional, national and local levels. Long before the meeting begins, for example, national NGOs can make contact with other civil society organizations and speak with government officials who are preparing national positions. They may be able to make suggestions on policies, provide inputs to country reports and urge that the delegation include an NGO representative.

NGOs may also mobilize awareness among the general public through the press or other kinds of education campaigns. They can work with parliamentarians, who can call for discussions on government policies or preparations for the meetings. They can gather together to achieve greater influence in advocating certain issues, attend regional preparatory meetings and compile alternative local, national and regional reports. Finally, they can still monitor the progress and outcome of the meeting through documents and press releases available on the UN website, through connections with delegates, or through links with other national or international NGOs who have been able to attend.

**Monitoring and Implementing Decisions:** UN agreements are only the first step in the process of achieving the aims that they express.

Their central importance lies in follow-up at the national level. Many agreements contain references to establishing follow-up mechanisms, methods of evaluating implementation and sources of funding. It is primarily the responsibility of national governments and international organizations to use these tools to transform commitments and obligations into reality.

However, NGOs can also play a role in carrying decisions forward after a meeting has concluded, mainly through monitoring and encouraging national governments and international agencies to act on their promises. Start this process by obtaining an official copy of the final agreement, either on the Internet or by contacting the Secretariat. The next step would be to identify the relevant governmental departments responsible for implementation, or continue working with official contacts that have been made during the course of the meeting. Contact should be maintained as well with regional and international NGO networks to exchange information on strategies and practices for ensuring accountability. Finally, one might consider organizing a meeting within a few months after the UN session where an action plan and set of commitments to follow-up can be developed. Invite relevant actors—including government representatives, other NGOs, the media, academics, private sector representatives, donors and UN organizations—to brainstorm on next steps.

# Annexes

# Annex I

# NGO Focal Points of the United Nations

The main UN website *www.un.org* provides an extensive range of information on peace and security, economic and social development, human rights, humanitarian affairs and international law. It also provides information on the Secretary-General, Member States, issues on the UN agenda, conferences and events, civil society and business, among many other topics.

Most UN organs have offices and officers responsible for liaison with NGOs, civil society and the private sector. Contact information on some of these offices is provided below, in alphabetical order.

**Department for Disarmament Affairs (DDA)**
www.un.org/Depts/dda

NGO Liaison Office
Mr. Gary De Rosa
Room S-3151F, United Nations
New York NY 10017, United States
telephone +1-212/963 3980
fax +1-212/963 1121
email: derosa@un.org

**Department of Economic and Social Affairs (DESA)**
www.un.org/esa/

NGO Section
Ms. Hanifa Dahela Mezoui, Chief
Room DC1-1480, United Nations
New York NY 10017, United States
telephone +1-212/963 8652
fax +1-212/963 9248
email: desangosection@un.org
website: www.un.org/esa/coordination/ngo

Social Development
Mr. Yao N'Goran
Division for Social Policy and Development
Room DC2-1360, United Nations
New York NY 10017, United States
telephone +1-212/963 3175
fax +1-212/963 3062
email: ngoran@un.org
website: www.un.org/esa/socdev

Division for the Advancement of Women
Ms. Tsu-Wei Chang
Coordination and Outreach Unit
Room DC2-1274
New York NY 10017, United States
telephone +1-212/963 8370
fax +1-212/963 3463
email: changt@un.org
website: www.un.org/womenwatch

Division for Sustainable Development
Ms. Federica Pietracci
Major Groups Coordinator
Room DC2-2262, United Nations
New York NY 10017, United States
telephone +1-212/963 8497
fax +1-212/963 0443
email: pietracci@un.org
website: www.un.org/esa/sustdev/index.html

Financing for Development Office (FFD)
Mr. Daniel Platz, NGO Liaison
Room DC2-2386, United Nations
New York NY 10017, United States
telephone +1-212/963 2587
fax +1-212/963 0443
email: platz@un.org
website: www.un.org/esa/ffd

Exhibit R-78



Population Division
Ms. Hania Zlotnik, Director
Room DC2-19050, United Nations
New York NY 10017, United States
telephone +1-212/963 3179
fax +1-212/963 2147
email: zlotnik@un.org
website: www.un.org/esa/population/unpop.htm

Secretariat of the Permanent Forum on Indigenous Issues
Ms. Elsa Stamatopoulou-Robbins, Director of Secretariat
Room DC2-1772, United Nations
New York NY 10017, United States
telephone +1-917/367 5100
email: indigenouspermanentforum@un.org
website: www.un.org/esa/socdev/pfii/index.html

United Nations Forum on Forests (UNFF)
Ms. Ghazal Badiozamani, Focal Point Major Groups
Room DC1-1245
New York NY 10017, United States
telephone +1-212/963 3160
fax +1-917/367 3186
email: badiozamani@un.org
website: www.un.org/esa/forests

**Department of General Assembly Affairs and Conference Services (DGAACS)**
www.un.org/Depts/DGAACS

Mr. Sergei Cherniavksy
Political Affairs Officer
Room S-2977D, United Nations
New York NY 10017, United States
telephone +1-212/963 3051
fax +1-212/963 5305

**Department of Political Affairs (DPA)**
www.un.org/depts/dpa/qpal

Focal Point for NGOs
Ms. Elizabeth Cabal
United Nations
New York NY 10017, United States
telephone +1-212/963 1800
email: cabal@un.org

Division for Palestinian Rights
Mr. Wolfgang Grieger
NGO Liaison Office
Room S-3350I, United Nations
New York NY 10017, United States
telephone +1-212/963 1550
fax +1-212/963 4199
email: grieger@un.org
website: www.un.org/Depts/dpa/ngo

**Department of Public Information (DPI)**
www.un.org/dpi/ngosection

DPI/NGO Section
Mr. Juan Carlos Brandt, Chief
Room S-1070L, United Nations
New York NY 10017, United States
telephone +1-212/963 8070
fax +1-212/963 6914
email: brandt@un.org

NGO Resource Centre
Room L-1B-31, United Nations
New York NY 10017, United States
telephone +1-212/963 7234/7078
fax +1-212/963 2819

**Department of Peacekeeping Operations (DPKO)**
www.un.org/Depts/dpko/dpko/home.shtml

Peace and Security Section
Public Affairs Division
Department of Public Information
United Nations
New York NY 10017, United States
telephone +1-212/963 6840
fax +1-212/963 9737

**United Nations Fund for International Partnership (UNFIP)**
www.un.org/unfip

Ms. Gawaher Atif
Chief of Office/Secretary of the Advisory Board
Room DC1-1300
New York NY 10017, United States
telephone +1-212/963 1000
fax +1-212/963 1486
email: unfip@un.org

**United Nations Global Compact Office**
Ms. Olajobi Makinwa, Civil Society Coordinator
Room S-1881
New York NY 10017, United States
telephone +1-917/367 3423
fax +1-212/963 1207
email: makinwa@un.org
website: www.unglobalcompact.org

**International Strategy for Disaster Reduction (ISDR)**
www.unisdr.org

Mr. Michele Cocchiglia
Secretariat for the ISDR
Chemin de Balexert, 7-9
CH-1219 Geneva, Switzerland
telephone +41-22/917 8840
fax +41-22/917 8983
email: cocchiglia@un.org

**Office for the Coordination of Humanitarian Affairs (OCHA)**
http://ochaonline.un.org, www.reliefweb.inf

Ms. Madeleine Moulin-Acevedo
Advocacy and External Relations Officer
Palais des Nations
CH-1211 Geneva 10, Switzerland
telephone +41-22/917 3160
fax +41-22/917 0023
email: ochagva@un.org

**United Nations Office at Geneva (UNOG)**
www.unog.ch

Mr. Ricardo Espinosa
NGO Liaison Officer
Palais des Nations, Room 155
CH-1211 Geneva 10, Switzerland
telephone +41-22/917 2127
fax +41-22/917 0583
email: respinosa@unog.ch

**United Nations Office at Nairobi (UNON)**
www.unon.org

PO Box 67578
Nairobi 00200, Kenya
telephone +254-20/621234

**United Nations Office at Vienna (UNOV)**
www.unvienna.org

Mr. Boris Znamenski
Chief, Protocol and NGO Liaison
Vienna International Centre, Room E1415
Wagramerstrasse 5
A-1400 Vienna, Austria
telephone +43-1/26060, extension 4090
fax +43-1/26060 5929
email: boris.znamenski@unvienna.org

# United Nations Agencies, Programmes and Funds, and Specialized Agencies

**Food and Agriculture Organization (FAO)**
www.fao.org

Mr. Thomas Price
Senior Programme Officer
Resources and Strategic Partnerships Unit (TCDS)
Viale delle Terme di Caracalla
I-00100 Rome, Italy
telephone +39-06/5705 4775
fax +39-06/5705 5175
email: thomas.price@fao.org

**International Atomic Energy Agency (IAEA)**
www.iaea.org/worldatom

Ms. Tracy C. Brown
Room DC1-1155, United Nations
New York NY 10017, USA
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**United Nations Development Fund for Women (UNIFEM)**
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**World Intellectual Property Organization (WIPO)**
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# United Nations Environment Conventions

**Convention on Biological Diversity (CBD)**
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**United Nations Convention to Combat Desertification (CCD)**
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**Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**
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**United Nations Framework Convention on Climate Change (UNFCCC)**
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# United Nations Regional Commissions

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**Economic and Social Commission for Asia and the Pacific (UN ESCAP)**
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**Economic and Social Commission for Western Asia (UN ESCWA)**
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# Annex II
# Institutional Resources

**United Nations Non-Governmental Liaison Service (NGLS)**: NGLS is mandated to support the organizations of the UN in developing their relations with NGOs and also to support the constructive engagement of NGOs in the work and governance of the UN system by providing information, advice, expertise and support services. NGLS's work is concerned with the entire UN development, human rights and disarmament agendas. NGLS's current work priorities include the Millennium Development Goals, follow-up and implementation of the UN world conferences, UN reform, ensuring NGO engagement in the work and follow up of the Panel of Eminent Persons on UN System-wide Coherence in the field of humanitarian assistance, development and environment (in the form of online consultations, briefings and other events), discussions around NGO accountability, the preparatory process for the 2008 review of the Financing for Development agenda, the Human Rights Council, the Peacebuilding Commission, among others.

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**Department of Economic and Social Affairs (DESA)**: DESA's NGO Section acts as the substantive secretariat of the ECOSOC Committee on NGOs. It also acts as a focal point within the United Nations Secretariat for all matters related to the consultative relationship between the United Nations and NGOs. As of August 2006, there were 2,869 Non-Governmental Organizations in consultative status with ECOSOC in three different categories: General, Special and Roster.

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**Department of Public Information (DPI)**: DPI's NGO Section provides information to NGOs, including briefings with UN officials. It also organizes an annual conference for NGOs on a major UN theme, and offers orientation courses, workshops and seminars. The NGO Resource Centre provides documents, press releases, reports and a video lending library.

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**The Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations (CONGO)**: is an independent, international, not-for-profit membership association of NGOs that facilitates the participation of NGOs in United Nations debates and decisions. CONGO is most active in the major UN centers of New York, Geneva, and Vienna, but extends its work to all regions of the world.

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**World Federation of United Nations Associations (WFUNA)**: WFUNA's objective is to inform, sustain and energize a global network of United Nations Associations to support the principles and programmes of the United Nations and to help shape its agenda.
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# Annex III

**Excerpt from ECOSOC Resolution 1996/31 on Consultative relationship between the United Nations and non-governmental organizations**

**PART I**
PRINCIPLES TO BE APPLIED IN THE ESTABLISHMENT OF CONSULTATIVE RELATIONS

The following principles shall be applied in establishing consultative relations with non-governmental organizations:

1. The organization shall be concerned with matters falling within the competence of the Economic and Social Council and its subsidiary bodies.

2. The aims and purposes of the organization shall be in conformity with the spirit, purposes and principles of the Charter of the United Nations.

3. The organization shall undertake to support the work of the United Nations and to promote knowledge of its principles and activities, in accordance with its own aims and purposes and the nature and scope of its competence and activities.

4. Except where expressly stated otherwise, the term "organization" shall refer to non-governmental organizations at the national, subregional, regional or international levels.

5. Consultative relationships may be established with international, regional, subregional and national organizations, in conformity with the Charter of the United Nations and the principles and criteria established under the present resolution. The Committee, in considering applications for consultative status, should ensure, to the extent possible, participation of non-governmental organizations from all regions, and particularly from developing countries, in order to help achieve a just, balanced, effective and genuine involvement of non-governmental organizations from all regions and areas of the world. The Committee shall also pay particular attention to non-governmental organizations that have special expertise or experience upon which the Council may wish to draw.

6. Greater participation of non-governmental organizations from developing countries in international conferences convened by the United Nations should be encouraged.

7. Greater involvement of non-governmental organizations from countries with economies in transition should be encouraged.

8. Regional, subregional and national organizations, including those affiliated to an international organization already in status, may be admitted provided that they can demonstrate that their programme of

work is of direct relevance to the aims and purposes of the United Nations and, in the case of national organizations, after consultation with the Member State concerned. The views expressed by the Member State, if any, shall be communicated to the non-governmental organization concerned, which shall have the opportunity to respond to those views through the Committee on Non-Governmental Organizations.

9. The organization shall be of recognized standing within the particular field of its competence or of a representative character. Where there exist a number of organizations with similar objectives, interests and basic views in a given field, they may, for the purposes of consultation with the Council, form a joint committee or other body authorized to carry on such consultation for the group as a whole.

10. The organization shall have an established headquarters, with an executive officer. It shall have a democratically adopted constitution, a copy of which shall be deposited with the Secretary-General of the United Nations, and which shall provide for the determination of policy by a conference, congress or other representative body, and for an executive organ responsible to the policy-making body.

11. The organization shall have authority to speak for its members through its authorized representatives. Evidence of this authority shall be presented, if requested.

12. The organization shall have a representative structure and possess appropriate mechanisms of accountability to its members, who shall exercise effective control over its policies and actions through the exercise of voting rights or other appropriate democratic and transparent decision-making processes. Any such organization that is not established by a governmental entity or intergovernmental agreement

shall be considered a non-governmental organization for the purpose of these arrangements, including organizations that accept members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organization.

13. The basic resources of the organization shall be derived in the main part from contributions of the national affiliates or other components or from individual members. Where voluntary contributions have been received, their amounts and donors shall be faithfully revealed to the Council Committee on Non-Governmental Organizations. Where, however, the above criterion is not fulfilled and an organization is financed from other sources, it must explain to the satisfaction of the Committee its reasons for not meeting the requirements laid down in this paragraph. Any financial contribution or other support, direct or indirect, from a Government to the organization shall be openly declared to the Committee through the Secretary-General and fully recorded in the financial and other records of the organization and shall be devoted to purposes in accordance with the aims of the United Nations.

14. In considering the establishment of consultative relations with a non-governmental organization, the Council will take into account whether the field of activity of the organization is wholly or mainly within the field of a specialized agency, and whether or not it could be admitted when it has, or may have, a consultative arrangement with a specialized agency.

15. The granting, suspension and withdrawal of consultative status, as well as the interpretation of norms and decisions relating to this matter, are the prerogative of Member States exercised through the Economic and Social Council and its Committee on

Non-Governmental Organizations. A non-governmental organization applying for general or special consultative status or a listing on the Roster shall have the opportunity to respond to any objections being raised in the Committee before the Committee takes its decision.

16. The provisions of the present resolution shall apply to the United Nations regional commissions and their subsidiary bodies mutatis mutandis.

17. In recognizing the evolving relationship between the United Nations and non-governmental organizations, the Economic and Social Council, in consultation with the Committee on Non-Governmental Organizations, will consider reviewing the consultative arrangements as and when necessary to facilitate, in the most effective manner possible, the contributions of non-governmental organizations to the work of the United Nations.

**Part II**

PRINCIPLES GOVERNING THE NATURE OF THE CONSULTATIVE ARRANGEMENTS

18. A clear distinction is drawn in the Charter of the United Nations between participation without vote in the deliberations of the Council and the arrangements for consultation. Under Articles 69 and 70, participation is provided for only in the case of States not members of the Council, and of specialized agencies. Article 71, applying to non-governmental organizations, provides for suitable arrangements for consultation. This distinction, deliberately made in the Charter, is fundamental and the arrangements for consultation should not be such as to accord to non-governmental organizations the same rights of participation as are accorded to States not members of the Council and to the specialized agencies brought into relationship with the United Nations.

19. The arrangements should not be such as to overburden the Council or transform it from a body for coordination of policy and action, as contemplated in the Charter, into a general forum for discussion.

20. Decisions on arrangements for consultation should be guided by the principle that consultative arrangements are to be made, on the one hand, for the purpose of enabling the Council or one of its bodies to secure expert information or advice from organizations having special competence in the subjects for which consultative arrangements are made, and, on the other hand, to enable international, regional, subregional and national organizations that represent important elements of public opinion to express their views. Therefore, the arrangements for consultation made with each organization should relate to the subjects for which that organization has a special competence or in which it has a special interest. The organizations given consultative status should be limited to those whose activities in fields set out in paragraph 1 above qualify them to make a significant contribution to the work of the Council and should, in sum, as far as possible reflect in a balanced way the major viewpoints or interests in these fields in all areas and regions of the world.

**Part III**
ESTABLISHMENT OF CONSULTATIVE RELATIONSHIPS

21. In establishing consultative relationships with each organization, regard shall be had to the nature and scope of its activities and to the assistance it may be expected to give to the Council or its subsidiary bodies in carrying out the functions set out in Chapters IX and X of the Charter of the United Nations.

22. Organizations that are concerned with most of the activities of the Council and its subsidiary bodies and can demonstrate to the satisfaction of the Council that they have substantive and sustained contributions to make to the achievement of the objectives of the United Nations in fields set out in paragraph 1 above, and are closely involved with the economic and social life of the peoples of the areas they represent and whose membership, which should be considerable, is broadly representative of major segments of society in a large number of countries in different regions of the world shall be known as organizations in general consultative status.

23. Organizations that have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by the Council and its subsidiary bodies, and that are known within the fields for which they have or seek consultative status shall be known as organizations in special consultative status.

24. Other organizations that do not have general or special consultative status but that the Council, or the Secretary-General of the United Nations in consultation with the Council or its Committee on Non-Governmental Organizations, considers can make occasional and useful contributions to the work of the Council or its subsidiary bodies or other United Nations bodies within their competence shall be included in a list (to be known as the Roster). This list may also include organizations in consultative status or a similar relationship with a specialized agency or a United Nations body. These organizations shall be available for consultation at the request of the Council or its subsidiary bodies. The fact that an organization is on the Roster shall not in itself be regarded as a qualification for general or special consultative status should an organization seek such status.

25. Organizations to be accorded special consultative status because of their interest in the field of human rights should pursue the goals of promotion and protection of human rights in accordance with the spirit of the Charter of the United Nations, the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action.

26. Major organizations one of whose primary purposes is to promote the aims, objectives and purposes of the United Nations and a furtherance of the understanding of its work may be accorded consultative status.

**Part VIII**
SUSPENSION AND WITHDRAWAL OF CONSULTATIVE STATUS

55. Organizations granted consultative status by the Council and those on the Roster shall conform at all times to the principles governing the establishment and nature of their consultative relations with the Council. In periodically reviewing the activities of non-governmental organizations on the basis of the reports submitted under paragraph 61 (c) below and other relevant information, the Council Committee on Non-Governmental Organizations shall determine the extent to which the organizations have complied with the principles governing consultative status and have contributed to the work of the Council, and may recommend to the Council suspension of or exclusion from consultative status of organizations that have not met the requirements for consultative status as set forth in the present resolution.

56. In cases where the Committee on Non-Governmental Organizations has decided to recommend that the general or special

consultative status of a non-governmental organization or its listing on the Roster be suspended or withdrawn, the non-governmental organization concerned shall be given written reasons for that decision and shall have an opportunity to present its response for appropriate consideration by the Committee as expeditiously as possible.

57. The consultative status of non-governmental organizations with the Economic and Social Council and the listing of those on the Roster shall be suspended up to three years or withdrawn in the following cases:
(a) If an organization, either directly or through its affiliates or representatives acting on its behalf, clearly abuses its status by engaging in a pattern of acts contrary to the purposes and principles of the Charter of the United Nations including unsubstantiated or politically motivated acts against Member States of the United Nations incompatible with those purposes and principles;
(b) If there exists substantiated evidence of influence from proceeds resulting from internationally recognized criminal activities such as the illicit drugs trade, money-laundering or the illegal arms trade;
(c) If, within the preceding three years, an organization did not make any positive or effective contribution to the work of the United Nations and, in particular, of the Council or its commissions or other subsidiary organs.

58. The consultative status of organizations in general consultative status and special consultative status and the listing of those on the Roster shall be suspended or withdrawn by the decision of the Economic and Social Council on the recommendation of its Committee on Non-Governmental Organizations.

59. An organization whose consultative status or whose listing on the Roster is withdrawn may be entitled to reapply for consultative status

or for inclusion on the Roster not sooner than three years after the effective date of such withdrawal.

For more information:
*www.un.org/documents/ecosoc/res/ 1996/eres1996-31.htm*.

# Annex IV

**Description of the DPI Accreditation Process and Criteria**

NGOs that are committed and have the means to conduct effective information programmes with their constituents and to a broader audience about UN activities may apply for association with DPI.

- The NGO must support and respect the principles of the UN Charter and have a clear mission statement that is consistent with those principles;
- The NGO must be recognized nationally or internationally;
- The NGO should operate solely on a non-for-profit basis and have tax-exempt status;
- The NGO must have the commitment and the means to conduct effective information programmes, with its constituents and to a broader audience (about UN activities);
- The NGO should have an established record of continuity of work for a minimum of three years and should show promise of sustained activity in the future;

Exhibit R-78



- The NGO should have a satisfactory record of collaboration with UN Information Centres/Services or other parts of the UN system prior to association;
- The NGO should provide an audited annual financial statement, conducted by a qualified, independent accountant;
- The NGO should have statutes/by-laws providing for a transparent process of making decisions, elections of officers and members of the Board of Directors.

Associated NGOs are expected to devote a portion of their information programmes to promoting knowledge of the principles and activities of the UN. In addition, an evaluation and review process was in place in 2002 wherein NGOs associated with DPI are expected to keep the DPI/NGO Section abreast of their activities by providing a short summary of their UN-related activities and samples of their information materials every four years relating to the work of the UN. The information materials are also made available for perusal at the DPI/NGO Resource Centre.

# Annex V

# Three Generations of UN-Civil Society Relations: A Quick Sketch

by Tony Hill

**The First Generation**

In the span of time since the UN's creation in 1945, it is possible to speak of two generations, and the emergence of a third generation, of UN-Civil Society relations. The first, lasting up to the end of the Cold War in the late 1980s, involved mostly International NGOs (INGOs) of different varieties, including professional and business associations that were granted formal consultative relations with the UN (ECOSOC) in recognition of their international standing. Just as the Cold War shaped the inter-governmental deliberative processes of the UN, so too did it impact strongly on the dynamics and role of INGOs at the UN. What is striking about this period is how little actual

engagement there was of INGOs in the work of the UN. NGO forums may have been organized around UN Conferences but they remained more or less autonomous, commenting on UN deliberations at arms length. There were some exceptions to this, in particular the Stockholm Conference on the Human Environment in 1972, and the work of International Coalition for Development Action (ICDA) and others that engaged in the North-South Dialogue for a NIEO (under UNCTAD auspices) through the 1970s and early 1980s. By and large, however, the relations between the UN and NGOs in the first generation were more of a formal and ceremonial nature rather than of a political nature.

This is not to say that the role of INGOs in the first generation of UN-Civil Society relations was unimportant or inconsequential, far from it. The first generation of non-governmental organizations brought many new ideas and eloquent spokespersons to the work of the UN. Above all, they established the right of non-governmental actors to participate in UN deliberations, and gave real, practical expression to the possibilities opened up by Article 71 of the UN Charter. But that was a different political epoch, prior to the emergence of global civil society comprised of international, regional and national non-governmental organizations of all kinds, the emergence of the UN and it's system of organizations as the backbone of the world system of global governance, and the emergence of new ideas and practices of democratic governance involving the on-going participation of citizens and their organizations in governance processes.

**The Second Generation**

The ending of the Cold War and the decisions taken by the UN to embark upon a series of major World Conferences and Summits through the 1990s, ushered in a second generation of NGOs and UN-NGO relationships. Large numbers of non-governmental actors, in

particular, national NGOs from developing countries, from the Western hemisphere and, albeit to a lesser extent, from East-Central European post-communist societies, appeared around the major UN Conferences on Environment and Development, Population and Development, Human Rights, Women's Rights, Social Development, Human Settlements and Food Security, and their preparatory and follow-up processes. In marked contrast to the first generation of UN relations with non-governmental actors, the newly-emerged national and regional NGOs sought to engage directly in intergovernmental deliberations and, through advocacy and mobilization work, influence their outcomes. At the same time many of the traditional International NGOs began adapting to these new realities and reinventing themselves – with varying degrees of success – while many new forms of global and transnational organizations began to emerge such as the Oxfam family, the Third World Network, and the International Coalition for a Criminal Court. It is also true to say that over this period the presence of the private economic sector at the UN started to become much more marked.

In 1993, partly in response to the experience of NGO participation in the Rio Conference of 1992, a working group established by ECOSOC began a review and evaluation of relations with NGOs and Civil Society, leading three years later to the adoption of Resolution 1996/31 as the formal, legal framework for UN-NGO relations. Resolution 1996/31 replaced Resolution 1296 (XLIV) of 1968 and advanced on it by explicitly opening up UN consultative status to national NGOs – despite the efforts of some of the first generation of INGOs who allied with some of the most reluctant UN Member States to try to prevent this opening up to national (and regional) NGOs. Since 1996 there has been an exponential growth of NGOs, many of them national NGOs, applying for consultative status, with the number of those acquiring it growing from 744 in 1992 to 2,350

in 2003 with, today, a growing backlog of applications waiting for review by ECOSOC's Committee on NGOs.

The second generation of UN-NGO relations is marked by the much larger scale of the NGO presence across the UN system, the more diverse institutional character of the organizations involved, now including national, regional and international NGOs, networks, coalitions and alliances, and the greater diversity of the issues that NGOs seek to address at the UN. Above all, the second generation of UN-NGO relations are essentially political and reflect the motivation of NGOs to engage with the UN as part of the institutional architecture of global governance. This should not hide the fact that while the majority of civil society participants act as a "loyal opposition" to the UN (i.e. do not put into question its existence, principles and objectives), the opening of the UN to national NGOs has also allowed the participation of very conservative national non-governmental actors largely, but not only, based in the United States, who seek to roll-back or curtail UN agreements in areas such as women's reproductive rights, firearms control, and pre-emptive military action, and who even advocate the virtual abolition of the UN in some cases.

Another important feature of the second generation of UN-NGO relations has been the significant increase in operational cooperation between the Secretariats of UN organizations and non-governmental actors. UN agencies such as UNFPA, UNICEF, UNDP, and others such as IFAD, FAO, UNODC and ILO, collectively fund a significant and diverse range of non-governmental projects and activities in the global South, unlike in the past when UN system funding was channelled almost exclusively to governments. UN funding for non-governmental actors is also significant in humanitarian crises and refugee-related work (WFP, UNHCR and others) with between 33% and 50% of UNHCR's operational budget disbursed through NGOs,

both national and international, with efforts to give priority to the former. In addition, there are large numbers of examples of voluntary – as opposed to contractual – cooperation between non governmental actors and UN Secretariats (such as the current Civil Society Hearings in the run-up to UNCTAD XI in June of this year and the International Planning Committee, constituted by non-governmental actors internationally, and involving groups such as Via Campesina, to engage with follow-up to the 1996 World Food Summit and the Rome-based food agencies—FAO, IFAD, WFP).

Similarly, there are many examples of cooperation between the UN system's field offices and information centres in the developing countries and the local non-governmental community although it is recognized by the agencies concerned (UNDP, UNICEF and others), that progress has been patchy and more efforts need to be made in general to connect UN country and regional offices to local and regional civil society. UNDP, for example, has introduced awards for Resident Coordinators whose office works with local civil society on innovative projects and initiatives. While most attention focuses on civil society participation in the inter-governmental processes of UN World Conferences and Summits, and their follow-up at the international level, this growing field of cooperation of various forms between UN Secretariats and offices, and civil society organizations, described above, is a significant development in the practice of the UN system as part of the global governance and implementation architecture that will continue to evolve and develop.

**A Third Generation?**

The outline of a possible third generation of UN-Civil Society relations has now begun to emerge. This involves like-minded coalitions of governments and civil society (International Criminal Court,

Landmine Convention), and various forms of multi-stakeholder, public-private, public policy networks and partnerships such as the Global Compact, the GAVI initiative and the over 200 "Track II" partnership agreements emerging from the World Summit on Sustainable Development in Johannesburg in August-September 2002. These new forms of partnership relations currently co-exist with the second-generation political and advocacy role of civil society and raise many critical questions concerning the role of the UN as a broker of partnerships, the future of multilateralism as a form of global governance and the future of the UN's relations with the second generation of largely advocacy NGOs, many of whom view these latest developments with scepticism, to say the least.

Today, an unprecedented number and variety of civil society and business-related organizations participate in the work of the UN system. At the political level, the UN has shifted from an organization in which only governments spoke to only governments, to one that now brings together the political power of governments, the economic power of the corporate sector, and the "public opinion" power of civil society (and the global communication and information media) as participants in the global policy dialogue – without denying that there are areas of UN work, disarmament, for example, where today there is a clear civil society deficit in the governance architecture*. The evolution of this third generation of UN-Civil Society relations cannot be predicted in advance since it will depend upon forces whose interaction will shape outcomes. Within the UN system, the report of the Secretary-General's High Level Panel and its ensuing recommendations and follow-up, will certainly set the political tone, and a practical agenda, for effectively managing, and benefiting from, the UN's engagement with civil society. Outside the UN it will very much depend upon the extent to which global civil society continues to invest its "public opinion" power and resources in UN processes.

UN work in human rights, food security, economic and social development, environment and sustainable development, the Least-Developed Countries, disarmament, international justice and law, security, humanitarian emergencies and refugees will continue to attract global civil society constituencies concerned with influencing the outcomes of policy deliberations on this set of global issues. The Millennium Development Campaign also appears to be mobilizing significant new constituencies of non-governmental actors in support of the Millennium Development Goals. Nevertheless, it is striking that the global social justice movement that expresses itself through the World and Regional Social Forums that have been held since the historic Porto Allegre World Social Forum in 2001, have largely ignored the UN – although some of the leading organizations of the Social Forums are also active at the UN, and it does show that the UN is still perceived in a different, more benign light than the IMF, the World Bank and the WTO, who are severely criticized at these gatherings.

Until now, the Forums have had a policy of not engaging with the institutions of global governance and their member governments although, following Mumbai in 2004, the question of whether and how to engage now seems to be on the political agenda of the global social justice movement. Whether and how this may impact on the UN in the future depends to a large extent upon the degree to which the UN provides a platform for discussing alternative ways of managing globalization and for realizing progress towards the goals enshrined in agreements such as Financing for Development, the World Summit on Sustainable Development and the Millennium Declaration. The recent report of the ILO-initiated World Commission on the Social Dimensions of Globalization, (in effect, the follow up to the 1995 Copenhagen World Summit on Social Development) marks an important new contribution in that regard.

**Looking Forward**

Our global governance architecture, embracing the UN system and many other organizations and institutions beyond, is at once in crisis and developing rapidly; civil society has become a vital driver of change and democratisation of global decision-making. Civil society is drawn to the UN because it provides fora, based on the ethics, moral principles and aspirations of the Charter, in which governments exercise their power at the international level and in which even the smallest state has formal equality with the most powerful. There are many forces at play as the UN moves to a third generation of relationships with civil society, and many unknowns. The dialectic at play will hinge upon the degree to which governments invest political capital (and financial resources) in the UN system as it moves forward as the existing backbone of the global governance system; and the degree to which civil society continues to invest its "public opinion" power in UN fora both to influence and empower governments and counter the power and influence of the private sector.

The international community has, by and large, accepted that good governance, nationally and internationally, demands the participation of independent groups and organizations of civil society, and representatives of the private economy, in governance processes. At the international level, and across the UN system, tremendous progress has been made in opening-up intergovernmental decision-making to the participation and scrutiny of civil society, thereby making it transparent and accountable in a way that the UN's far-sighted founders could never have imagined. Civil society has also enriched intergovernmental deliberations by bringing forward new information, different experiences and perspectives and has contributed enormously to the practical implementation of global governance outcomes. Planet-wide problems today—poverty, epidemics, environmental destruction, human rights abuses, arms proliferation and insecurity—can

only be addressed globally. Despite recent setbacks, the architecture, dynamics and processes of global governance have to maintain forward momentum and evolution if these problems are to be adequately addressed. Global governance will continue to be a work-in-progress with enormous challenges to be surmounted, but there is simply no alternative.

Tony Hill
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*Explanatory Note*

*By global governance is meant a vision and a dynamic and open-ended process *which seeks to achieve* the coming together at the international level of national governments and other political authorities, civil society and the private economic sector, to develop consensus and reach agreements to take collective action to address global issues, problems and threats and to promote trust, harmony and well-being, security and cooperation between nation states and peoples of the world.

# Acronyms

| | |
|---|---|
| AMR | Annual Ministerial Review |
| AOSIS | Alliance of Small Island States |
| AU | African Union |
| CBD | Convention on Biodiversity |
| CBOs | Community-Based Organizations |
| CCD | Convention to Combat Desertification |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| CITES | Convention on International Trade in Endangered Species of Wild Fauna and Flora |
| CONGO | Conference of NGOs in Consultative Relationship with the United Nations |
| COW | Committee of the Whole |
| CSD | Commission on Sustainable Development |
| CSOs | Civil Society Organizations |

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| | |
|---|---|
| DAW | Division for the Advancement of Women |
| DDA | Department for Disarmament Affairs |
| DPA | Department of Political Affairs |
| DESA | Department of Social and Economic Affairs |
| DGACCS | Department of General Assembly Affairs and Conference Services |
| DoC | Declaration of Commitment |
| DPI | Department of Public Information |
| DPKO | Department of Peacekeeping Operations |
| ECOSOC | Economic and Social Council |
| EU | European Union |
| FAO | Food and Agriculture Organization |
| FfD | Financing for Development |
| G-77/China | Group of 77 Developing Countries and China |
| GA | General Assembly |
| HLS | High-Level Segment |
| HRC | Human Rights Council |
| IAEA | International Atomic Energy Agency |
| ICAO | International Civil Aviation Organization |
| ICJ | International Court of Justice |
| ICTs | Information and Communication Technologies |
| IFAD | International Fund for Agricultural Development |
| ILO | International Labour Organization |
| IMF | International Monetary Fund |
| IMO | International Maritime Organization |
| INSTRAW | International Research and Training Institute for the Advancement of Women |
| ISDR | International Strategy for Disaster Reduction |
| ITC | International Trade Centre |
| ITU | International Telecommunication Union |
| JUSCANZ | Japan, the United States, Canada, Australia and New Zealand |

| | |
|---|---|
| LDCs | Least Developed Countries |
| MDGs | Millennium Development Goals |
| MoU | Memorandum of Understanding |
| NAM | Non-Aligned Movement |
| NGO | Non-Governmental Organization |
| OCHA | Office for the Coordination of Humanitarian Affairs |
| OIC | Organization of Islamic Conference |
| OHCHR | Office of the High Commissioner for Human Rights |
| OHRLLS | Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States |
| PCB | Programme Coordinating Board |
| PoA | Programme of Action |
| PrepCom | Preparatory Committee |
| PRSP | Poverty Reduction Strategy Papers |
| SIDS | Small Island Developing States |
| UNAIDS | Joint United Nations Programme on HIV/AIDS |
| UNCTAD | United Nations Conference on Trade and Development |
| UNCDF | United Nations Capital Development Fund |
| UNDP | United Nations Development Programme |
| UNECA | United Nations Economic Commission for Africa |
| UNECE | United Nations Economic Commission for Europe |
| UN ECLAC | United Nations Economic Commission for Latin America and the Caribbean |
| UN ESCAP | United Nations Economic Commission for Asia and the Pacific |
| UN ESCWA | United Nations Economic Commission for Western Asia |
| UNEP | United Nations Environment Programme |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |

| | |
|---|---|
| UNFCC | United Nations Framework Convention on Climate Change |
| UNFF | United Nations Forum on Forests |
| UNFIP | United Nations Fund for International Partnership |
| UNFPA | United Nations Population Fund |
| UNGASS | UN General Assembly Special Session |
| UN-HABITAT | United Nations Human Settlements Programme |
| UNHCR | United Nations High Commissioner for Refugees |
| UNICEF | United Nations Children's Fund |
| UNICRI | United Nations Interregional Crime and Justice Research Institute |
| UNIDIR | United Nations Institute for Disarmament Research |
| UNIDO | United Nations Industrial Development Organization |
| UNIFEM | United Nations Development Fund for Women |
| UNITAR | United Nations Institute for Training and Research |
| UN-NGLS | United Nations Non-Governmental Liaison Service |
| UNODC | United Nations Office on Drugs and Crime |
| UNOG | United Nations Office at Geneva |
| UNON | United Nations Office at Nairobi |
| UNOV | United Nations Office at Vienna |
| UNPFII | United Nations Permanent Forum on Indigenous Issues |
| UNRISD | United Nations Research Institute for Social Development |
| UNRWA | United Nations Relief and Works Agency for Palestinian Refugees in the Near East |
| UNU | United Nations University |
| UNU-WIDER | United Nations University-World Institute for Development Economics Research |
| UNV | United Nations Volunteers |
| UPU | Universal Postal Union |
| WEOG | Western European and Other Groups |

| | |
|---|---|
| WFP | World Food Programme |
| WFUNA | World Federation of UN Associations |
| WHO | World Health Organization |
| WIPO | World Intellectual Property Organization |
| WMO | World Meteorological Organization |
| WSIS | World Summit on the Information Society |
| WSSD | World Summit on Sustainable Development |
| WTO | World Trade Organization |
| WUF | World Urban Forum |

# Suggested Reading and Additional Resources

**NGLS Publications:**

*UN/Civil Society Engagement: Year in Review 2006* (2007). NGLS: Geneva and New York. This publication gives a snapshot picture of civil society engagement in the policy and normative work of the UN and reviews the various consultations, forums, policy dialogues, hearings, and CSO advisory committees that have taken place throughout the year 2006.

*The Unfinished Story of Women and the United Nations by Hilkka Pietilä*, (2007). NGLS: Geneva and New York.

*Debating NGO Accountability by Jem Bendell*, (2006). NGLS: Geneva and New York.

*UN System Engagement with NGOs, Civil Society, the Private Sector and Other Actors* (2005). NGLS: Geneva and New York.

These and other NGLS publications are available online at *www.un-ngls.org*.

**Additional Resources:**

**United Nations**
**Global Issues on the UN Agenda:**
www.un.org/issues

**United Nations Documentation Centre:**
www.un.org/documents

**United Nations Treaty Collection:**
http://untreaty.un.org

**Reference document** on the participation of civil society in United Nations conferences and special sessions of the General Assembly during the 1990s: *www.un.org/ga/president/55/speech/civilsociety .htm*.

**Office of the High Commissioner for Human Rights (OHCHR):**
A Handbook for NGOs: *www.ohchr.org/english/about/ngohandbook .htm*.

The Handbook aims to provide NGOs with a comprehensive and user-friendly guide to the work of OHCHR, including key information on human rights mechanisms, entry points for NGOs and contact details with a view to assisting NGOs in identifying areas of possible cooperation and partnership with OHCHR; it also anticipates the changes of the current United Nations reform process.

**United Nations Research Institute on Social Development (UNRISD):**
A recent UNRISD project on UN World Summits and Civil Society Engagement aimed to critically assess the impact of the various UN summits on civil society activism at global, national and local levels. It focused, first, on the extent to which UN summits have been a meaningful mechanism for creating a favourable political space for increased civil society density and activism. Second, it examined the range and quality of civil society activities in planning, implementing and monitoring the principal agenda and agreed programmes subsequent to the world summits. Third, it looked at the stimulus created by UN summits for greater linkages among civil society organizations, both horizontally and vertically. Information on this and other UNRISD research projects is available on the UNRISD website: *www.unrisd.org*.

A number of publications based on this research are available online, including:

*UN World Summits and Civil Society: The State of the Art*

Survey evidence reviewed in this paper shows that an attitude of active dialogue with UN world summits is dominant among civil society organizations, followed by policy criticism from the outside, and efforts at integration in official summits. A range of alternative policy proposals is also discussed, with an emphasis on those receiving higher priority from CSOs.

*Civil Society in United Nations Conferences: A Literature Review*
When civil society engagement in global conferences is studied, there is usually limited attention to the effects this participation can have on civil society itself. This paper outlines some of the results of civil society involvement in global governance for developments within civil society.

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*Political Space for Non-Governmental Organizations in United Nations World Summit Processes*
The 1990s showed the necessity of cooperation between the United Nations and civil society actors. Yet many UN decisions with regard to NGO involvement seem to be dominated by a kind of "cost-benefit analysis". Instead, a moderating and mediating approach should be adopted toward the engagement of these actors in UN events.

**NGO Resources**

Report on the International Conference for the Reform of International Institutions by the UBUNTU Forum Secretariat held in Geneva (ILO Headquarters) in November 2006: *www.ubuntu.upc.edu/pdf/geneva_memo_06.pdf*. "UN summits (for example, the recent gatherings held in Monterrey on Financing for Development and in Johannesburg on Sustainable Development) have given rise to extremely interesting declarations and action plans but without the resources to fulfil them. Moreover, much of the responsibility has been shifted to the 'global market.' In the light of these circumstances, there is a need for in-depth analysis on how the System of International Institutions should re-orientate towards a greater, if any, ability to bring about global solutions to current global problems. In a world in which conflict, violence, fundamentalism, etc. seem to be winning the war over peace and individual and collective human rights, analysis and alternative wide-ranging proposals are more urgently required today than ever before." (Introduction to the report.) Further information on the World Campaign for in-depth Reform of the System of International Institutions is available online: *www.reformcampaign.net*.

*How to Lobby at Intergovernmental Meetings* by Felix Dodds, (2004). Earthscan: London and Sterling, VA.

**UNITED NATIONS NON-GOVERNMENTAL LIAISON SERVICE (NGLS)**

The United Nations Non-Governmental Liaison Service (NGLS), established in 1975, is a jointly-financed interagency programme of the UN system. NGLS programme activities deal with the full UN agenda on sustainable development, human emergencies and refugees, peace and disarmament and the Least Developed Countries and operate across the entire UN system of agencies, programmes, funds and departments concerned with these issues. NGLS works with national and regional NGOs from developing and industrialized countries and international NGOs.

The information produced by NGLS both in published form and electronically combines public information on UN and NGO events and issues, practical "how to" guides to the UN system for NGOs, and substantive analysis of issues on the international agenda. NGLS's publications (electronic and print) are distributed to almost 10,000 NGOs worldwide, around 50% based in developing countries, and to over 1,000 development professionals in the UN system, governments and bilateral agencies.

All NGLS's publications are also available on its website *www.un-ngls.org*. As part of its outreach activities, NGLS also disseminates information on a range of activities on the UN agenda to NGO electronic mail networks and listservs. NGLS also provides advice, guidance and support to the organizations of the UN system as they seek to develop constructive working relationships with the nongovernmental community.

For further information on NGLS's activities, please contact:

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  fax +1-212/963 8712,
  e-mail: ngls@un.org
  website: www.un-ngls.org

# The United Nations System

## Principal Organs

**Trusteeship Council**

**Security Council**

**Subsidiary Bodies**

- Military Staff Committee
- Standing Committee and ad hoc bodies
- International Criminal Tribunal for the former Yugoslavia (ICTY)
- International Criminal Tribunal for Rwanda (ICTR)
- UN Monitoring, Verification and Inspection Commission (Iraq) (UNMOVIC)
- United Nations Compensation Commission
- Peacekeeping Operations and Missions

**General Assembly**

**Subsidiary Bodies**

- Main committees
- Human Rights Council
- Other sessional committees
- Standing committees and ad hoc bodies
- Other subsidiary organs

**Advisory Subsidiary Body**

United Nations Peacebuilding Commission

### Programmes and Funds

**UNCTAD** United Nations Conference on Trade and Development

**ITC** International Trade Centre (UNCTAD/WTO)

**UNDCP**[1] United Nations Drug Control Programme

**UNEP** United Nations Environment Programme

**UNICEF** United Nations Children's Fund

**UNDP** United Nations Development Programme

**UNIFEM** United Nations Development Fund for Women

**UNV** United Nations Volunteers

**UNCDF** United Nations Capital Development Fund

**UNFPA** United Nations Population Fund

**UNHCR** Office of the United Nations High Commissioner for Refugees

**WFP** World Food Programme

**UNRWA**[2] United Nations Relief and Works Agency for Palestine Refugees in the Near East

**UN-HABITAT** United Nations Human Settlements Programme

### Research and Training Institutes

**UNICRI** United Nations Interregional Crime and Justice Research Institute

**UNITAR** United Nations Institute for Training and Research

**UNRISD** United Nations Research Institute for Social Development

**UNIDIR**[2] United Nations Institute for Disarmament Research

**INSTRAW** International Research and Training Institute for the Advancement of Women

### Other UN Entities

**OHCHR** Office of the United Nations High Commissioner for Human Rights

**UNOPS** United Nations Office for Project Services

**UNU** United Nations University

**UNSSC** United Nations System Staff College

**UNAIDS** Joint United Nations Programme on HIV/AIDS

### Other UN Trust Funds[7]

**UNFIP** United Nations Fund for International Partnerships

**UNDEF** United Nations Democracy Fund

**NOTES:** Solid lines from a Principal Organ indicate a direct reporting relationship; dashes indicate a non-subsidiary relationship.

1 The UN Drug Control Programme is part of the UN Office on Drugs and Crime

2 UNRWA and UNIDIR report only to the GA

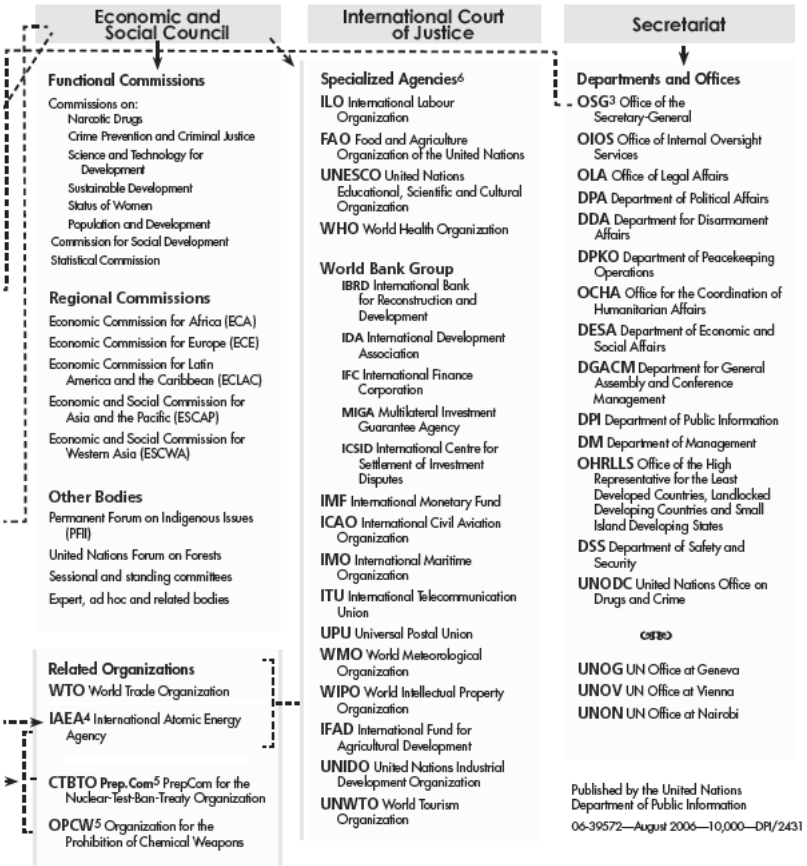
3 The United Nations Ethics Office and the United Nations Ombudsman's Office report directly to the Secretary General

4 IAEA reports to the Security Council and the General Assembly (GA)

5 The CTBTO Prep Com and OPCW report to the GA

6 Specialized agencies are autonomous organizations working with the UN and each other through the coordinating machinery of the ECOSOC at the intergovernmental level, and through the Chief Executives Board for coordination (CEB) at the inter-secretariat level

7 UNFIP is an autonomous trust fund operating under the leadership of the United Nations Deputy Secretary General. UNDEF's advisory board recommends funding proposals for approval by the Secretary General

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The United Nations Non-Governmental Liaison Service (NGLS) is an interagency programme of the UN system that facilitates dialogue and fosters cooperation and constructive engagement between the UN system and the NGO community worldwide on global development, human rights, and peace and disarmament issues. NGLS has offices in Geneva and New York.

**The work of NGLS is currently supported by:**

- United Nations Department for Economic and Social Affairs (UN/DESA Lead Agency)
- United Nations Conference on Trade and Development (UNCTAD Administering Agency)
- Food and Agriculture Organization of the United Nations (FAO)
- International Fund for Agricultural Development (IFAD)
- International Labour Office (ILO)
- Joint United Nations Programme on HIV/AIDS (UNAIDS)
- Office of the United Nations High Commissioner for Refugees (UNHCR)
- United Nations Human Settlements Programme (HABITAT)
- United Nations Children's Fund (UNICEF)
- United Nations Department of Public Information (UN/DPI)
- United Nations Development Programme (UNDP)
- United Nations Environment Programme (UNEP)
- United Nations Educational, Scientific and Cultural Organization (UNESCO)
- United Nations Office on Drugs and Crime (UNODC)
- United Nations Population Fund (UNFPA)
- World Food Programme (WFP)
- World Health Organization (WHO)

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# R-79

RESPONDENT'S EXHIBIT

# ICANN Board Notes on the GAC New gTLDs Scorecard

4 March 2011

**This document contains the ICANN Board's notes on the "GAC indicative scorecard on new gTLD outstanding issues" of 23 February 2011. Each GAC scorecard item is noted with a "1A", "1B", or "2":**

- "1A" indicates that the Board's position is consistent with GAC advice as described in the Scorecard.
- "1B" indicates that the Board's position is consistent with GAC advice as described in the Scorecard in principle, with some revisions to be made.
- "2" indicates that the Board's current position is not consistent with GAC advice as described in the Scorecard, and further discussion with the GAC in San Francisco is required.

| Item # | GAC Scorecard Actionable Item | Position | Notes |
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| **1.** | **The objection procedures including the requirements for governments to pay fees** | | |
| 1. | Delete the procedures related to "Limited Public Interest Objections" in Module 3. | **1B** | The GAC indicated in Brussels that its concern relates to requiring governments to use this objection process. The Board and GAC therefore agreed that it would be consistent with GAC advice to leave the provision for Limited Public Interest Objections in the Guidebook for general purposes, but the GAC (as a whole) would not be obligated to use the objection process in order to give advice. |
| **2.** | **Procedures for the review of sensitive strings** | | |
| 2.1.1 | ***1. String Evaluation and Objections*** | **1B** | A procedure for GAC review will be |

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| | ***Procedure***<br>Amend the following procedures related to the Initial Evaluation called for in Module 2 to include review by governments, via the GAC. At the beginning of the Initial Evaluation Period, ICANN will provide the GAC with a detailed summary of all new gTLD applications.<br>Any GAC member may raise an objection to a proposed string for any reason. The GAC will consider any objection raised by a GAC member or members, and agree on advice to forward to the ICANN Board. | | incorporated into the new gTLD process. The GAC may review the posted applications and provide advice to the ICANN Board. As discussed with the GAC, such advice would be provided within the 45-day period after posting of applications, with documentation according to accountability and transparency principles including whether the advice from the GAC is supported by a consensus of GAC members (which should include identification of the governments raising/supporting the objection). |
| 2.1.2 | GAC advice could also suggest measures to mitigate GAC concerns. For example, the GAC could advise that additional scrutiny and conditions should apply to strings that could impact on public trust (e.g. '.bank'). | **2** | If the GAC were to provide suggested changes to mitigate concerns, we are concerned that the advice would lead to ad hoc changes to the evaluation process based on subjective assessments. |
| 2.1.3 | In the event the Board determines to take an action that is not consistent with GAC advice pursuant to Article XI Section 2.1 j and k, the Board will provide a rationale for its decision. | **1A** | |

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| 2.2 | ***2. Expand Categories of Community-based Strings***<br>Amend the provisions and procedures contained in Modules 1 and 3 to clarify the following: | | |
| 2.2.1 | "Community-based strings" include those that purport to represent or that embody a particular group of people or interests based on historical, cultural or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non exhaustive). In addition, those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse, should also be considered "community-based" strings. | **2** | Any community is eligible to designate its application as community-based. Bona fide community applicants are eligible for preference in the event of contention for a string.<br><br>Also, ICANN has provided a community objection process in the event that there is "substantial opposition to it from a significant portion of the community." (A community objection may be lodged against any application, whether or not it is designated as community-based.)<br><br>The GAC's list of groups and sectors appears to be an example of the kinds of communities that may be able to achieve standing to raise a community objection. |

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| | | | ICANN will review the standards for the community objection process to ensure that they are appropriate. Revised standards will be included in the forthcoming version of the Applicant Guidebook. |
| 2.2.2 | Applicants seeking such strings should be required to affirmatively identify them as "community-based strings" and must demonstrate their affiliation with the affected community, the specific purpose of the proposed TLD, and –when opportune evidence of support or non-objection from the relevant authority/ies that the applicant is the appropriate or agreed entity for purposes of managing the TLD. | **2** | The GAC's suggestion would require applicants to designate themselves as a community, even if they might not be.<br><br>Strings may have many meanings, not all of which might implicate a community.<br><br>Reducing the context for how strings may be used is contrary to an important goal of the new gTLD program, which is to help encourage competition, innovation and consumer choice. |
| 2.2.3 | In the event the proposed string is either too broad to effectively identify a single entity as the relevant authority or appropriate manager, or is sufficiently contentious that an appropriate manager cannot be identified and/or agreed, the application should be rejected. | **2** | The community objection process is intended to deal with applications where "there is substantial opposition" to the application "from a significant portion of the community."<br><br>This GAC advice seems to suggest that |

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| | | | unless everyone can agree on an appropriate applicant for a given string then the string should not be approved. Again, this seems contrary to the goal of increasing competition and providing additional choice to all consumers.<br><br>Further, the phrase "sufficiently contentious" is vague and it is unclear who the GAC is suggesting would need to agree on an "appropriate manager." Thus, this suggestion does not seem to be workable in light of the goals of the new gTLD program. |
| 2.2.4 | The requirement that objectors must demonstrate "material detriment to the broader Internet community" should be amended to reflect simply "material detriment", as the former represents an extremely vague standard that may prove impossible to satisfy. | **1B** | Staff will return with revised wording to address this concern. |
| 2.2.5 | Individual governments that choose to file objections to any proposed "community-based" string should not be required to pay fees. | **1B** | ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances (subject to constraints |

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| | | | imposed by budget and other considerations). |
| 3. | **Root Zone Scaling** | | |
| 3.1.1 | The Board should continue implementing a monitoring and alerting system and ensure a) that ICANN can react predictably and quickly when there are indicators that new additions and changes are straining the root zone system, and | **1A** | Root zone monitoring systems are currently in place. ICANN will work with root zone operators to identify relevant reporting metrics and establish a process to report such metrics to the GAC and the Internet community.<br><br>Furthermore, a process will be implemented that enables the delegation of TLDs to be slowed or stopped in the event there is a strain to the root zone system.<br><br>ICANN also commits to review the effects of the new gTLD program on the operations of the root zone system, and defer the delegations in the second round until it is determined that the delegations in the first round did not jeopardize root zone system security or stability. |
| 3.1.2 | b) that the processes and possible resulting restorative measures that flow from its results are fully described in the Application | | See 3.1.1 above. |

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| | Guidebook before the start of the first application round. | | |
| 3.2 | The Board commits to defer the launch of a second round or batch of applications unless an evaluation shows that there are indications from monitoring the root system etc. that a first (limited) round did not in any way jeopardize the security and stability of the root zone system. | | See 3.1.1 above. |
| 3.3 | The Board commits to make the second round or batch of applications contingent on a clean sheet from full technical and administrative assessment of impact of the first round with recommendations which should go out to public comment for approval. | | See 3.1.1 above. |
| 3.4 | The Board commits to avoid the possibility that other activities will be impacted by the possible diversion of resources to processing new gTLD applications. | | ICANN commits that the operation of the IANA functions and ICANN's coordination of the root zone system will not be negatively affected. |
| 3.5 | The Board should ensure that ICANN can effectively address the specific needs of applicants from different, perhaps non-English speaking cultures, and with different legal environments. | | See note on 3.4 above. |

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| 3.6 | The Board should monitor the pace and effectiveness of ICANN's management of contract negotiations for new gTLDs in a potential situation of 200 to 300 simultaneous applications and evaluations. | **1A** | |
| 3.7 | The Board is confident that all relevant actors (IANA, root server operators, etc) are sufficiently informed about what is expected from them in terms of work loadings and resources in order to fulfil their respective roles, in particular the pre delegation checking, approvals, implementation of potentially 200 to 300 root zone changes a year and expected post-delegation changes. | **1A** | |
| **4.** | **Market and Economic Impacts** | | |
| 4.1 | Amend the final Draft Applicant Guidebook to incorporate the following:<br><br>Criteria to facilitate the weighing of the potential costs and benefits to the public in the evaluation and award of new gTLDs. | **2** | It is not planned that information gathered as part of the application will be used to predict the net benefit of the prospective TLD – that would be too speculative to be of real value. However, during the discussions between the GAC and the Board in Brussels, the GAC indicated that the weighing of costs and benefits should |

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| | | | instead take place as part of the new gTLD program review as specified in section 9.3 of the Affirmation of Commitments. |
| 4.2 | A requirement that new gTLD applicants provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers. | **1B** | As clarified through the discussions with the GAC in Brussels, ICANN will continue to explore with the GAC during the ICANN Public meeting in March 2011what data might be included in the application to provide useful input to later economic studies and community analysis. |
| 4.3 | Due diligence or other operating restrictions to ensure that Community-based gTLDs will in fact serve their targeted communities and will not broaden their operations in a manner that makes it more likely for the registries to impose costs on existing domain owners in other TLDs. | **1A** | ICANN will continue to work to ensure that post-delegation dispute mechanisms adequately address this concern. |
| **5.** | **Registry – Registrar Separation** | | |
| | Amend the proposed new registry agreement to restrict cross-ownership between registries and registrars, in those cases where it can be determined that the registry does have, or is likely to obtain, market power. | **2** | ICANN sought to implement a marketplace model that would enhance competition, opportunities for innovation and increase choice for consumers while preventing abuses in cases where the registry could wield |

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| | | | market power. While lifting restrictions on cross-ownership, ICANN reserves the right to refer issues to appropriate competition authorities if there are apparent abuses of market power. As previously resolved by the Board, registry agreements will include requirements and restrictions on any inappropriate or abusive conduct arising out of registry-registrar cross ownership, including without limitations provisions protecting against misuse of data or violations of a registry code of conduct. |
| **6.** | **Protection of Rights Owners and consumer protection issue** | | |
| 6.1.1 | ***1. Rights Protection: Trademark Clearing House (TC)***<br><br>The TC should be permitted to accept all types of intellectual property rights that are recognized under the national law of the country or countries under which the registry is organized or has its principal place of business. The only mandatory requirement for new registry operators will be to recognize national and supranational trademark registrations issued before June 26, 2008 and | **1B** | ICANN will update the Applicant Guidebook to permit the Trademark Clearinghouse to include intellectual property rights for marks in addition to registered trademarks and those protected by treaty or statute. Of those marks, registry operators will be required to recognize national, supranational and marks protected by treaty and statute as eligible for their sunrise and Trademark claims services (subject to proof of use as described |

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| | court-validated common law trademarks. | | below relating to sunrise services).<br><br>The Clearinghouse must clearly note when entering the marks into the database, which marks are registered trademarks.<br><br>The proposed date cut-off will not be utilized as discussed with the GAC. |
| 6.1.2 | Sunrise services and IP claims should both be mandatory for registry operators because they serve different functions with IP claims serving a useful notice function beyond the introductory phase. | **2** | The IRT and STI suggested an either/or approach. Please advise reasons for advocating both. |
| 6.1.3 | IP claims services and sunrise services should go beyond exact matches to include exact match plus key terms associated with goods or services identified by the mark) e.g. "Kodakonlineshop") and typographical variations identified by the rights holder. | **2** | ICANN recognizes that trademark holders have an interest in receiving notification in the event that strings are registered that include their mark and a key term associated with goods or services identified by the mark. This remains an area of discussion. |
| 6.1.4 | All trademark registrations of national and supranational effect, regardless of whether | **1B** | All trademark registrations of national and supranational effect, regardless of |

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| | examined on substantive or relative grounds, must be eligible to participate in the pre-launch sunrise mechanisms. | | whether examined on substantive or relative grounds, will be eligible for inclusion in the Trademark Clearinghouse and for the Sunrise/TM Claims service subject to the following.<br><br>Registries that utilize a sunrise process must require submission of evidence of use of the mark by holders of all trademark registrations, regardless of the jurisdiction of registration.<br><br>Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use. Further discussion should take place relating to proof of use. |
| 6.1.5 | Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings. | **1A** | |
| 6.1.6 | The IP claims service should notify the potential domain name registrant of the rights | **1A** | Agreed. Note: the notification to the rights holder will be sent promptly after |

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| | holder's claim and also notify the rights holder of the registrant's application for the domain name. | | the potential registrant has acknowledged the IP Claim and proceeds with the application to register the name. |
| 6.1.7.1 | The TC should continue after the initial launch of each gTLD. | **2** | The Trademark Clearinghouse will be an ongoing operation. The Sunrise and TM Claims service will operate only at launch (in accordance with the recommendations of the IRT and the STI). Trademark holders will continue to be able to subscribe to "watch" services that will be able to utilize the Centralized Zone File Access system to be able to efficiently monitor registrations across multiple gTLDs. |
| 6.1.7.2 | Rights holders, registries and registrars should all contribute to the cost of the TC because they all benefit from it. | **1B** | Rights holders will pay the Trademark Clearinghouse when the rights holders register their marks, and the registry will pay when administering its sunrise/trademark claims service. |
| 6.2.1 | ***2. Rights Protection: Uniform Rapid Suspension (URS):***<br><br>Significantly reduce the timescales. See attached table for proposed changes. | **1A** | |

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| 6.2.2 | The complaint should be simplified by replacing the 5,000 word free text limit + unlimited attachments [para 1.2] with a simple pro forma standardised wording with the opportunity for not more than 500 words of freeform text and limit the attachments to copies of the offending website. | **1A** | Note: The word limit will not apply to respondents. |
| 6.2.3 | Decisions should be taken by a suitably qualified 'Examiner' and not require panel appointments. | **1A** | Examiners will be appointed by the URS Provider. Only one Examiner will be appointed per URS proceeding. |
| 6.2.4 | Where the complaint is based upon a valid registration, the requirement that the jurisdiction of registration incorporate substantive examination (paras 1.2f (i) and 8.1a) should be removed. | **1B** | There is no requirement that any registration of a trademark must include substantive evaluation.<br><br>Each trademark registration must be supported by evidence of use in order to be the basis of a URS complaint.<br><br>Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use. Further discussion should take place relating to proof of use. |

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| 6.2.5 | If, as is expected in the majority of cases, there is no response from the registrant, the default should be in favour of the complainant and the website locked. The examination of possible defences in default cases according to para 8.4(2) would otherwise give an unjustified privilege to the non-cooperating defendant. | **1B** | An examiner will review the merits of each complaint to ensure that the standard is met, even in the event of a default. The examiner will not be required to imagine possible defenses – this provision will be removed from the Guidebook. |
| 6.2.6 | The standard of proof (para 8.2) should be lowered from “clear and convincing evidence” to a preponderance of evidence”. | **2** | The principle of the URS is that it should only apply to clear-cut cases of abuse.<br><br>"Clear and convincing" is the burden of proof that was recommended by the IRT and endorsed by the STI. |
| 6.2.7 | The “bad faith” requirement in paras 1.2f), 1.2g) and 8.1c) is not acceptable. Complainants will in only rare cases prevail in URS proceedings if the standards to be fulfilled by registrants are lax. Correspondingly, the factors listed in paras 5.7a) (“bona fide”) and b) “been commonly known by the domain name”) can hardly allow a domain name owner to prevail over the holders of colliding trademarks. | **2** | The standard applied for the URS is based on the UDRP standard. Both require a finding of bad faith. |
| 6.2.8 | A ‘loser pays’ mechanism should be added. | **2** | A loser pays mechanism was |

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| | | | investigated, but ultimately was not adopted. The UDRP does not have a loser-pays mechanism. It is unlikely that complainants would ever be able to effectively collect based on clear-cut cases of abuse, since the names in question will already have been suspended. Notwithstanding, ICANN will monitor URS procedures once launched to see whether a loser pays mechanism or some other methodology to reimburse mark holders is feasible. |
| 6.2.9 | Registrants who have lost five or more URS proceedings should be deemed to have waived the opportunity to respond to future URS complaints (this amendment corresponds to the “two strikes” provision which applies to rights holders). | **2** | Due process principles require that every registrant should always have the opportunity to present a defense. |
| 6.2.10.1 | However, there should be a clear rationale for appeal by the complainant. | **2** | The Board has asked the GAC to clarify if it intended to refer to "complainant" (as opposed to respondent) in this statement. Every appeal will be decided de novo, and therefore the appeal process does not require a separate evaluation of the rationale for filing the appeal. |

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| 6.2.10.2 | The time for filing an appeal in default cases must be reduced from 2 years to not more than 6 months. | **2** | The IRT originally suggested a URS without any appeal process. The STI suggested the inclusion of an appeal process (without any mention of a limitation on the ability to seek relief from a default). In response to comments, the Applicant Guidebook was revised to include a two-year limitation period on the opportunity to seek relief from a default. |
| 6.2.10.3 | In addition, the examination of possible defences in default cases according to para 8.4(2) means an unjustified privilege of the non-cooperating defendant. | **1A** | |
| 6.2.11 | The URS filing fee should be US$200-US$300 and minor administrative deficiencies should not result in dismissal of the URS complaint. | **1B** | ICANN will negotiate with URS service providers for the best prices and services. The fee range mentioned will be a target. |
| 6.2.12 | A successful complainant should have the right of first refusal for transfer of the disputed domain name after the suspension period so that the complainant is not forced to pursue a UDRP proceeding to secure a transfer. | **1A** | A successful complainant should have the right of first refusal to register the disputed domain name after the expiration of the registration period and any extension of the suspension period. This right of first refusal upon expiration will not diminish the registration period, or the period of time available for the registrant to seek |

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| | | | relief from default, or in any other way harm the rights of any registrant. |
| 6.2.13 | The URS should go beyond 'exact' matches and should at least include exact + goods/other generic words e.g. "Kodakonlineshop". | **2** | As recommended by the IRT, the URS only applies to registrations that are identical or confusingly similar to protected marks as described in the Guidebook. As noted above, the URS is only intended to apply to clear-cut cases of abuse. |
| 6.3.1 | ***3. Rights Protection: Post-delegation Dispute Resolution Procedure (PDDRP)***<br><br>The standard of proof be changed from "clear and convincing evidence" to a "preponderance of evidence". | **2** | This was the standard developed by the IRT. |
| 6.3.2 | The second level registrations that form the underlying basis of a successful PDDRP complaint should be deleted. | **2** | The registrants are not parties to the proceedings, thus keeping a registrant from using the domain name or stripping the name from the registrant should be effected through an alternative proceeding, such as URS or UDRP. Note that to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with |

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| | | | a registry operator, then deletion of registrations may be a recommended remedy. |
| 6.3.3 | The requirement of "substantive examination" in para 9.2.1(i) should be deleted. | **1B** | There is no requirement that any registration of a trademark must include substantive evaluation.<br><br>Each trademark registration must be supported by evidence of use in order to be the basis of a PDDRP complaint.<br><br>Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use. Further discussion should take place relating to proof of use. |
| 6.3.4 | A new para 6.1 a) be added: "being identical to the complainant's mark in relation to goods and services which are identical to those for which the complainant's mark is registered. This would not apply if the registrant has a better right to the mark. In particular the registrant will in normal circumstances have a better right if the mark has been registered prior to the registration of the complainant's mark." | **(?)** | (Clarification from the GAC requested.) |

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| 6.3.5 | Regarding the second level (para 6.2), the registrant operator should be liable if he/she acts in bad faith or is grossly negligent in relation to the circumstances listed in para 6.a)-d). | **2** | Changing the standard from requiring "affirmative conduct" to “gross negligence” would effectively create a new policy imposing liability on registries based on actions of registrants. |
| 6.3.6 | The requirement in para 7.2.3 lit.d) that the complainant has to notify the registry operator at least 30 days prior to filing a complaint is burdensome and should be reduced to 10 days if not deleted entirely. | **2** | The current requirement is in place to provide the registry with a reasonable amount of time to investigate and take appropriate action if a trademark holder notifies the registry that there may be infringing names in the registry. |
| 6.3.7 | Para 19.5 should be amended as follows: “In cases where the Expert Determination decides that a registry operator is liable under the standards of the Trademark PDDRP, ICANN will impose appropriate remedies that are in line with the Determination. | **1A** | ICANN agrees that it will impose appropriate remedies that are "in line" with the determination. It should be noted however that ICANN is ultimately responsible for determining the appropriate remedy. |
| 6.4.1 | ***4. Consumer Protection***<br><br>**A**mend the "Maintain an abuse point of contact" paragraph in the DAG to include government agencies which address consumer protection: | **1B** | |

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| 6.4.2 | A registry operator must assist law enforcement, government agencies and agencies endorsed by governments with their enquiries about abuse complaints concerning all names registered in the TLD, including taking timely action, as required, to resolve abuse issues. | **1B** | ICANN agrees that the registry operator must assist appropriately in law enforcement investigations. There might be a difference between local and International law enforcement agencies. There is a question about whether this requirement would be stronger than what is already required by law. Changes to the Guidebook will be made after consideration of those issues. |
| 6.4.3 | Ensure that ICANN's contract compliance function is adequately resourced to build confidence in ICANN's ability to enforce agreements between ICANN and registries and registrars. | **1A** | Augment ICANN's contractual compliance function with additional resources to support the program of contracts between ICANN and the registries and registrars. |
| 6.4.4 | **Vetting of certain strings**<br>gTLD strings which relate to any generally regulated industry (e.g. .bank, .dentist, .law) should be subject to more intensive vetting than other non-geographical gTLDs. | **2** | ICANN has requested clarification from the GAC of the intended meaning of "generally regulated industries", but generally believes that *a priori* categorization of strings is inherently problematic. |
| **7.** | **Post-Delegation Disputes** | | |
| 7.1 | Change the wording in the sample letter of Government support in AG back to the wording in DAGv4 and keeping the new | **1B** | ICANN will modify the suggested wording of the letter of support or non-objection, and make clear its |

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| | paragraph 7.13 of the new gTLD registry agreement with the changed wording from “may implement” to “will comply”. E.g change the wording from “may implement” back to “will comply” with a legally binding decision in the relevant jurisdiction. | | commitments to governments in additional text of the Applicant Guidebook. However, the registry agreement will continue to indicate that ICANN "may implement" instead of "will comply" with such decisions for legal reasons. As discussed previously with the GAC, ICANN’s commitment to comply with legally binding decisions is made to governments, not to registries, Therefore, it is not necessarily in the interests of ICANN, or of governments, to place that obligation in registry agreements, giving registry operators the ability, and perhaps duty, to force ICANN to implement decisions in every case. (ICANN has a mechanism to enforce its contracts with registry operators.) |
| 7.2 | In addition describe in the AG that ICANN will comply with a legally binding decision in the relevant jurisdiction where there has been a dispute between the relevant government or public authority and registry operator. | **1B** | The suggestion to change "court decision" to "legally binding decision" requires further discussion as it may in some cases amount to a redelegation request. Also, there could be multiple jurisdictions that have given their support to one application (e.g., multiple "Springfield"s), thus, it may not |

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| | | | be appropriate to implement a particular action based on one such decision. |
| **8.** | **Use of geographic names:** | | |
| 8.1.1.1 | ***1. Definition of geographic names*** Implement a free of charge objection mechanism would allow governments to protect their interest | **1B** | ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances (subject to constraints imposed by budget and other considerations). |
| 8.1.1.2 | and to define names that are to be considered geographic names. | **2** | The process relies on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government. Governments and other representatives of communities will continue to be able to utilize the community objection process to address attempted misappropriation of community labels. ICANN will continue to explore the possibility of pre-identifying using additional authoritative lists of geographic identifiers that are published by recognized global organizations. |
| 8.1.2 | This implies that ICANN will exclude an | **1B** | ICANN will continue to rely on pre- |

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| | applied for string from entering the new gTLD process when the government formally states that this string is considered to be a name for which this country is commonly known as. | | existing lists of geographic names for determining which strings require the support or non-objection of a government. This is in the interest of providing a transparent and predictable process for all parties. (See related note above.) |
| 8.1.3 | Review the proposal in the DAG in order to ensure that this potential [city name applicants avoiding government support requirement by stating that use is for non-community purposes] does not arise. Provide further explanations on statements that applicants are required to provide a description/purpose for the TLD, and to adhere to the terms and condition of submitting an application including confirming that all statements and representations contained in the application are true and accurate. | **2** | There are post-delegation mechanisms to address this situation. In addition, the "early warning" opportunity will offer an additional means to indicate community objections. |
| 8.1.4 | Governments should not be required to pay a fee for raising objections to new gTLD applications. Implement a free objection mechanism would allow governments to protect their interest. | **1B** | ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances (subject to constraints imposed by budget and other |

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| | | | considerations). |
| 8.2.1 | ***2. Further requirements regarding geographic names***<br>The GAC clarifies that it is a question of national sovereignty to decide which level of government or which administration is responsible for the filing of letters of support or non-objection. There may be countries that require that such documentation has to be filed by the central government - also for regional geoTLDs; in other countries the responsibility for filing letters of support may rest with sub-national level administrations even if the name of the capital is concerned. GAC requests some clarification on this in the next version of the Applicants Guidebook. | **1A** | This principle is agreed, and this can be clarified in the Guidebook. ICANN invites governments to identify appropriate points of contact on this issue. |
| 8.2.2 | According to the current DAG applications will be suspended (pending resolution by the applicants), if there is more than one application for a string representing a certain geographic name, and the applications have requisite government approvals. The GAC understands such a position for applications that have support of different administrations or governmental entities. In such circumstances it is not considered appropriate | **1B** | ICANN will continue to suspend processing of applications with inconsistent/conflicting support, but will allow multiple applicants all endorsed by the same authority to go forward, when requested by the government.<br><br>This area needs further discussion on the potential situations that could lead |

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| | for ICANN to determine the most relevant governmental entity; the same applies, if one string represents different geographic regions or cities. Some governments, however, may prefer not to select amongst applicants and support every application that fulfils certain requirements. Such a policy may facilitate decisions in some administrations and avoid time-consuming calls for tenders. GAC encourages ICANN to process those applications as other competing applications that apply for the same string. | | to redelegation requests. |
| **9.** | **Legal Recourse for Applications**: | | |
| 9. | Seek legal advice in major jurisdiction whether such a provision might cause legal conflicts – in particular but not limited to US and European competition laws. If ICANN explains that it has already examined these legal questions carefully and considering the results of these examinations still adheres to that provision, GAC will no longer insist on its position. However, the GAC expects that ICANN will continue to adhere to the rule of law and follow broad principles of natural justice. For example, if ICANN deviates from its agreed processes in coming to a decision, | **1A** | As discussed with the GAC, ICANN has examined these legal questions carefully and considering the results of these examinations still adheres to this provision. ICANN will clarify in the Applicant Guidebook that: if ICANN deviates from its agreed processes in coming to a decision, ICANN's internal accountability mechanisms will allow complaints to be heard. |

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| | the GAC expects that ICANN will provide an appropriate mechanism for any complaints to be heard. | | |
| **10.** | **Providing opportunities for all stakeholders including those from developing countries** | | |
| 10.1 | ***Main issues***<br>**1. Cost Considerations**<br>**S**et technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude stakeholders from developing countries from participating in the new gTLD process. | **TBD** | ICANN's Board recognized the importance of an inclusive New gTLD Program and issued a Resolution forming a Joint Working Group (JAS WG) which is underway. ICANN would like to receive the report of the JAS WG as soon as possible. JAS WG is requested to provide a possible deadline for his work during the ICANN meeting in SFO allowing the Board to act.<br><br>It is noted that one of the challenges in developing support mechanisms for applicants is to ensure that such support is actually received by those applicants with the most need, rather than being used advantageously by other participants. This issue has also been taken into account in the work of the JAS WG. |

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| | | | The minimum technical requirements for operating a registry are expected to be consistent across applications. |
| 10.2.1 | **2. Language diversity**<br>Key documents produced by ICANN must be available in all UN languages within a reasonable period in advance of the launch of the gTLD round. | **1A** | Some documents are already available in the 6 UN languages. The Final Application Guidebook will be also in due course, and the web site will be organize to find easily all the documents available in each language. |
| 10.2.2 | The GAC strongly recommends that the communications strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority. | **1A** | |
| 10.3 | **3. Technical and logistics support** | **1B** | ICANN has agreed to provide certain mechanisms for technical and logistical support, such as assisting with matching needs to providers. ICANN is also considering setting up regional help desks to provide more responsive and relevant technical support to new gTLD applicants in developing countries. |
| 10.4 | **4. Outreach – as per Joint AC/SO recommendations** | **1A** | |
| 10.5 | **5. Joint AC/SO Working Group on support for** | **TBD** | This item from the GAC Scorecard |

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| | **new gTLD applicants**.<br>GAC urged ICANN to adopt recommendations of the Joint AC/SO Working Group. | | appears to reflect the interim report of the JAS WG. ICANN is awaiting their final report. (ICANN would like to receive the report of the JAS WG as soon as possible.) |
| 10.6 | **6. Applications from Governments or National authorities (especially municipal councils and provincial authorities) – special consideration for applications from developing countries**<br>The GAC commented that the new gTLD process should meet the global public interest consistent with the Affirmation of Commitments. It therefore urged ICANN to set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude developing country stakeholders from participating in the new gTLD-process. Key documents should be available in all UN languages. The GAC urges that the communications and outreach strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority.<br><br>ii. Nairobi Communiqué<br>The GAC believed that instead of the then | **TBD** | This set of issues overlaps with and is addressed in the other items in this section. |

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| | proposal of single-fee requirement, a cost-based structure of fees appropriate to each category of TLD would:<br>a) prevent cross subsidization and<br>b) better reflect the project scale,<br>This would improve logistical requirements and financial position of local community and developing country stakeholders who should not be disenfranchised from the new TLD round.<br>Further the board believes that :<br>a. New gTLD process is developed on a cost recovery model.<br>b. Experience gained from first round will inform decisions on fee levels, and the scope for discounts and subsidies in subsequent rounds.<br>c. Non-financial means of support are being made available to deserving cases.<br>i. Proposed that the following be entertained to achieve cost reduction:<br>• Waiving the cost of Program Development ($26k).<br>• Waiving the Risk/Contingency cost ($60k).<br>• Lowering the application cost ($100k)<br>• Waiving the Registry fixed fees ($25k | | |

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| | per calendar year), and charge the Registry- Level Transaction Fee only ($0.25 per domain name registration or renewal).<br>ii. Proposed that the reduced cost be paid incrementally, which will give the applicants/communities from developing countries more time to raise money, and investors will be more encouraged to fund an application that passes the initial evaluation.<br>iii. Believe that communities from developing countries apply for new gTLDs according to an appropriate business model taking into consideration the realities of their regions.<br>ICANN's commitment towards supporting gTLD applicants in communities from developing countries will be a milestone to the development of the overall Internet community in Africa and other developing regions. | | |
| 10.7 | **A. Other Developing world Community comments**<br>Rolling out new gTLD and IDNs was done in a hurry and without basis on a careful feasibility study on the impact that this rollout will have on developing countries. For some | **1B** | ICANN is investigating and intends to provide mechanisms for assisting with matching needs to providers, and will continue to investigate mechanisms for providing additional forms of support (such as providing documents in |

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| | representatives, this is a massive roll out of gTLDs and IDNs that will find many developing countries unprepared and unable to absorb it. There is the fear that there might be serious consequence in terms of economic impact to developing countries. | | additional languages beyond the official U.N. languages). |
| **11.** | **Law enforcement due diligence recommendations [to amend the Registrar Accreditation Agreement as noted in the Brussels Communiqué]** (Note: ICANN will provide an update on the status of the RAA-related recommendations from law enforcement) | | |
| 11.1 | Include other criminal convictions as criteria for disqualification, such as Internet-related crimes (felony or misdemeanor) or drugs. | **1B** | ICANN accepts the principle that screening should be as effective as possible. ICANN is willing to meet with law enforcement and other experts to ensure that all available expertise is focused on this issue. (ICANN notes however that there is no consistent definition of criminal behavior across multiple jurisdictions, and the existing proposed Applicant Guidebook consciously targets "crimes of trust".) |
| 11.2.1 | Assign higher weight to applicants offering the highest levels of security to minimize the potential for malicious activity, particularly for those strings that present a higher risk of serving as venues for criminal, fraudulent or illegal conduct (e.g. such as those related to | **1B** | ICANN could consider providing extra points in some aspects of the qualification evaluation scoring process. (ICANN notes however that a priori categorization of strings is inherently problematic.) |

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| | children, health-care, financial services, etc.) | | |
| 11.3 | Add domestic screening services, local to the applicant, to the international screening services. | **1B** | ICANN accepts the principle that screening should be as effective as possible. ICANN is willing to meet with law enforcement and other experts to ensure that all available expertise is focused on this issue. (ICANN is mindful that this particular recommendation could lead applicants to locate in certain regions in order to game the depth of domestic screening. International screening is likely to include the reports of local agencies and could therefore be duplicative.) |
| 11.4 | Add criminal background checks to the Initial Evaluation | **1B** | ICANN accepts the principle that screening should be as effective as possible. ICANN is willing to meet with law enforcement and other experts to ensure that all available expertise is focused on this issue. (ICANN notes that there is no consistent definition of criminal behavior across multiple jurisdictions, and the existing proposed Applicant Guidebook already addresses serious crimes of trust.) |
| 11.5 | Amend the statement that the results of due diligence efforts will not be posted to a | **1B** | ICANN will explore possible ways to make results public, but is concerned |

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| | positive commitment to make such results publicly available | | that posting such information poses concerns about privacy that should be explored further. |
| 11.6 | Maintain requirements that WHOIS data be accurate and publicly available. | **1A** | From the Affirmation of Commitments: "ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information." |
| **12.** | **The need for an early warning to applicants whether a proposed string would be considered controversial or to raise sensitivities (including geographical names)** | | |
| 12.1 | Reconsider its objection to an "early warning" opportunity for governments to review potential new gTLD strings and to advise applicants whether their proposed strings would be considered controversial or to raise national sensitivities. | **1B** | The principle of an early warning is already included in the Guidebook. The exact process needs to be discussed further – please see the Board's notes above with respect to the GAC's advice on "Procedures for the review of sensitive strings." |

| Item | Subpoints | 1A | 1B | 2 | ? |
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| 1 | 1 | | 1 | | |
| 2 | 8 | 1 | 3 | 4 | |
| 3 | 8 | 8 | | | |
| 4 | 3 | 1 | 1 | 1 | |
| 5 | 1 | | | 1 | |
| 6.1 | 8 | 2 | 3 | 3 | |
| 6.2 | 15 | 5 | 3 | 7 | |
| 6.3 | 7 | 1 | 1 | 4 | 1 |
| 6.4 | 4 | 1 | 2 | 1 | |
| 7 | 2 | | 2 | | |
| 8 | 7 | 1 | 4 | 2 | |
| 9 | 1 | 1 | | | |
| 10 | 8 | 3 | 2 | | 3 |
| 11 | 6 | 1 | 5 | | |
| 12 | 1 | | 1 | | |
| Totals | 80 | 25 | 28 | 23 | 9 |

# R-80

RESPONDENT'S EXHIBIT

Resources
- About ICANN
- Board
- Accountability
- Governance
- Groups
- Business
- Civil Society
- Contractual Compliance
- Registrars
- Registries
- GDD Metrics
- Identifier Systems Security, Stability and Resiliency (IS-SSR)
- ccTLDs
- Internationalized Domain Names
- Universal Acceptance Initiative

# BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | As amended 18 March 2011

A California Nonprofit Public-Benefit Corporation

As amended 18 March 2011

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Public Comment
Root Zone KSK Rollover
Technical Functions
Contact
Help

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**ARTICLE I: MISSION AND CORE VALUES**

**Section 1. MISSION**

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

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

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

b. Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and

c. Protocol port and parameter numbers.

2. Coordinates the operation and evolution of the DNS root name server system.

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

**Section 2. CORE VALUES**

In performing its mission, the following core values should guide the decisions and actions of ICANN:

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

2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters

within ICANN's mission requiring or significantly benefiting from global coordination.

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

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

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

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

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

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

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

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.

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

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven

core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

## ARTICLE II: POWERS

### Section 1. GENERAL POWERS

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

### Section 2. RESTRICTIONS

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

### Section 3. NON-DISCRIMINATORY TREATMENT

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

## ARTICLE III: TRANSPARENCY

### Section 1. PURPOSE

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

**Section 2. WEBSITE**

ICANN shall maintain a publicly-accessible Internet World Wide Web site (the "Website"), which may include, among other things, (i) a calendar of scheduled meetings of the Board, Supporting Organizations, and Advisory Committees; (ii) a docket of all pending policy development matters, including their schedule and current status; (iii) specific meeting notices and agendas as described below; (iv) information on ICANN's budget, annual audit, financial contributors and the amount of their contributions, and related matters; (v) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (vi) announcements about ICANN activities of interest to significant segments of the ICANN community; (vii) comments received from the community on policies being developed and other matters; (viii) information about ICANN's physical meetings and public forums; and (ix) other information of interest to the ICANN community.

**Section 3. MANAGER OF PUBLIC PARTICIPATION**

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

**Section 4. MEETING NOTICES AND AGENDAS**

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

**Section 5. MINUTES AND PRELIMINARY REPORTS**

> 1. All minutes of meetings of the Board and Supporting Organizations (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN Secretary for posting on the Website.
>
> 2. No later than 11:59 p.m. on the second business days after the conclusion of each meeting (as calculated by local time at the location of ICANN's principal office), any resolutions passed by the Board of

Directors at that meeting shall be made publicly available on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the preliminary report made publicly available. The Secretary shall send notice to the Board of Directors and the Chairs of the Supporting Organizations (as set forth in Articles VIII - X of these Bylaws) and Advisory Committees (as set forth in Article XI of these Bylaws) informing them that the resolutions have been posted.

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

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

**Section 6. NOTICE AND COMMENT ON POLICY ACTIONS**

1. With respect to any policies that are being considered by the Board

for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN shall:

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

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

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

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

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

**Section 7. TRANSLATION OF DOCUMENTS**

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

**ARTICLE IV: ACCOUNTABILITY AND REVIEW**

**Section 1. PURPOSE**

In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in Article I of

these Bylaws. The provisions of this Article, creating processes for reconsideration and independent review of ICANN actions and periodic review of ICANN's structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article III and the Board and other selection mechanisms set forth throughout these Bylaws.

**Section 2. RECONSIDERATION**

1. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board.

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

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.

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

a. evaluate requests for review or reconsideration;

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

c. conduct whatever factual investigation is deemed appropriate;

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

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

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

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

a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a preliminary report or minutes of the Board's meetings; or

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

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

6. All Reconsideration Requests must include the information required by the Board Governance Committee, which shall include at least the following information:

a. name, address, and contact information for the requesting party, including postal and e-mail addresses;

b. the specific action or inaction of ICANN for which review or reconsideration is sought;

c. the date of the action or inaction;

d. the manner by which the requesting party will be affected by the action or inaction;

e. the extent to which, in the opinion of the party submitting the Request for Reconsideration, the action or inaction complained of adversely affects others;

f. whether a temporary stay of any action complained of is requested, and if so, the harms that will result if the action is not stayed;

g. in the case of staff action or inaction, a detailed explanation of the facts as presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies);

h. in the case of Board action or inaction, a detailed explanation of the material information not considered by the Board and, if the information was not presented to the Board, the reasons the party submitting the request did not submit it to the Board before it acted or failed to act;

i. what specific steps the requesting party asks ICANN to take- i.e., whether and how the action should be reversed, cancelled, or modified, or what specific action should be taken;

j. the grounds on which the requested action should be taken; and

k. any documents the requesting party wishes to submit in support of its request.

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

8. The Board Governance Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as (i) the requests involve the same general action or inaction and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction.

9. The Board Governance Committee shall review Reconsideration Requests promptly upon receipt and announce, within thirty days, its

intention to either decline to consider or proceed to consider a Reconsideration Request after receipt of the Request. The announcement shall be posted on the Website.

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

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

12. The Board Governance Committee may ask the ICANN staff for its views on the matter, which comments shall be made publicly available on the Website.

13. If the Board Governance Committee requires additional information, it may elect to conduct a meeting with the party seeking Reconsideration by telephone, e-mail or, if acceptable to the party requesting reconsideration, in person. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.

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

15. The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN staff, and by any third party.

16. To protect against abuse of the reconsideration process, a request for reconsideration may be dismissed by the Board Governance Committee where it is repetitive, frivolous, non-substantive, or otherwise abusive, or where the affected party had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. Likewise, the Board Governance Committee may dismiss a request when the requesting party does not show that it will be affected by ICANN's action.

17. The Board Governance Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within ninety days following its receipt of the request, unless

impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. The final recommendation shall be posted on the Website.

18. The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken.

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

a. the number and general nature of Reconsideration Requests received;

b. the number of Reconsideration Requests on which the Board Governance Committee has taken action;

c. the number of Reconsideration Requests that remained pending at the end of the calendar year and the average length of time for which such Reconsideration Requests have been pending;

d. a description of any Reconsideration Requests that were pending at the end of the calendar year for more than ninety (90) days and the reasons that the Board Governance Committee has not taken action on them;

e. the number and nature of Reconsideration Requests that the Board Governance Committee declined to consider on the basis that they did not meet the criteria established in this policy;

f. for Reconsideration Requests that were denied, an explanation of any other mechanisms available to ensure that ICANN is accountable to persons materially affected by its decisions; and

g. whether or not, in the Board Governance Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness

while limiting frivolous claims.

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

**Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS**

1. In addition to the reconsideration process described in Section 2 of this Article, ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.

2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action.

3. Requests for such independent review shall be referred to an Independent Review Panel ("IRP"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws.

4. The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN ("the IRP Provider") using arbitrators under contract with or nominated by that provider.

5. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this Section 3.

6. Either party may elect that the request for independent review be considered by a three-member panel; in the absence of any such election, the issue shall be considered by a one-member panel.

7. The IRP Provider shall determine a procedure for assigning members to individual panels; provided that if ICANN so directs, the IRP Provider shall establish a standing panel to hear such claims.

8. The IRP shall have the authority to:

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

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

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

9. Individuals holding an official position or office within the ICANN structure are not eligible to serve on the IRP.

10. In order to keep the costs and burdens of independent review as low as possible, the IRP should conduct its proceedings by e-mail and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP may hold meetings by telephone.

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

12. Declarations of the IRP shall be in writing. The IRP shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.

13. The IRP operating procedures, and all petitions, claims, and declarations, shall be posted on the Website when they become available.

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

15. Where feasible, the Board shall consider the IRP declaration at the Board's next meeting.

**Section 4. PERIODIC REVIEW OF ICANN STRUCTURE AND OPERATIONS**

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

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

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

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

**ARTICLE V: OMBUDSMAN**

**Section 1. OFFICE OF OMBUDSMAN**

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

position, with salary and benefits appropriate to the function, as determined by the Board.

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

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

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

**Section 2. CHARTER**

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration Policy set forth in Section 2 of Article IV or the Independent Review Policy set forth in Section 3 of Article IV have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

**Section 3. OPERATIONS**

The Office of Ombudsman shall:

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

Independent Review Policies;

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

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

4. heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN community and online availability;

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

6. comply with all ICANN conflicts-of-interest and confidentiality policies.

**Section 4. INTERACTION WITH ICANN AND OUTSIDE ENTITIES**

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

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

3. Contact with the Ombudsman shall not constitute notice to ICANN of any particular action or cause of action.

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

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

**Section 5. ANNUAL REPORT**

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

**ARTICLE VI: BOARD OF DIRECTORS**

**Section 1. COMPOSITION OF THE BOARD**

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

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

1. The Directors shall consist of:

a. Eight voting members selected by the Nominating Committee

established by Article VII of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seats 1 through 8.

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

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

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

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

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

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

For purposes of this sub-section 2 of Article VI, Section 2 of the ICANN Bylaws, if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile"), that

candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this sub- section 2 of Article VI, Section 2 of the ICANN Bylaws, a person can only have one "Domicile," which shall be determined by where the candidate has a permanent residence and place of habitation.

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

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

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

**Section 3. CRITERIA FOR SELECTION OF DIRECTORS**

ICANN Directors shall be:

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

2. Persons with an understanding of ICANN's mission and the potential impact of ICANN decisions on the global Internet community, and

committed to the success of ICANN;

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

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

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

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

**Section 4. ADDITIONAL QUALIFICATIONS**

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

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

be considered for selection as a Director, the constituency group or other group or entity that selected the person may select a replacement for purposes of the Council's selection process. In the event that a person serving in any capacity on the At-Large Advisory Committee accepts a nomination to be considered for selection by the At-Large Community as a Director, the Regional At-Large Organization or other group or entity that selected the person may select a replacement for purposes of the Community's selection process.

3. Persons serving in any capacity on the Nominating Committee shall be ineligible for selection to positions on the Board as provided by Article VII, Section 8.

**Section 5. INTERNATIONAL REPRESENTATION**

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

**Section 6. DIRECTORS' CONFLICTS OF INTEREST**

The Board, through the Board Governance Committee, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN. Each Director shall be responsible for disclosing to ICANN any matter that could reasonably be considered to make such Director an "interested director" within the meaning of Section 5233 of the California Nonprofit Public Benefit Corporation Law ("CNPBCL"). In addition, each Director shall disclose to ICANN any relationship or other factor that could reasonably be considered to cause the Director to be considered to be an "interested person" within the meaning of Section 5227 of the CNPBCL. The

Board shall adopt policies specifically addressing Director, Officer, and Supporting Organization conflicts of interest. No Director shall vote on any matter in which he or she has a material and direct financial interest that would be affected by the outcome of the vote.

**Section 7. DUTIES OF DIRECTORS**

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

**Section 8. TERMS OF DIRECTORS**

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

a. The regular terms of Seats 1 through 3 shall begin at the conclusion of ICANN's annual meeting in 2003 and each ICANN annual meeting every third year after 2003;

b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN's annual meeting in 2004 and each ICANN annual meeting every third year after 2004;

c. The regular terms of Seats 7 and 8 shall begin at the conclusion of ICANN's annual meeting in 2005 and each ICANN annual meeting every third year after 2005;

d. The terms of Seats 9 and 12 shall continue until the conclusion of ICANN's Mid-year Meeting after ICANN's annual meeting in 2011. The next terms of Seats 9 and 12 shall begin at the conclusion of the Mid-year Meeting occurring after the 2011 ICANN annual meeting and each ICANN annual meeting every third year after 2011;

e. The terms of Seats 10 and 13 shall continue until the conclusion of ICANN's Mid-year Meeting after the 2012 ICANN annual meeting. The next terms of Seats 10 and 13 shall begin at the conclusion of the Mid-year Meeting occurring after the 2012 ICANN annual meeting and each ICANN annual meeting every third year after 2012; and

f. The terms of Seats 11 and 14 shall begin at the conclusion of ICANN's Mid-year Meeting after the 2010 ICANN annual meeting, and each ICANN annual meeting every third year after 2010.

g. The first regular term of Seat 15 shall begin at the conclusion of ICANN's Mid-year Meeting after the 2010 ICANN annual meeting and each ICANN annual meeting every third year after 2010. (Note: In the period prior to the beginning of the regular term of Seat 15, Seat 15 is deemed vacant. Through a process coordinated by the At Large Advisory Committee, the At-Large Community made the selection of a Director to fill the vacant Seat 15 and provided the ICANN Secretary written notice of its selection. The vacant Seat 15 was filled at the conclusion of the ICANN annual meeting in 2010, with a term to conclude upon the commencement of the first regular term specified for Seat 15 in accordance with this Section of the Bylaws. Until the conclusion of the ICANN annual meeting in 2010, there was a non-voting Liaison appointed by the At Large Advisory Committee who participated as specified at Sections 9(3) and 9(5) of this Article.)

h. For the purposes of this Section, the term "Mid-year Meeting" refers to the first ICANN Public Meeting occurring no sooner than six and no later than eight months after the conclusion of ICANN's annual general meeting. In the event that a Mid-year Meeting is scheduled and subsequently cancelled within six months prior to the date of its commencement, the term of any seat scheduled to begin at the conclusion of the Mid-year Meeting shall begin on the date the Mid-year Meeting was previously scheduled to conclude. In the event that no Public Meeting is scheduled during the time defined for the Mid-year Meeting, the term of any seat set to begin at the conclusion of the Mid-year Meeting shall instead begin on the day six months after the conclusion of ICANN's annual meeting.

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

3. At least two months before the commencement of each annual meeting, the Nominating Committee shall give the Secretary of ICANN

written notice of its selection of Directors for seats with terms beginning at the conclusion of the annual meeting.

4. At least two months before the date specified for the commencement of the term as specified in paragraphs 1.d-g above, any Supporting Organization or the At-Large community entitled to select a Director for a Seat with a term beginning that year shall give the Secretary of ICANN written notice of its selection.

5. Subject to the provisions of the Transition Article of these Bylaws, no Director may serve more than three consecutive terms. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. Any prior service in Seats 9, 10, 11, 12, 13 and 14 as such terms were defined in the Bylaws as of [insert date before amendment effective], so long as such service was not to fill a vacancy, shall be included in the calculation of consecutive terms under this paragraph.

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

**Section 9. NON-VOTING LIAISONS**

1. The non-voting liaisons shall include:

a. One appointed by the Governmental Advisory Committee;

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

c. One appointed by the Security and Stability Advisory Committee established by Article XI of these Bylaws;

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

e. One appointed by the Internet Engineering Task Force.

2. Subject to the provisions of the Transition Article of these Bylaws, the

non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of ICANN written notice of its appointment.

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

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

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

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

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

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

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

the Director was selected by a Supporting Organization, notice must be provided to that Supporting Organization at the same time notice is provided to the Director. If the Director was selected by the At-Large Community, notice must be provided to the At-Large Advisory Committee at the same time notice is provided to the Director.

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

**Section 12. VACANCIES**

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

2. The organizations selecting the non-voting liaisons identified in Section 9 of this Article are responsible for determining the existence of, and filling, any vacancies in those positions. They shall give the

> Secretary of ICANN written notice of their appointments to fill vacancies.

**Section 13. ANNUAL MEETINGS**

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

**Section 14. REGULAR MEETINGS**

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

**Section 15. SPECIAL MEETINGS**

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

**Section 16. NOTICE OF MEETINGS**

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

protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

**Section 17. QUORUM**

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

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

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

**Section 19. ACTION WITHOUT MEETING**

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

minutes of the proceedings of the Board.

**Section 20. ELECTRONIC MAIL**

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

**Section 21. RIGHTS OF INSPECTION**

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

**Section 22. COMPENSATION**

The Chair of the ICANN Board shall be entitled to receive reasonable compensation for his/her services as a Director. The compensation committee shall be responsible for recommending a reasonable level of compensation for the Board Chair. Only those members of the Compensation Committee that are free from conflicts of interest with respect to the party for whom compensation is under consideration shall participate in the deliberations or voting on the recommendation to the Board. Only those members of the Board that are free from conflicts of interest with respect to the party for whom compensation is under consideration shall participate in the deliberations or voting on the approval of compensation for the Board Chair. At no time shall the Board Chair participate in deliberations or voting on compensation for the Board Chair. The Compensation Committee and the Board shall follow appropriate processes set forth in the United States Internal Revenue Code and applicable Treasury Regulations to ensure that there is a rebuttable presumption of reasonable compensation established for the Board Chair.

All Directors other than the Board Chair shall receive no compensation for their services as Directors. The Board may, however, authorize the reimbursement of actual and necessary reasonable expenses incurred by any Directors and non-voting liaisons performing their duties as Directors or non-voting liaisons.

**Section 23. PRESUMPTION OF ASSENT**

A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or

her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary of ICANN immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

**ARTICLE VII: NOMINATING COMMITTEE**

**Section 1. DESCRIPTION**

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

**Section 2. COMPOSITION**

The Nominating Committee shall be composed of the following persons:

1. A non-voting Chair, appointed by the ICANN Board;

2. A non-voting Chair-Elect, appointed by the ICANN Board as a non-voting advisor;

3. A non-voting liaison appointed by the ICANN Root Server System Advisory Committee established by Article XI of these Bylaws;

4. A non-voting liaison appointed by the ICANN Security and Stability Advisory Committee established by Article XI of these Bylaws;

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

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

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

a. One delegate from the Registries Stakeholder Group;

b. One delegate from the Registrars Stakeholder Group;

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

d. One delegate from the Internet Service Providers Constituency;

e. One delegate from the Intellectual Property Constituency; and

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

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

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

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

c. An entity designated by the Board to represent academic and similar organizations;

d. The Internet Engineering Task Force; and

e. The ICANN Technical Liaison Group established by Article XI-A of these Bylaws;

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

**Section 3. TERMS**

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

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

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

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

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

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

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

**Section 4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES**

Delegates to the ICANN Nominating Committee shall be:

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

2. Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN;

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

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

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

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

**Section 5. DIVERSITY**

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

**Section 6. ADMINISTRATIVE AND OPERATIONAL SUPPORT**

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

**Section 7. PROCEDURES**

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

### Section 8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

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

### Section 9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

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

## ARTICLE VIII: ADDRESS SUPPORTING ORGANIZATION

### Section 1. DESCRIPTION

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

### Section 2. ADDRESS COUNCIL

> 1. The ASO shall have an Address Council, consisting of the members of the NRO Number Council.
>
> 2. The Address Council shall select Directors to those seats on the Board designated to be filled by the ASO.

## ARTICLE IX: COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

**Section 1. DESCRIPTION**

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

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

2. Nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs; and

3. Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN.

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

**Section 2. ORGANIZATION**

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

**Section 3. ccNSO COUNCIL**

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

2. There shall also be one liaison to the ccNSO Council from each of the

following organizations, to the extent they choose to appoint such a liaison: (a) the Governmental Advisory Committee; (b) the At-Large Advisory Committee; and (c) each of the Regional Organizations described in Section 5 of this Article. These liaisons shall not be members of or entitled to vote on the ccNSO Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO Council. Appointments of liaisons shall be made by providing written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

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

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

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

6. ccNSO Council members may be removed for not attending three

consecutive meetings of the ccNSO Council without sufficient cause or for grossly inappropriate behavior, both as determined by at least a 66% vote of all of the members of the ccNSO Council.

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

8. The role of the ccNSO Council is to administer and coordinate the affairs of the ccNSO (including coordinating meetings, including an annual meeting, of ccNSO members as described in Section 4(6) of this Article) and to manage the development of policy recommendations in accordance with Section 6 of this Article. The ccNSO Council shall also undertake such other roles as the members of the ccNSO shall decide from time to time.

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

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

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

Council shall be published on the Website.

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

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

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

than 21 days following the meeting.

**Section 4. MEMBERSHIP**

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

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

3. Neither membership in the ccNSO nor membership in any Regional Organization described in Section 5 of this Article shall be a condition for access to or registration in the IANA database. Any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's

receipt of IANA services is not in any way contingent upon membership in the ccNSO.

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

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

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

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

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

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

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

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

custom, religion, or public policy (not embodied in the applicable law described in paragraph 10 of this Section) and (b) whether failure to implement the policy would impair DNS operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO Council.

**Section 5. REGIONAL ORGANIZATIONS**

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

**Section 6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE**

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

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

**Section 7. STAFF SUPPORT AND FUNDING**

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

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

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

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

## ARTICLE X: GENERIC NAMES SUPPORTING ORGANIZATION

### Section 1. DESCRIPTION

There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains.

### Section 2. ORGANIZATION

The GNSO shall consist of:

(i) A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in Section 5 of this Article;

(ii) Four Stakeholder Groups organized within Houses as described in Section 5 of this Article;

(iii) Two Houses within the GNSO Council as described in Section 3(8) of this Article; and

(iv) a GNSO Council responsible for managing the policy development process of the GNSO, as described in Section 3 of this Article.

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

**Section 3. GNSO COUNCIL**

1. Subject to the provisions of Transition Article XX, Section 5 of these Bylaws and as described in Section 5 of Article X, the GNSO Council shall consist of:

a. three representatives selected from the Registries Stakeholder Group;

b. three representatives selected from the Registrars Stakeholder Group;

c. six representatives selected from the Commercial Stakeholder Group;

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

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

No individual representative may hold more than one seat on the GNSO Council at the same time.

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

Constituency, sector, ability and gender.

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

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

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

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

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

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

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

6. The GNSO shall make selections to fill Seats 13 and 14 on the ICANN Board by written ballot or by action at a meeting. Each of the two voting Houses of the GNSO, as described in Section 3(8) of this Article, shall make a selection to fill one of two ICANN Board seats, as outlined below; any such selection must have affirmative votes compromising sixty percent (60%) of all the respective voting House members:

a. the Contracted Party House shall select a representative to fill Seat 13; and

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

Election procedures are defined in the GNSO Operating Procedures.

Notification of the Board seat selections shall be given by the GNSO Chair in writing to the ICANN Secretary, consistent with Article VI, Sections 8(4) and 12(1).

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

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

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

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

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

following GNSO actions:

a. Create an Issues Report: requires an affirmative vote of more than 25% vote of each House or majority of one House;

b. Initiate a Policy Development Process ("PDP") Within Scope (as described in Annex A): requires an affirmative vote of more than 33% of each House or more than 66% of one House;

c. Initiate a PDP Not Within Scope: requires an affirmative vote of more than 75% of one House and a majority of the other House ("GNSO Supermajority");

d. 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;

e. Approve a PDP Recommendation With a GNSO Supermajority: requires an affirmative vote of a GNSO Supermajority; and

f. 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 with respect to any contracting party affected by such contract provision.

**Section 4. STAFF SUPPORT AND FUNDING**

1. 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).

2. 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 5. STAKEHOLDER GROUPS**

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

a. Registries Stakeholder Group representing all gTLD registries under contract to ICANN;

b. Registrars Stakeholder Group representing all registrars accredited by and under contract to ICANN;

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

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

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

3. Each Stakeholder Group identified in paragraph 1 of this Section and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN Board. Recognition is granted by the Board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder Group and Constituency Charters may be reviewed periodically as prescribed by the Board.

4. Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency in the Non-Contracted

Parties House. Any such petition shall contain:

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

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

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

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

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

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

**Section 6. POLICY DEVELOPMENT PROCESS**

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

**ARTICLE XI: ADVISORY COMMITTEES**

**Section 1. GENERAL**

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

**Section 2. SPECIFIC ADVISORY COMMITTEES**

There shall be at least the following Advisory Committees:

1. Governmental Advisory Committee

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

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

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

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

e. Each member of the Governmental Advisory Committee shall appoint one accredited representative to the Committee. The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or

multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.

f. The Governmental Advisory Committee shall annually appoint one non-voting liaison to the ICANN Board of Directors, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN Nominating Committee.

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

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

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

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

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

2. Security and Stability Advisory Committee

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

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

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

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

4. To report periodically to the Board on its activities.

5. To make policy recommendations to the ICANN community and Board.

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

c. The SSAC shall annually appoint a non-voting liaison to the ICANN Board according to Section 9 of Article VI.

3. Root Server System Advisory Committee

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

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

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

d. The Root Server System Advisory Committee shall annually appoint one non-voting liaison to the ICANN Board of Directors, without limitation on re-appointment, and shall annually appoint one non-voting liaison to the ICANN Nominating Committee.

4. At-Large Advisory Committee

a. The role of the At-Large Advisory Committee ("ALAC") shall be to consider and provide advice on the activities of ICANN, insofar as they relate to the interests of individual Internet users.

b. The ALAC shall consist of (i) two members selected by each of the Regional At-Large Organizations ("RALOs") established according to paragraph 4(g) of this Section, and (ii) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to Section 5 of Article VI.

c. Subject to the provisions of the Transition Article of these Bylaws, the regular terms of members of the ALAC shall be as follows:

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

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

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

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

d. The Chair of the ALAC shall be elected by the members of the ALAC pursuant to procedures adopted by the Committee.

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

f. Subject to the provisions of the Transition Article of these Bylaws, the At-Large Advisory Committee may designate non-voting liaisons to each of the ccNSO Council and the GNSO Council.

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

h. Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region that have been certified

to meet the requirements of the RALO's Memorandum of Understanding with ICANN according to paragraph 4(i) of this Section. If so provided by its Memorandum of Understanding with ICANN, a RALO may also include individual Internet users who are citizens or residents of countries within the RALO's Geographic Region.

i. Membership in the At-Large Community

1. The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on recommendations from the ALAC and shall be stated in the Memorandum of Understanding between ICANN and the RALO for each Geographic Region.

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

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

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

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

6. Decisions to certify or decertify an At-Large Structure shall

be made as decided by the ALAC in its Rules of Procedure, save always that any changes made to the Rules of Procedure in respect of ALS applications shall be subject to review by the RALOs and by the ICANN Board.

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

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

j. The ALAC is also responsible, working in conjunction with the RALOs, for coordinating the following activities:

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

2. Keeping the community of individual Internet users informed about the significant news from ICANN;

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

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

5. Developing and maintaining on-going information and education programs, regarding ICANN and its work;

6. Establishing an outreach strategy about ICANN issues in each RALO's Region;

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

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

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

**Section 3. PROCEDURES**

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

**Section 4. TERM OF OFFICE**

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

**Section 5. VACANCIES**

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

**Section 6. COMPENSATION**

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

**ARTICLE XI-A: OTHER ADVISORY MECHANISMS**

**Section 1. EXTERNAL EXPERT ADVICE**

1. Purpose. The purpose of seeking external expert advice is to allow the policy-development process within ICANN to take advantage of existing expertise that resides in the public or private sector but outside

of ICANN. In those cases where there are relevant public bodies with expertise, or where access to private expertise could be helpful, the Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals.

2. Types of Expert Advisory Panels.

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

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

3. Process for Seeking Advice-Public Policy Matters.

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

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

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

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

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

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

**Section 2. TECHNICAL LIAISON GROUP**

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

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

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

a. In response to a request for information, to connect the Board or other ICANN body with appropriate sources of technical

expertise. This component of the TLG role covers circumstances in which ICANN seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.

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

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

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

6. Individual Technical Experts. Each TLG organization shall designate two individual technical experts who are familiar with the technical standards issues that are relevant to ICANN'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.

7. Board Liaison and Nominating Committee Delegate. Annually, in rotation, one TLG organization shall appoint one non-voting liaison to

the Board according to Article VI, Section 9(1)(d). Annually, in rotation, one TLG organization shall select one voting delegate to the ICANN Nominating Committee according to Article VII, Section 2(8)(j). The rotation order for the appointment of the non-voting liaison to the Board shall be ETSI, ITU-T, and W3C. The rotation order for the selection of the Nominating Committee delegate shall be W3C, ETSI, and ITU-T. (IAB does not participate in these rotations because the IETF otherwise appoints a non-voting liaison to the Board and selects a delegate to the ICANN Nominating Committee.)

## ARTICLE XII: BOARD AND TEMPORARY COMMITTEES

### Section 1. BOARD COMMITTEES

The Board may establish one or more committees of the Board, which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all members of the Board; provided, however, that any Director or Directors which are the subject of the removal action shall not be entitled to vote on such an action or be counted as a member of the Board when calculating the required two-thirds (2/3) vote; and, provided further, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all members of the Board.

### Section 2. POWERS OF BOARD COMMITTEES

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

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

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

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

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

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

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

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

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

**Section 3. TEMPORARY COMMITTEES**

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

**ARTICLE XIII: OFFICERS**

**Section 1. OFFICERS**

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

**Section 2. ELECTION OF OFFICERS**

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

**Section 3. REMOVAL OF OFFICERS**

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

**Section 4. PRESIDENT**

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

**Section 5. SECRETARY**

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

**Section 6. CHIEF FINANCIAL OFFICER**

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

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

**Section 7. ADDITIONAL OFFICERS**

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

**Section 8. COMPENSATION AND EXPENSES**

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

**Section 9. CONFLICTS OF INTEREST**

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

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

ICANN shall, to maximum extent permitted by the CNPBCL, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN, provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN's best interests and not criminal. For purposes of this Article, an "agent" of ICANN includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (including a member of any Supporting Organization, any Advisory Committee, the Nominating Committee, any other ICANN committee, or the Technical Liaison Group) acting within the scope of his or her

responsibility; or is or was serving at the request of ICANN as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN would have the power to indemnify the agent against that liability under the provisions of this Article.

**ARTICLE XV: GENERAL PROVISIONS**

**Section 1. CONTRACTS**

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

**Section 2. DEPOSITS**

All funds of ICANN not otherwise employed shall be deposited from time to time to the credit of ICANN in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

**Section 3. CHECKS**

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

**Section 4. LOANS**

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

**ARTICLE XVI: FISCAL MATTERS**

**Section 1. ACCOUNTING**

The fiscal year end of ICANN shall be determined by the Board.

**Section 2. AUDIT**

At the end of the fiscal year, the books of ICANN shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

**Section 3. ANNUAL REPORT AND ANNUAL STATEMENT**

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

**Section 4. ANNUAL BUDGET**

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

**Section 5. FEES AND CHARGES**

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

**ARTICLE XVII: MEMBERS**

ICANN shall not have members, as defined in the California Nonprofit Public Benefit Corporation Law ("CNPBCL"), notwithstanding the use of the term "Member" in these Bylaws, in any ICANN document, or in any action of the ICANN Board or staff.

## ARTICLE XVIII: OFFICES AND SEAL

### Section 1. OFFICES

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

### Section 2. SEAL

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

## ARTICLE XIX: AMENDMENTS

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

## ARTICLE XX: TRANSITION ARTICLE

### Section 1. PURPOSE

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

### Section 2. BOARD OF DIRECTORS

> 1. For the period beginning on the adoption of this Transition Article and ending on the Effective Date and Time of the New Board, as defined in paragraph 5 of this Section 2, the Board of Directors of the Corporation ("Transition Board") shall consist of the members of the Board who would have been Directors under the Old Bylaws immediately after the conclusion of the annual meeting in 2002, except that those At-Large members of the Board under the Old Bylaws who elect to do so by notifying the Secretary of the Board on 15 December 2002 or in writing

or by e-mail no later than 23 December 2002 shall also serve as members of the Transition Board. Notwithstanding the provisions of Article VI, Section 12 of the New Bylaws, vacancies on the Transition Board shall not be filled. The Transition Board shall not have liaisons as provided by Article VI, Section 9 of the New Bylaws. The Board Committees existing on the date of adoption of this Transition Article shall continue in existence, subject to any change in Board Committees or their membership that the Transition Board may adopt by resolution.

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

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

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

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

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

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

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

**Section 3. ADDRESS SUPPORTING ORGANIZATION**

The Address Supporting Organization shall continue in operation according to the provisions of the Memorandum of Understanding originally entered on 18 October 1999 between ICANN and a group of regional Internet registries (RIRs), and amended in October 2000, until a replacement Memorandum of Understanding becomes effective. Promptly after the adoption of this Transition Article, the Address Supporting Organization shall make selections, and give the ICANN Secretary written notice of those selections, of:

1. Directors to fill Seats 9 and 10 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for each of those Seats in Article VI, Section 8(1)(d) and (e) of the New Bylaws; and

2. the delegate to the Nominating Committee selected by the Council of the Address Supporting Organization, as called for in Article VII, Section 2(8)(f) of the New Bylaws.

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

person it selected as an ICANN Director pursuant to the Old Bylaws for a term beginning in 2001 and for Seat 10 the person it selected as an ICANN Director pursuant to the Old Bylaws for a term beginning in 2002.

**Section 4. COUNTRY-CODE NAMES SUPPORTING ORGANIZATION**

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

2. After the adoption of Article IX of these Bylaws, the Nominating Committee shall select the three members of the ccNSO Council described in Article IX, Section 3(1)(b). In selecting three individuals to serve on the ccNSO Council, the Nominating Committee shall designate one to serve a term that ends upon the conclusion of the first ICANN annual meeting after the ccNSO Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN annual meeting after the ccNSO Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN annual meeting after the ccNSO Council is constituted. The three members of the ccNSO Council selected by the Nominating Committee shall not take their seats before the ccNSO Council is constituted.

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

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

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

6. Until the ccNSO Council is constituted, the delegate to the Nominating Committee established by the New Bylaws designated to be selected by the ccNSO shall be appointed by the Transition Board or New Board, depending on which is in existence at the time any particular appointment is required, after due consultation with members of the ccTLD community. Upon the ccNSO Council being constituted, the delegate to the Nominating Committee appointed by the Transition Board or New Board according to this Section 4(9) then serving shall remain in office, except that the ccNSO Council may replace that delegate with one of its choosing within three months after the conclusion of ICANN's annual meeting, or in the event of a vacancy. Subsequent appointments of the Nominating Committee delegate described in Article VII, Section 2(8)(c) shall be made by the ccNSO Council.

**Section 5. GENERIC NAMES SUPPORTING ORGANIZATION**

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

a. The gTLD Registries Constituency shall be assigned to the Registries Stakeholder Group;

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

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

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

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

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

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

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

4. Beginning with the commencement of the ICANN Meeting in October 2009, or another date the Board may designate by resolution (the “Effective Date of the Transition”), the GNSO Council seats shall be

assigned as follows:

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

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

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

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

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

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

5. The GNSO Council, as part of its Restructure Implementation Plan, will document: (a) how vacancies, if any, will be handled during the transition period; (b) for each Stakeholder Group, how each assigned Council seat to take effect at the 2009 ICANN annual meeting will be filled, whether through a continuation of an existing term or a new election or appointment; (c) how it plans to address staggered terms such that the new GNSO Council preserves as much continuity as reasonably possible; and (d) the effect of Bylaws term limits on each Council member.

6. As soon as practical after the commencement of the ICANN meeting

in October 2009, or another date the Board may designate by resolution, the GNSO Council shall, in accordance with Article X, Section 3(7) and its GNSO Operating Procedures, elect officers and give the ICANN Secretary written notice of its selections.

**Section 6. PROTOCOL SUPPORTING ORGANIZATION**

The Protocol Supporting Organization referred to in the Old Bylaws is discontinued.

**Section 7. ADVISORY COMMITTEES AND TECHNICAL LIAISON GROUP**

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

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

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

4. Upon the adoption of the New Bylaws, the Root Server System Advisory Committee shall continue in operation according to its existing operating principles and practices, until further action of the committee.

Promptly upon the adoption of this Transition Article, the Root Server Advisory Committee shall notify the ICANN Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2(3) of the New Bylaws.

5. At-Large Advisory Committee

a. There shall exist an Interim At-Large Advisory Committee until such time as ICANN recognizes, through the entry of a Memorandum of Understanding, all of the Regional At-Large Organizations (RALOs) identified in Article XI, Section 2(4) of the New Bylaws. The Interim At-Large Advisory Committee shall be composed of (i) ten individuals (two from each ICANN region) selected by the ICANN Board following nominations by the At-Large Organizing Committee and (ii) five additional individuals (one from each ICANN region) selected by the initial Nominating Committee as soon as feasible in accordance with the principles established in Article VII, Section 5 of the New Bylaws. The initial Nominating Committee shall designate two of these individuals to serve terms until the conclusion of the ICANN annual meeting in 2004 and three of these individuals to serve terms until the conclusion of the ICANN annual meeting in 2005.

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

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

d. Promptly upon its creation, the Interim At-Large Advisory Committee shall notify the ICANN Secretary of the persons

selected as its delegates to the Nominating Committee, as set forth in Article VII, Section 2(6) of the New Bylaws.

**Section 8. OFFICERS**

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

**Section 9. GROUPS APPOINTED BY THE PRESIDENT**

Notwithstanding the adoption or effectiveness of the New Bylaws, task forces and other groups appointed by the ICANN President shall continue unchanged in membership, scope, and operation until changes are made by the President.

**Section 10. CONTRACTS WITH ICANN**

Notwithstanding the adoption or effectiveness of the New Bylaws, all agreements, including employment and consulting agreements, entered by ICANN shall continue in effect according to their terms.

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## Annex A: GNSO Policy-Development Process

The following process shall govern the GNSO policy development process ("PDP") until such time as modifications are recommended to and approved by the ICANN Board of Directors ("Board"). [Note: this Annex includes amendments that were needed on an interim basis to allow the GNSO to operate while community and Board discussions continue on revised policy development and operating procedures].

**1. Raising an Issue**

An issue may be raised for consideration as part of the PDP by any of the following:

a. *Board Initiation*. The Board may initiate the PDP by instructing the GNSO Council ("Council") to begin the process outlined in this Annex.

b. *Council Initiation*. The GNSO Council may initiate the PDP by a vote of at least twenty-five percent (25%) of the members of the Council of each House or a majority of one House.

c. *Advisory Committee Initiation*. An Advisory Committee may raise an issue for policy development by action of such committee to commence the PDP, and transmission of that request to the GNSO Council.

**2. Creation of the Issue Report**

Within fifteen (15) calendar days after receiving either (i) an instruction from the Board; (ii) a properly supported motion from a Council member; or (iii) a properly supported motion from an Advisory Committee, the Staff Manager will create a report (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 Staff Manager as to whether the Council should initiate the PDP for this issue (the "Staff Recommendation"). Each Staff Recommendation shall include the opinion of the ICANN General Counsel regarding whether the issue proposed to initiate the PDP is properly within the scope of the ICANN policy process and within the scope of the GNSO. In determining whether the issue is properly within the scope of the ICANN policy process, the General Counsel shall examine whether such issue:

1. is within the scope of ICANN's mission statement;

2. is broadly applicable to multiple situations or organizations;

3. is likely to have lasting value or applicability, albeit with the need for occasional updates;

4. will establish a guide or framework for future decision-making;

or

5. implicates or affects an existing ICANN policy.

f. On or before the fifteen (15) day deadline, the Staff Manager shall distribute the Issue Report to the full Council for a vote on whether to initiate the PDP, as discussed below.

**3. Initiation of PDP**

The Council shall initiate the PDP as follows:

a. *Issue Raised by the Board*. If the Board directs the Council to initiate the PDP, then the Council shall meet and do so within fifteen (15) calendar days after receipt of the Issue Report, with no intermediate vote of the Council.

b. *Issue Raised by Other than by the Board*. If a policy issue is presented to the Council for consideration via an Issue Report, then the Council shall meet within fifteen (15) calendar days after receipt of such Report to vote on whether to initiate the PDP. Such meeting may be convened in any manner deemed appropriate by the Council, including in person, via conference call or via electronic mail.

c. *Vote of the Council*. A vote of more than 33% of the Council members of each House or more than 66% vote of one House in favor of initiating the PDP within scope will suffice to initiate the PDP; unless the Staff Recommendation stated that the issue is not properly within the scope of the ICANN policy process or the GNSO, in which case a GNSO Supermajority Vote as set forth in Article X, Section 3, paragraph 9(c) in favor of initiating the PDP will be required to initiate the PDP.

**4. Commencement of the PDP**

At the meeting of the Council initiating the PDP, the Council shall decide, by a majority vote of members of each House, whether 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 the provisions of Item 7 below.

b. Against convening a task force, then it will collect information on the policy issue in accordance with the provisions of Item 8 below.

**5. Composition and Selection of Task Forces**

a. Upon voting to appoint a task force, the Council shall invite each of the Constituencies and/or Stakeholder Groups of the GNSO to appoint one individual to participate in the task force. Additionally, the Council may appoint up to three outside advisors to sit on the task force. (Each task force member is referred to in this Annex as a "Representative" and collectively, the "Representatives"). The Council may increase the number of Representatives per Constituency or Stakeholder Group that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.

b. Any Constituency or Stakeholder Group wishing to appoint a Representative to the task force must submit the name of the Constituency or Stakeholder Group designee to the Staff Manager within ten (10) calendar days after such request in order to be included on the task force. Such designee need not be a member of the Council, but must be an individual who has an interest, and ideally knowledge and expertise, in the area to be developed, coupled with the ability to devote a substantial amount of time to task force activities.

c. The Council may also pursue other options 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 Staff Manager within thirty-five (35) calendar days after initiation of the PDP.

**6. Public Notification of Initiation of the PDP**

After initiation of the PDP, ICANN shall post a notification of such action to the Website. A public comment period shall be commenced for the issue for a period of twenty (20) calendar days after initiation of the PDP. The Staff Manager, or some other designated representative of ICANN shall review the public comments and incorporate them into a report (the "Public 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 will generally be to (i) gather information detailing the positions of the Stakeholder Groups and the formal constituencies and provisional constituencies, if any, within the GNSO; and (ii) otherwise obtain relevant information that will enable the Task Force Report to be as complete and informative as possible.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that will 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 Staff Manager, shall develop a charter or terms of reference for the task force (the "Charter") within ten (10) calendar days after initiation of the PDP. Such Charter will include:

1. the issue to be addressed by the task force, as such issue was articulated for the vote before the Council that commenced the PDP;

2. the specific timeline that the task force must adhere to, as set forth below, unless the Board 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 each house of the Council members.

c. *Appointment of Task Force Chair*. The Staff Manager shall convene the first meeting of the task force within five (5) calendar days after receipt of the Charter. At the initial meeting, the task force members will, 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. *Constituency and Stakeholder Group Statements*. The Representatives of the Stakeholder Groups will each be responsible for soliciting the position of their Stakeholder Groups or any of their constituencies, at a minimum, and other comments as each Representative deems appropriate, regarding the issue under consideration. This position and other comments, as applicable, should be submitted in a formal statement to the task force chair (each, a "Constituency/Stakeholder Group Statement") within thirty-five (35) calendar days after initiation of the PDP. Every Constituency/Stakeholder Group Statement shall include at least the following:

(i) If a Supermajority Vote was reached, a clear statement of the constituency's or Stakeholder Group's position on the issue;

(ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by constituency or Stakeholder Group members;

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

(iv) An analysis of how the issue would affect the constituency or Stakeholder Group, including any financial impact on the constituency or Stakeholder Group; and

(v) An analysis of the period of time that would likely be

necessary to implement the policy.

2. *Outside Advisors*. The task force, should it deem it appropriate or helpful, may solicit the opinions of outside advisors, experts, or other members of the public, in addition to those of constituency or Stakeholder Group members. 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 thirty-five (35) calendar days after initiation of the PDP.

e. *Task Force Report*. The chair of the task force, working with the Staff Manager, shall compile the Constituency/Stakeholder Group Statements, Public 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 forty (40) calendar days after initiation of the PDP. The task force shall have a final task force meeting within five (5) days after the date of distribution of the Preliminary Task Force Report to deliberate the issues and try and reach a Supermajority Vote. Within five (5) calendar days after the final task force meeting, the chair of the task force and the Staff Manager shall create the final task force report (the "Task Force Report") and post it on the Comment Site. Each Task Force Report must include:

1. A clear statement of any Supermajority Vote 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 twenty-day timeline for submission of constituency or Stakeholder Group reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the constituency(ies) or Stakeholder Group(s) that held the position;

3. An analysis of how the issue would affect each constituency or Stakeholder Group of the task force, including any financial impact on the constituency or Stakeholder Group;

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, the Council will request that, within ten (10) calendar days thereafter, each constituency or Stakeholder Group appoint a representative to solicit the constituency's or Stakeholder Group's views on the issue. Each such representative shall be asked to submit a Constituency/Stakeholder Group Statement to the Staff Manager within thirty-five (35) calendar days after initiation of the PDP.

b. The Council may also pursue other options 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 Staff Manager within thirty-five (35) calendar days after initiation of the PDP.

c. The Staff Manager will take all Constituency/Stakeholder Group Statements, Public Comment Statements, and other information and compile (and post on the Comment Site) an Initial Report within fifty (50) calendar days after initiation of the PDP. Thereafter, the PDP shall follow the provisions of Item 9 below in creating a Final Report.

**9. Public Comments to the Task Force Report or Initial Report**

a. The public comment period will last for twenty (20) calendar days after posting of the Task Force Report or Initial Report. Any individual or organization may submit comments during the public comment period, including any Constituency or Stakeholder Group that did not participate

in the task force. All comments shall be accompanied by the name of the author of the comments, the author's relevant experience, and the author's interest in the issue.

b. At the end of the twenty (20) day period, the Staff Manager will be responsible for reviewing the comments received and adding those deemed appropriate for inclusion in the Staff Manager's reasonable discretion to the Task Force Report or Initial Report (collectively, the "Final Report"). The Staff Manager shall not be obligated to include all comments made during the comment period, including each comment made by any one individual or organization.

c. The Staff Manager shall prepare the Final Report and submit it to the Council chair within ten (10) calendar days after the end of the public comment period.

**10. Council Deliberation**

a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for a Council meeting within ten (10) calendar days thereafter. 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. The deliberation process shall culminate in a formal Council meeting either in person or via teleconference, wherein the Council will work towards achieving a Successful GNSO Vote to present to the Board.

b. 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) be accompanied by a detailed statement of the advisor's (x) qualifications and relevant experience; and (y) potential conflicts of interest.

**11. Council Report to the Board**

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 Successful GNSO Vote recommendation of the Council;

b. If a Successful GNSO 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) or Stakeholder Group(s) that held the position;

c. An analysis of how the issue would affect each constituency or Stakeholder Group, including any financial impact on the constituency or Stakeholder Group;

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.

**12. Agreement of the Council**

A. Successful GNSO Vote of the Council members will be deemed to reflect the view of the Council, and may be conveyed to the Board as the Council's recommendation. In the event a GNSO Supermajority Vote is not achieved, approval of the recommendations contained in the Final Report requires a majority of both houses and further requires that one representative of at least 3 of the 4 Stakeholder Groups supports the recommendations. Abstentions shall not be permitted; thus all Council members must cast a vote unless they identify a financial interest in the outcome of the policy issue. Notwithstanding the foregoing, as set forth above, all viewpoints expressed by Council members during the PDP must be included in the Board Report.

**13. Board Vote**

a. The Board will meet to discuss the GNSO Council recommendation as soon as feasible after receipt of the Board Report from the Staff Manager.

b. In the event that the Council reached a GNSO Supermajority Vote, the Board shall adopt the policy according to the GNSO 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.

c. In the event that the Board determines not to act in accordance with the GNSO 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.

d. 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.

e. 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 GNSO 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.

f. In any case in which the Council is not able to reach GNSO Supermajority vote, a majority vote of the Board will be sufficient to act.

g. 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.

**14. Implementation of the Policy**

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.

**15. 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, which will describe:

> a. The initial suggestion for a policy;
>
> b. A list of all suggestions that do not result in the creation of an Issue Report;
>
> c. The timeline to be followed for each policy;
>
> d. All discussions among the Council regarding the policy;
>
> e. All reports from task forces, the Staff Manager, the Council and the Board; and
>
> f. All public comments submitted.

**16. Additional Definitions**

"Comment Site" and "Website" refer to one or more web sites 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.

A “Successful GNSO Vote” is an affirmative vote of the GNSO Council that meets the relevant voting thresholds set forth in Article X, Section 3(9) including, without limitation, a GNSO Supermajority Vote.

## Annex B: ccNSO Policy-Development Process (ccPDP)

The following process shall govern the ccNSO policy-development process ("PDP").

**1. Request for an Issue Report**

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

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

b. *Board.* The ICANN Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.

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

d. *ICANN Supporting Organization or Advisory Committee.* An ICANN Supporting Organization or an ICANN Advisory Committee may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

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

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

**2. Creation of the Issue Report and Initiation Threshold**

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

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

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

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

> > 3) Implicates or affects an existing ICANN policy;

> 4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Annex C) shall be within the scope of ICANN and the ccNSO.

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

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

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

**3. Initiation of PDP**

The Council shall decide whether to initiate the PDP as follows:

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

b. A vote of ten or more Council members in favor of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the ICANN mission statement and the ccNSO Scope.

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

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

a. In favor of convening a task force, it shall do so in accordance with Item 7 below.

b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

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

**5. Composition and Selection of Task Forces**

a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see Article IX, Section 6) to appoint two individuals to participate in the task force (the "Representatives"). Additionally, the Council may appoint up to three advisors (the "Advisors") from outside the ccNSO and, following formal request for GAC participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee to sit on the task force. The Council may increase the number of Representatives that may sit on a

task force in its discretion in circumstances that it deems necessary or appropriate.

b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.

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

**6. Public Notification of Initiation of the PDP and Comment Period**

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

**7. Task Forces**

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

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and

comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

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

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

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

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

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

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

d. *Collection of Information.*

1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems

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

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

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

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

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

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

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

2. *Outside Advisors.* The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP Time Line.

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

1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue;

2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the time line for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position;

3. An analysis of how the issue would affect each Region, including any financial impact on the Region;

4. An analysis of the period of time that would likely be necessary to implement the policy; and

5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

**8. Procedure if No Task Force is Formed**

a. If the Council decides not to convene a task force, each Regional

Organization shall, within the time designated in the PDP Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP Time Line.

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

c. The Council shall formally request the Chair of the GAC to offer opinion or advice.

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

**9. Comments to the Task Force Report or Initial Report**

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

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

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

**10. Council Deliberation**

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

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

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

**11. Recommendation of the Council**

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

**12. Council Report to the Members**

In the event that a Council Recommendation is adopted pursuant to Item 11 then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by the Council

and then to be submitted to the Members (the "Members Report"). The Members Report must contain at least the following:

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

**13. Members Vote**

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

In the event that at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be 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.

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## Annex C: The Scope of the ccNSO

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

The scope of the ccNSO's authority and responsibilities must recognize the complex relation between ICANN and ccTLD managers/registries with regard to policy issues. This annex shall assist the ccNSO, the ccNSO Council, and the ICANN Board and staff in delineating relevant global policy issues.

*Policy areas*

The ccNSO's policy role should be based on an analysis of the following functional model of the DNS:

1. Data is registered/maintained to generate a zone file,

2. A zone file is in turn used in TLD name servers.

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

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

These two core functions must be performed at the ccTLD registry level as well as at a higher level (IANA function and root servers) and at lower levels of the DNS hierarchy. This mechanism, as RFC 1591 points out, is recursive:

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

*The Core Functions*

1. Data Entry Function (DEF):

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

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

2. The Name-Server Function (NSF)

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

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

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

*Respective Roles with Regard to Policy, Responsibilities, and Accountabilities*

It is in the interest of ICANN and ccTLD managers to ensure the stable and proper functioning of the domain name system. ICANN and the ccTLD registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO cannot be established without reaching a common understanding of the allocation of authority between ICANN and ccTLD registries.

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

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

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

The information below offers an aid to:

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

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

*Name Server Function (as to ccTLDs)*

> Level 1: Root Name Servers
> Policy role: IETF, RSSAC (ICANN)
> Executive role: Root Server System Operators
> Accountability role: RSSAC (ICANN), (US DoC-ICANN MoU)
>
> Level 2: ccTLD Registry Name Servers in respect to interoperability
> Policy role: ccNSO Policy Development Process (ICANN), for best practices a ccNSO process can be organized
> Executive role: ccTLD Manager
> Accountability role: part ICANN (IANA), part Local Internet Community, including local government
>
> Level 3: User's Name Servers
> Policy role: ccTLD Manager, IETF (RFC)
> Executive role: Registrant
> Accountability role: ccTLD Manager

*Data Entry Function (as to ccTLDs)*

> Level 1: Root Level Registry
> Policy role: ccNSO Policy Development Process (ICANN)
> Executive role: ICANN (IANA)
> Accountability role: ICANN community, ccTLD Managers, US DoC, (national authorities in some cases)
>
> Level 2: ccTLD Registry
> Policy role: Local Internet Community, including local government, and/or ccTLD Manager according to local structure
> Executive role: ccTLD Manager
> Accountability role: Local Internet Community, including national authorities in some cases
>
> Level 3: Second and Lower Levels

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

You Tube
Twitter
LinkedIn
Flickr
Facebook
RSS Feeds
Community W ki
ICANN Blog

Who We Are
Get Started
Learning
Participate
Groups
Board
President's Corner
Staff
Careers
Newsletter
Development and Public Responsibility

Contact Us
Offices
Global Support
Security Team
PGP Keys
Certificate Authority
Registry Liaison
Specific Reviews
Organizational Reviews
Request a Speaker
For Journalists

Accountability & Transparency
Accountability Mechanisms
Independent Review Process
Request for Reconsideration
Ombudsman

Governance
Documents
Agreements
Specific Reviews
Annual Report
Financials
Document Disclosure
Planning
KPI Dashboard
RFPs
Litigation
Correspondence

Help
Dispute Resolution
Domain Name Dispute Resolution
Name Collision
Registrar Problems
WHOIS

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RESPONDENT'S EXHIBIT

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- Accountability
- Governance
- Groups
  - Business
  - Civil Society
- Contractual Compliance
- Registrars
- Registries
  - GDD Metrics
- Identifier Systems Security, Stability and Resiliency (IS-SSR)
- ccTLDs
- Internationalized Domain Names
- Universal Acceptance Initiative

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

As amended 1 October 2016

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ANNEX G-2

# ARTICLE 1 MISSION, COMMITMENTS AND CORE VALUES

## Section 1.1. MISSION

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

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

- 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 Governance Committee to review and consider Reconsideration Requests. The Board Governance 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 Governance 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 Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The Board Governance 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 Governance Committee his or her substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board Governance 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 Governance Committee shall review the Reconsideration Request without involvement by the Ombudsman.

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

(o) The Board Governance 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 Governance 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 Governance 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 Governance 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 Governance 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 Governance 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 Governance 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 Governance 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 Governance 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 Governance Committee within 45 days of receipt of the Board Governance 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 Governance 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 Governance 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 Governance 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 Governance Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Governance Committee agrees to consider the matter with urgency, it will cause notice to be provided to the Requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Governance Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Reconsideration Request, or as soon thereafter as feasible. If the Board Governance Committee does not agree to consider the matter with urgency, the Requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.

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

> (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 Governance Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

## Section 4.3. INDEPENDENT REVIEW PROCESS FOR COVERED ACTIONS

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

(i) Ensure that ICANN does not exceed the scope of its Mission and otherwise complies with its Articles of Incorporation and Bylaws.

(ii) Empower the global Internet community and Claimants to enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable and accessible expert review of Covered Actions (as defined in Section 4.3(b)(i)).

(iii) Ensure that ICANN is accountable to the global Internet community and Claimants.

(iv) Address claims that ICANN has failed to enforce its rights under the IANA Naming Function Contract (as defined in Section 16.3(a)).

(v) Provide a mechanism by which direct customers of the IANA naming functions may seek resolution of PTI (as defined in Section 16.1) service complaints that are not resolved through mediation.

(vi) Reduce Disputes by creating precedent to guide and inform the Board, Officers (as defined in Section 15.1), Staff members, Supporting Organizations, Advisory Committees, and the global Internet community in connection with policy development and implementation.

(vii) Secure the accessible, transparent, efficient, consistent, coherent, and just resolution of Disputes.

(viii) Lead to binding, final resolutions consistent with international arbitration norms that are enforceable in any court with proper jurisdiction.

(ix) Provide a mechanism for the resolution of Disputes, as an alternative to legal action in the civil courts of the United States or other jurisdictions.

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

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

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

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

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

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

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

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

(1) exceeded the scope of the Mission;

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

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

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

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

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

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

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

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

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

(iii) Claims relating to Internet numbering resources, and

(iv) Claims relating to protocol parameters.

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

(e) Cooperative Engagement Process

(i) Except for Claims brought by the EC in accordance with this Section 4.3 and Section 4.2 of Annex D, prior to the filing of a Claim, the parties are strongly encouraged to participate in a non-binding Cooperative Engagement Process ("**CEP**") for the purpose of attempting to resolve and/or narrow the Dispute. CEPs shall be conducted pursuant to the CEP Rules to be developed with community involvement, adopted by the Board, and as amended from time to time.

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

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

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

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

(g) Upon the filing of a Claim, an Independent Review Process Panel ("**IRP Panel**", described in Section 4.3(k) below) shall be selected in accordance

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

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

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

> (i) With respect to Covered Actions, the IRP Panel shall make findings of fact to determine whether the Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws.
>
> (ii) All Disputes shall be decided in compliance with the Articles of Incorporation and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.
>
> (iii) For Claims arising out of the Board's exercise of its fiduciary duties, the IRP Panel shall not replace the Board's reasonable judgment with its own so long as the Board's action or inaction is within the realm of reasonable business judgment.
>
> (iv) With respect to claims that ICANN has not enforced its contractual rights with respect to the IANA Naming Function Contract, the standard of review shall be whether there was a material breach of ICANN's obligations under the IANA Naming Function Contract, where the alleged breach has resulted in material harm to the Claimant.
>
> (v) For avoidance of doubt, IRPs initiated through the mechanism contemplated at Section 4.3(a)(iv) above, shall be subject to a separate standard of review as defined in the IANA Naming Function Contract.

(j) Standing Panel

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

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

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

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

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

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

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

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

(k) IRP Panel

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

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

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

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

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

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

(m) IRP Provider

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

(n) Rules of Procedure

(i) An IRP Implementation Oversight Team shall be established in consultation with the Supporting Organizations and Advisory Committees and comprised of members of the global Internet community. The IRP Implementation Oversight Team, and once the Standing Panel is established the IRP Implementation Oversight Team in consultation with the Standing Panel, shall develop clear published rules for the IRP ("**Rules of Procedure**") that conform with international arbitration norms and are streamlined, easy to understand and apply fairly to all parties. Upon request, the IRP Implementation Oversight Team shall have assistance of counsel and other appropriate experts.

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

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

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

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

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

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

(D)Availability and limitations on discovery methods;

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

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

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

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

> (i) Summarily dismiss Disputes that are brought without standing, lack substance, or are frivolous or vexatious;
>
> (ii) Request additional written submissions from the Claimant or from other parties;
>
> (iii) Declare whether a Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws, declare whether ICANN failed to enforce ICANN's contractual rights with respect to the IANA Naming Function Contract or resolve PTI service complaints by direct customers of the IANA naming functions, as applicable;
>
> (iv) Recommend that ICANN stay any action or decision, or take necessary interim action, until such time as the opinion of the IRP Panel is considered;
>
> (v) Consolidate Disputes if the facts and circumstances are sufficiently similar, and take such other actions as are necessary for the efficient resolution of Disputes;

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

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

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

(i) A harm for which there will be no adequate remedy in the absence of such relief;

(ii) Either: (A) likelihood of success on the merits; or (B) sufficiently serious questions related to the merits; and

(iii) A balance of hardships tipping decidedly toward the party seeking relief.

(q) Conflicts of Interest

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

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

(B)Additional independence requirements to be developed by the IRP Implementation Oversight Team, including term limits and restrictions

> on post-term appointment to other ICANN positions.
>
> (ii) The IRP Provider shall disclose any material relationship with ICANN, a Supporting Organization, an Advisory Committee, or any other participant in an IRP proceeding.

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

(s) An IRP Panel should complete an IRP proceeding expeditiously, issuing an early scheduling order and its written decision no later than six months after the filing of the Claim, except as otherwise permitted under the Rules of Procedure. The preceding sentence does not provide the basis for a Covered Action.

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

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

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

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

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

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

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

(iii) ICANN intends, agrees, and consents to be bound by all IRP Panel decisions of Disputes of Covered Actions as a final, binding arbitration.

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

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

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

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

> decision is not intended to be and shall not be enforceable.

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

## Section 4.4. PERIODIC REVIEW OF ICANN STRUCTURE AND OPERATIONS

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

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

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

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

## Section 4.5. ANNUAL REVIEW

ICANN will produce an annual report on the state of the accountability and transparency reviews, which will discuss the status of the implementation of all review processes required bySection 4.6 and the status of ICANN's

implementation of the recommendations set forth in the final reports issued by the review teams to the Board following the conclusion of such review ("**Annual Review Implementation Report**"). The Annual Review Implementation Report will be posted on the Website for public review and comment. Each Annual Review Implementation Report will be considered by the Board and serve as an input to the continuing process of implementing the recommendations from the review teams set forth in the final reports of such review teams required in Section 4.6.

## Section 4.6. SPECIFIC REVIEWS

(a) Review Teams and Reports

(i) Review teams will be established for each applicable review, which will include both a limited number of members and an open number of observers. The chairs of the Supporting Organizations and Advisory Committees participating in the applicable review shall select a group of up to 21 review team members from among the prospective members nominated by the Supporting Organizations and Advisory Committees, balanced for diversity and skill. In addition, the Board may designate one Director or Liaison to serve as a member of the review team. Specific guidance on the selection process is provided within the operating standards developed for the conduct of reviews under this Section 4.6 (the "**Operating Standards**"). The Operating Standards shall be developed through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN. The Operating Standards must be aligned with the following guidelines:

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

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

(C)If any Supporting Organization or Advisory Committee has not nominated at least three prospective review team members, the Chairs of the Supporting Organizations and Advisory Committees shall be responsible for the determination of whether all 21 SO/AC member

seats shall be filled and, if so, how the seats should be allocated from among those nominated.

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

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

(iv) Review teams may also solicit and select independent experts to render advice as requested by the review team. ICANN shall pay the reasonable fees and expenses of such experts for each review contemplated by this Section 4.6 to the extent such fees and costs are consistent with the budget assigned for such review. Guidelines on how review teams are to work with and consider independent expert advice are specified in the Operating Standards.

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

(vi) Confidential Disclosure to Review Teams

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

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

(2) ICANN may designate certain documents and information as "for

review team members only" or for a subset of the review team members based on conflict of interest. ICANN's designation of documents may also be appealed to the Ombudsman and/or the ICANN Board.

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

(vii) Reports

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

(B) At least one draft report of the review team shall be posted on the Website for public review and comment. The review team must consider the public comments received in response to any posted draft report and shall amend the report as the review team deems appropriate and in the public interest before submitting its final report to the Board. The final report should include an explanation of how public comments were considered as well as a summary of changes made in response to public comments.

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

(b) Accountability and Transparency Review

(i) The Board shall cause a periodic review of ICANN's execution of its

commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and are accountable to the Internet community ("**Accountability and Transparency Review**").

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

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

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

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

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

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

(F) assessing and improving the Independent Review Process.

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

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

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

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

(c) Security, Stability, and Resiliency Review

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

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

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

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

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

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

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

intended effect.

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

(d) Competition, Consumer Trust and Consumer Choice Review

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

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

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

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

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

(e) Registration Directory Service Review

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

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

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

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

(v) The Directory Service Review shall be conducted no less frequently than every five years, measured from the date the previous Directory Service Review Team was convened, except that the first Directory Service Review to be conducted after 1 October 2016 shall be deemed to be timely if the applicable Directory Service Review Team is convened on or before 31 October 2016.

## Section 4.7. COMMUNITY MEDIATION

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

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

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

(d) The mediator shall be a licensed attorney with general knowledge of contract law and general knowledge of the DNS and ICANN. The mediator may not have any ongoing business relationship with ICANN, any Supporting Organization (or constituent thereof), any Advisory Committee (or constituent thereof), the EC Administration or the EC. The mediator must confirm in writing that he or she is not, directly or indirectly, and will not become during the term of the mediation, an employee, partner, executive officer, director, consultant or advisor of ICANN, any Supporting Organization (or constituent thereof), any Advisory Committee (or constituent thereof), the EC Administration or the EC.

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

(f) The Mediation Administration and the Board Mediation Representatives shall discuss the dispute in good faith and attempt, with the mediator's

assistance, to reach an amicable resolution of the dispute.

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

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

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

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

# ARTICLE 5 OMBUDSMAN

## Section 5.1. OFFICE OF OMBUDSMAN

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

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

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

(d) The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN Budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN Budget recommended by the ICANN President to the Board.

Nothing in this Section 5.1 shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

## Section 5.2. CHARTER

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

## Section 5.3. OPERATIONS

The Office of Ombudsman shall:

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

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

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

(d) have the right to have access to (but not to publish if otherwise

confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN);

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

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

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

## Section 5.4. INTERACTION WITH ICANN AND OUTSIDE ENTITIES

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

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

(c) Contact with the Ombudsman shall not constitute notice to ICANN of any particular action or cause of action.

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

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

## Section 5.5. ANNUAL REPORT

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

# ARTICLE 6 EMPOWERED COMMUNITY

## Section 6.1. COMPOSITION AND ORGANIZATION OF THE EMPOWERED COMMUNITY

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

(b) This Article 6 shall constitute the articles of association of the EC and shall be considered the formational "governing document" (as defined in Section 18008 of the CCC) of the EC, and the terms contained herein and in these Bylaws relating to the EC shall be the EC's "governing principles" (as defined in Section 18010 of the CCC), which may only be amended as set forth in Section 25.2 . Where necessary for purposes of interpretation of these Bylaws, an "associate" shall be deemed to be a "member" of the EC as defined in Section 18015 of the CCC. Any change in the number and/or identity of Decisional Participants for any reason (including the resignation of any Decisional Participant or the addition of new Decisional Participants as a result of the creation of additional Supporting Organizations or Advisory Committees), and any corresponding changes in the voting thresholds for exercise of the EC's rights described in Annex D of these Bylaws, will only be effective following the completion of the process for amending Fundamental Bylaws described in Section 25.2 and Annex D. The EC may not be dissolved except upon the completion of the process for amending Fundamental Bylaws described in Section 25.2 and Annex D.

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

(d) The EC shall not acquire, hold, manage, encumber or transfer any interest

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

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

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

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

## Section 6.2. POWERS AND ACKNOWLEDGMENTS

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

(i) Appoint and remove individual Directors (other than the President);

(ii) Recall the entire Board;

(iii) Reject ICANN Budgets, IANA Budgets, Operating Plans (as defined in Section 22.5(a)(i)) and Strategic Plans (as defined in Section 22.5(b)(i));

(iv) Reject Standard Bylaw Amendments (as defined in Section 25.1(a));

(v) Approve Fundamental Bylaw Amendments, Articles Amendments (as defined in Section 25.2(b)), and Asset Sales (as defined in Article

26(a));

(vi) Reject PTI Governance Actions (as defined in Section 16.2(d));,

(vii) Require the ICANN Board to re-review its rejection of IFR Recommendation Decisions (as defined in Section 18.6(d)), Special IFR Recommendation Decisions (as defined in Section 18.12(e)), SCWG Creation Decisions (as defined in Section 19.1(d)) and SCWG Recommendation Decisions (as defined in Section 19.4(d));

(viii) Initiate a Community Reconsideration Request, mediation or a Community IRP; and

(ix) Take necessary and appropriate action to enforce its powers and rights, including through the community mechanism contained in Annex D or an action filed in a court of competent jurisdiction.

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

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

## Section 6.3. EC ADMINISTRATION

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

(b) In representing a Decisional Participant on the EC Administration, the representative individual shall act solely as directed by the represented

Decisional Participant and in accordance with processes developed by such Decisional Participant in accordance with Section 6.1(g).

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

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

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

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

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

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

# ARTICLE 7 BOARD OF DIRECTORS

## Section 7.1. COMPOSITION OF THE BOARD

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

validity of votes taken by the Board.

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

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

> (i) Eight Directors nominated by the Nominating Committee to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seats 1 through 8.
>
> (ii) Two Directors nominated by the ASO to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seat 9 and Seat 10.
>
> (iii) Two Directors nominated by the ccNSO to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seat 11 and Seat 12.
>
> (iv) Two Directors nominated by the GNSO to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seat 13 and Seat 14.
>
> (v) One Director nominated by the At-Large Community to be designated as Directors by the EC. This seat on the Board is referred to in these Bylaws as Seat 15.

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

(b) In carrying out its responsibilities to nominate the Directors for Seats 1 through 8 for designation by the EC, the Nominating Committee shall ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 7.3, Section 7.4 and Section 7.5. At no time when it makes its nomination shall the Nominating Committee nominate a Director to fill any vacancy or expired term whose designation would cause the

total number of Directors (not including the President) from countries in any one Geographic Region to exceed five; and the Nominating Committee shall ensure when it makes its nominations that the Board includes at least one Director who is from a country in each ICANN Geographic Region ("**Diversity Calculation**"). For purposes of this Section 7.2(b), if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("**Domicile**"), that candidate may be deemed to be from either country and must select in his or her Statement of Interest the country of citizenship or Domicile that he or she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this Section 7.2(b), a person can only have one Domicile, which shall be determined by where the candidate has a permanent residence and place of habitation.

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

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

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

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

> (i) acknowledges and agrees to the EC's right to remove the Director at

any time and for any reason following the processes set forth in these Bylaws;

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

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

## Section 7.3.CRITERIA FOR NOMINATION OF DIRECTORS

Directors shall be:

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

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

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

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

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

## Section 7.4. ADDITIONAL QUALIFICATIONS

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

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

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

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

## Section 7.5. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board, the nomination of Directors by the Nominating Committee, each Supporting Organization and the At-Large Community shall comply with all applicable diversity provisions of these Bylaws or of any memorandum of understanding referred to in these Bylaws concerning the Supporting Organization. One

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

## Section 7.6. DIRECTORS' CONFLICTS OF INTEREST

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

## Section 7.7. DUTIES OF DIRECTORS

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

## Section 7.8. TERMS OF DIRECTORS

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

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

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

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

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

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

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

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

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

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

posted promptly to the Website.

(e) No Director may serve more than three consecutive terms. For these purposes, a person designated to fill a vacancy in a term shall not be deemed to have served that term.

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

## Section 7.9. NON-VOTING LIAISONS

(a) The non-voting Liaisons shall include:

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

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

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

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

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

Subject to Section 5226 of the CCC, any Director or Liaison may resign at any time by giving written notice thereof to the Chair of the Board, the President, the Secretary, or the Board. Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

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

(a) Directors

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

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

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

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

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

(b) With the exception of the Liaison appointed by the Governmental Advisory Committee, any Liaison may be removed following notice to that Liaison and to the organization which selected that Liaison, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that Liaison following such notice. The vacancies created by such removal shall be filled in accordance with Section 7.12. The Board may request the Governmental Advisory Committee to consider the replacement of the Governmental Advisory Committee Liaison if the Board, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate.

## Section 7.12. VACANCIES

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

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

(c) The organizations selecting the Liaisons identified in Section 7.9 are responsible for determining the existence of, and filling, any vacancies in those

positions. Such organizations shall give the Secretary written notice of their appointments to fill any such vacancies, subject to the requirements set forth in Section 7.4, as applicable.

## Section 7.13. ANNUAL MEETINGS

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

## Section 7.14. REGULAR MEETINGS

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

## Section 7.15. SPECIAL MEETINGS

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

## Section 7.16. NOTICE OF MEETINGS

Notice of time and place of all meetings shall be delivered personally or by telephone or by electronic mail to each Director and Liaison, or sent by first-class mail (air mail for addresses outside the United States) or facsimile, charges prepaid, addressed to each Director and Liaison at the Director's or Liaison's address as it is shown on the records of ICANN. In case the notice is mailed, it shall be deposited in the United States mail at least fourteen (14) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or facsimile or electronic mail it shall be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting. Notwithstanding anything in this Section 7.16 to the contrary, notice of a meeting need not be given to any Director or Liaison who signed a waiver of notice or a Director who signed a written consent to holding the meeting or an

approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

## Section 7.17. QUORUM

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

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

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

## Section 7.19. ACTION WITHOUT MEETING

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

such Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

## Section 7.20. ELECTRONIC MAIL

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

## Section 7.21. BOARD RIGHTS OF INSPECTION

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

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

## Section 7.22. COMPENSATION

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

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

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

Committees, and appropriate data as to comparability regarding director compensation arrangements for U.S.-based, nonprofit, tax-exempt organizations possessing a global employee base.

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

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

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

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

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

(ii) A "**Reasoned Written Opinion**" means a written opinion of a valuation expert who meets the requirements of Section 7.22(g)(i)(A) through (D). To be reasoned, the opinion must be based upon a full disclosure by ICANN to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding whether the compensation

> arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.
>
> (iii) "**Reasonable Compensation**" shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations issued under §4958 of the Code.

(h) Each of the Liaisons, with the exception of the Governmental Advisory Committee Liaison, shall be entitled to receive compensation for his or her services as a Liaison. If the Board determines to offer a compensation arrangement to one or more Liaisons, the Board shall approve that arrangement by a required three-fourths (3/4) vote.

### Section 7.23. PRESUMPTION OF ASSENT

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

## Section 7.24 INTERIM BOARD

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

## Section 7.25 COMMUNICATION OF DESIGNATION

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

# ARTICLE 8 NOMINATING COMMITTEE

## Section 8.1. DESCRIPTION

There shall be a Nominating Committee of ICANN ("**Nominating Committee**"), responsible for nominating all Directors except the President and those Directors nominated by Decisional Participants; for nominating two directors of PTI (in accordance with the articles of incorporation and bylaws of PTI); and for such other selections as are set forth in these Bylaws. Notification of the Nominating Committee's Director nominations shall be given by the Nominating Committee Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25. Notification of the Nominating Committee's PTI director nomination shall be given to the Secretary.

## Section 8.2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

(a) A non-voting Chair, appointed by the Board;

(b) A non-voting Chair-Elect, appointed by the Board as a non-voting advisor;

(c) A non-voting liaison appointed by the Root Server System Advisory Committee established by Section 12.2(c);

(d) A non-voting liaison appointed by the Security and Stability Advisory Committee established by Section 12.2(b);

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

(f) Five voting delegates selected by the At-Large Advisory Committee established by Section 12.2(d);

(g) Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization established by Article 11, as follows:

> (i) One delegate from the Registries Stakeholder Group;

(ii) One delegate from the Registrars Stakeholder Group;

(iii) Two delegates from the Business Constituency, one representing small business users and one representing large business users;

(iv) One delegate from the Internet Service Providers and Connectivity Providers Constituency (as defined in Section 11.5(a)(iii));

(v) One delegate from the Intellectual Property Constituency; and

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

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

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

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

(iii) The Internet Engineering Task Force.

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

## Section 8.3. TERMS

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

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

(c) Non-voting liaisons shall serve during the term designated by the entity that

appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next ICANN annual meet ng.

(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 (ii ) the regular terms of the three ccNSO Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

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

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

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

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

(i) The ccNSO Council shall nominate individuals to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such nomination must have affirmative votes of a majority of all the members of the ccNSO Council then in office. Notification of the ccNSO Council's nominations shall be given

by the ccNSO Council Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25.

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

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

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

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

(n) Members of the ccNSO Council may participate in a meeting of the ccNSO

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

## Section 10.4. MEMBERSHIP

(a) The ccNSO shall have a membership consisting of ccTLD managers. Any ccTLD manager that meets the membership qualifications stated in Section 10.4(b) shall be entitled to be members of the ccNSO. For purposes of this Article 10, a ccTLD manager is the organization or entity responsible for managing an ISO 3166 country-code top-level domain, or under any later variant, for that country-code top-level domain.

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

the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices.

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

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

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

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

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

(h) Any ccNSO member may nominate an individual to serve as a ccNSO Council member representing the ccNSO member's Geographic Region. Nominations must be seconded by another ccNSO member from the same

Geographic Region. By accepting their nomination, individuals nominated to the ccNSO Council agree to support the policies committed to by ccNSO members.

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

(j) Subject to Section 10.4(k), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies (i) only address issues that are within scope of the ccNSO according to Section 10.6(a) and Annex C; (ii) have been developed through the ccPDP as described in Section 10.6, and (iii) have been recommended as such by the ccNSO to the Board, and (iv) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLDs.

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

the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)) and (B) whether failure to implement the policy would impair DNS operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO Council.

## Section 10.5. REGIONAL ORGANIZATIONS

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

## Section 10.6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

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

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

## Section 10.7. STAFF SUPPORT AND FUNDING

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

(b) Upon request of the ccNSO Council, ICANN shall provide administrative and operational support necessary for the ccNSO to carry out its responsibilities. Such support shall not include an obligation for ICANN to fund travel expenses incurred by ccNSO participants for travel to any meeting of

the ccNSO or for any other purpose. The ccNSO Council may make provision, at ccNSO expense, for administrative and operational support in addition or as an alternative to support provided by ICANN.

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

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

# ARTICLE 11 GENERIC NAMES SUPPORTING ORGANIZATION

## Section 11.1. DESCRIPTION

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

## Section 11.2. ORGANIZATION

The GNSO shall consist of:

(a) A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in Section 11.5;

(b) Four Stakeholder Groups organized within Houses as described in Section 11.5;

(c) Two Houses within the GNSO Council as described in Section 11.3(h);

(d) A GNSO Council responsible for managing the policy development process of the GNSO, as described in Section 11.3; and

(e) Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own charters with the approval of their members and of the Board.

## Section 11.3. GNSO COUNCIL

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

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

No individual representative may hold more than one seat on the GNSO Council at the same time.

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

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

(b) The regular term of each GNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the

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

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

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

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

(d) The GNSO Council is responsible for managing the policy development

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

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

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

> (i) the Contracted Parties House (as described in Section 11.3(h)(i)) shall select a representative to fill Seat 13; and
>
> (ii) the Non-Contracted Parties House (as described in Section 11.3(h)(ii)) shall select a representative to fill Seat 14.

Election procedures are defined in the GNSO Operating Procedures.

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

(g) The GNSO Council shall select the GNSO Chair for a term the GNSO Council specifies, but not longer than one year. Each House (as described in Section 11.3(h)) shall select a Vice-Chair, who will be a Vice-Chair of the whole of the GNSO Council, for a term the GNSO Council specifies, but not longer than one year. The procedures for selecting the Chair and any other officers are contained in the GNSO Operating Procedures. In the event that the GNSO Council has not elected a GNSO Chair by the end of the previous Chair's term, the Vice-Chairs will serve as Interim GNSO Co-Chairs until a successful election can be held.

(h) Except as otherwise required in these Bylaws, for voting purposes, the

GNSO Council (see Section 11.3(a)) shall be organized into a bicameral House structure as described below:

> (i) the Contracted Parties House includes the Registries Stakeholder Group (three members), the Registrars Stakeholder Group (three members), and one voting member appointed by the ICANN Nominating Committee for a total of seven voting members; and
>
> (ii) the Non Contracted Parties House includes the Commercial Stakeholder Group (six members), the Non-Commercial Stakeholder Group (six members), and one voting member appointed by the ICANN Nominating Committee to that House for a total of thirteen voting members.

Except as otherwise specified in these Bylaws, each member of a voting House is entitled to cast one vote in each separate matter before the GNSO Council.

(i) Except as otherwise specified in these Bylaws, Annex A, Annex A-1 or Annex A-2 hereto, or the GNSO Operating Procedures, the default threshold to pass a GNSO Council motion or other voting action requires a simple majority vote of each House. The voting thresholds described below shall apply to the following GNSO actions:

> (i) Create an Issues Report: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.
>
> (ii) Initiate a Policy Development Process ("**PDP**") Within Scope (as described in Annex A): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
>
> (iii) Initiate a PDP Not Within Scope: requires an affirmative vote of GNSO Supermajority (as defined in Section 11.3(i)(xix)).
>
> (iv) Approve a PDP Team Charter for a PDP Within Scope: requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
>
> (v) Approve a PDP Team Charter for a PDP Not Within Scope: requires an affirmative vote of a GNSO Supermajority.

(vi) Changes to an Approved PDP Team Charter: For any PDP Team Charter approved under (iv) or (v) above, the GNSO Council may approve an amendment to the Charter through a simple majority vote of each House.

(vii) Terminate a PDP: Once initiated, and prior to the publication of a Final Report, the GNSO Council may terminate a PDP only for significant cause, upon a motion that passes with a GNSO Supermajority Vote in favor of termination.

(viii) Approve a PDP Recommendation Without a GNSO Supermajority: requires an affirmative vote of a majority of each House and further requires that one GNSO Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation.

(ix) Approve a PDP Recommendation With a GNSO Supermajority: requires an affirmative vote of a GNSO Supermajority,

(x) Approve a PDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.

(xi) Modification of Approved PDP Recommendation: Prior to Final Approval by the Board, an Approved PDP Recommendation may be modified or amended by the GNSO Council with a GNSO Supermajority vote.

(xii) Initiation of an Expedited Policy Development Process ("**EPDP**"): requires an affirmative vote of a GNSO Supermajority.

(xiii) Approve an EPDP Team Charter: requires an affirmative vote of a GNSO Supermajority.

(xiv) Approval of EPDP Recommendations: requires an affirmative vote of a GNSO Supermajority.

(xv) Approve an EPDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.

(xvi) Initiation of a GNSO Guidance Process ("**GGP**"): requires an

affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

(xvii) Rejection of Initiation of a GGP Requested by the Board: requires an affirmative vote of a GNSO Supermajority.

(xviii) Approval of GGP Recommendations: requires an affirmative vote of a GNSO Supermajority.

(xix) A "**GNSO Supermajority**" shall mean: (A) two-thirds (2/3) of the Council members of each House, or (B) three-fourths (3/4) of the Council members of one House and a majority of the Council members of the other House.

## 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 19IANA NAMING FUNCTION SEPARATION PROCESS

## Section 19.1. ESTABLISHING AN SCWG

(a) An "**IANA Naming Function Separation Process**" is the process initiated in accordance with this Article 19 pursuant to which PTI may cease to perform the IANA naming function including, without limitation, the initiation of a request for proposal to select an operator to perform the IANA naming function instead of PTI ("**IANA Naming Function RFP**"), the selection of an IANA naming function operator other than PTI, termination or non-renewal of the IANA Naming Function Contract, and/or divestiture, or other reorganization of PTI by ICANN.

(b) The Board shall establish an SCWG if each of the following occurs:

(i) The IFRT conducting either a Special IFR or Periodic IFR, upon conclusion of a Special IFR or Periodic IFR, as applicable, has recommended that an IANA Naming Function Separation Process is necessary and has recommended the creation of an SCWG (an "**SCWG Creation Recommendation**");

(ii) The SCWG Creation Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;

(iii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the SCWG Creation Recommendation. A determination by the Board to not approve an SCWG Creation Recommendation, where such creation has been approved by the ccNSO and GNSO Councils pursuant to Section 19.1(b)(ii), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP recommendation that is supported by a GNSO Supermajority; and

(iv) The EC has not rejected the Board's approval of the SCWG Creation Recommendation pursuant to and in compliance with Section 19.1(d).

(c) If the Board (x) rejects an SCWG Creation Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 19.1(b)(ii) or (y) does not resolve to either accept or reject an SCWG Creation Recommendation within 45 days of the later of (1) the date that the condition in Section 19.1(b)(ii) is satisfied or (2) the expiration of the public comment period contemplated by Section 19.1(b)(iii), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable SCWG Creation Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants.

(i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the SCWG Creation Recommendation or approve the SCWG Creation Recommendation (either, a "**Post-Forum SCWG Creation Recommendation Decision**").

(A)If the Board resolves to approve the SCWG Creation Recommendation, such SCWG Creation Recommendation will be subject to Section 19.1(d).

(B)For the avoidance of doubt, the Board shall not be obligated to change its decision on the SCWG Creation Recommendation as a result of the Rejection Action Community Forum.

(C)The Board's Post-Forum SCWG Creation Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an SCWG Creation Recommendation (an "**SCWG Creation Decision**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the SCWG Creation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An SCWG Creation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such SCWG Creation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such SCWG Creation Decision; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such SCWG Creation Decision.

(ii) An SCWG Creation Decision that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

## Section 19.2. SCWG RESPONSIBILITIES

The responsibilities of the SCWG shall be as follows:

(a) The SCWG shall determine how to resolve the PTI Performance Issue(s) which the IFRT that conducted the Special IFR or Periodic IFR, as applicable, identified as triggering formation of this SCWG.

(b) If the SCWG recommends the issuance of an IANA Naming Function RFP, the SCWG shall:

(i) Develop IANA Naming Function RFP guidelines and requirements for the performance of the IANA naming function, in a manner consistent with ICANN's publicly available procurement guidelines (as in effect immediately prior to the formation of the SCWG); and

(ii) Solicit input from ICANN as well as the global Internet community (through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN) on requirements to plan and participate in the IANA Naming Function RFP process.

(c) If an SCWG Recommendation (as defined in Section 19.4(b)) to issue the IANA Naming Function RFP is approved pursuant to Section 19.4(b) and the EC does not reject the relevant SCWG Recommendation Decision pursuant to Section 19.4(d), the SCWG, in consultation with ICANN, shall:

(i) Issue the IANA Naming Function RFP;

(ii) Review responses from interested candidates to the IANA Naming Function RFP, which may be received from PTI and/or any other entity or person; and

(iii) Recommend the entity that ICANN should contract with to perform

the IANA naming function.

(d) If the SCWG recommends an IANA Naming Function Separation Process other than the issuance of an IANA Naming Function RFP, the SCWG shall develop recommendations to be followed with respect to that process and its implementation consistent with the terms of this Article 19. The SCWG shall monitor and manage the implementation of such IANA Naming Function Separation Process.

## Section 19.3. COMMUNITY REVIEWS AND REPORTS

(a) The SCWG shall seek community input through one or more public comment periods (such public comment period shall comply with the designated practice for public comment periods within ICANN) and may recommend discussions during ICANN's public meetings in developing and finalizing its recommendations and any report.

(b) The SCWG shall provide a draft report of its findings and recommendations to the community after convening of the SCWG, which such draft report will be posted for public comment on the Website. The SCWG may post additional drafts of its report for public comment until it has reached its final report.

(c) After completion of its review, the SCWG shall submit its final report containing its findings and recommendations to the Board. ICANN shall promptly post the SCWG's final report on the Website.

## Section 19.4. SCWG RECOMMENDATIONS

(a) The recommendations of the SCWG are not limited and could include a variety of recommendations or a recommendation that no action is required; provided, however, that any recommendations must directly relate to the matters discussed in Section 19.2 and comply with this Section 19.4.

(b) ICANN shall not implement an SCWG recommendation (including an SCWG recommendation to issue an IANA Naming Function RFP) unless, with respect to each such recommendation (each, an "**SCWG Recommendation**"), each of the following occurs:

(i) The SCWG Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO

Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the SCWG Recommendation. A determination by the Board to not approve an SCWG Recommendation, where such SCWG Recommendation has been approved by the ccNSO and GNSO Councils pursuant to Section 19.4(b)(i), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP recommendation that is supported by a GNSO Supermajority; and

(iii) The EC has not rejected the Board's approval of the SCWG Recommendation pursuant to and in compliance with Section 19.4(d).

(c) If the Board (x) rejects an SCWG Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 19.4(b)(i) or (y) does not resolve to either accept or reject an SCWG Recommendation within 45 days of the later of (1) the date that the condition in Section 19.4(b)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 19.4(b)(ii), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable SCWG Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants.

(i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action

Community Forum Period, the Board shall resolve to either uphold its rejection of the SCWG Recommendation or approve the SCWG Recommendation (either, a "**Post-Forum SCWG Recommendation Decision**").

(A)If the Board resolves to approve the SCWG Recommendation, such SCWG Recommendation will be subject to Section 19.4(d).

(B)For the avoidance of doubt, the Board shall not be obligated to change its decision on the SCWG Recommendation as a result of the Rejection Action Community Forum.

(C)The Board's Post-Forum SCWG Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an SCWG Recommendation (an "**SCWG Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the SCWG Recommendation that is the subject of the SCWG Recommendation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An SCWG Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such SCWG Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary

pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such SCWG Recommendation Decision; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such SCWG Recommendation Decision.

(ii) An SCWG Recommendation Decision that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(e) ICANN shall absorb the costs relating to recommendations made by the SCWG, including, without limitation, costs related to the process of selecting or potentially selecting a new operator for the IANA naming function and the operating costs of the successor operator that are necessary for the successor operator's performance of the IANA naming function as ICANN's independent contractor. ICANN shall not be authorized to raise fees from any TLD registry operators to cover the costs associated with implementation of any SCWG Recommendations that specifically relate to the transition to a successor operator. For avoidance of doubt, this restriction shall not apply to collecting appropriate fees necessary to maintain the ongoing performance of the IANA naming function, including those relating to the operating costs of the successor operator.

(f) In the event that (i) an SCWG Recommendation that selects an entity (other than PTI) as a new operator of the IANA naming function is approved pursuant to Section 19.4(b) and (ii) the EC does not reject the relevant SCWG Recommendation Decision pursuant to Section 19.4(d), ICANN shall enter into a contract with the new operator on substantially the same terms recommended by the SCWG and approved as part of such SCWG Recommendation.

(g) As promptly as practical following an SCWG Recommendation

Decision becoming final in accordance with this Section 19.4, ICANN shall take all steps reasonably necessary to effect such SCWG Recommendation Decision as soon as practicable.

## Section 19.5. SCWG COMPOSITION

(a) Each SCWG shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(i) Two representatives appointed by the ccNSO from its ccTLD registry operator representatives;

(ii) One non-ccNSO ccTLD representative who is associated with a ccTLD registry operator that is not a representative of the ccNSO, appointed by the ccNSO; it is strongly recommended that the ccNSO consult with the regional ccTLD organizations (i.e., AfTLD, APTLD, LACTLD and CENTR) in making its appointment;

(iii) Three representatives appointed by the Registries Stakeholder Group;

(iv) One representative appointed by the Registrars Stakeholder Group;

(v) One representative appointed by the Commercial Stakeholder Group;

(vi) One representative appointed by the Non-Commercial Stakeholder Group;

(vii) One representative appointed by the GAC;

(viii) One representative appointed by the SSAC;

(ix) One representative appointed by the RSSAC;

(x) One representative appointed by the ALAC;

(xi) One liaison appointed by the CSC;

(xii) One liaison appointed by the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the

SCWG, who shall be named in the IFRT's recommendation to convene the Special IFR;

(xiii) One liaison who may be appointed by the ASO;

(xiv) One liaison who may be appointed by the IAB; and

(xv) One liaison who may be appointed by the Board.

(xvi) The SCWG may also include an unlimited number of non-member, non-liaison participants.

(b) All candidates for appointment to the SCWG as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison, which shall state (i) why the candidate is interested in becoming involved in the SCWG, (ii) what particular skills the candidate would bring to the SCWG, (iii) the candidate's knowledge of the IANA naming function, (iv) the candidate's understanding of the purpose of the SCWG, and (v)that the candidate understands the time necessary to participate in the SCWG process and can commit to the role.

(c) Members and liaisons of the SCWG shall disclose to ICANN and the SCWG any conflicts of interest with a specific complaint or issue under review. The SCWG may exclude from the discussion of a specific complaint or issue any member, liaison or participant deemed by the majority of SCWG members to have a conflict of interest. The co-chairs of the SCWG shall record any such conflict of interest in the minutes of the SCWG.

(d) To the extent reasonably possible, the appointing organizations for SCWG members and liaisons shall work together to:

(i) achieve an SCWG that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the SCWG should include members from each ICANN Geographic Region, and the ccNSO and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN Geographic Region;

(ii) ensure that the SCWG is comprised of individuals who are different from those individuals who comprised the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the

creation of the SCWG, other than the liaison to the IFRT appointed by the CSC; and

(iii) seek to appoint as representatives of the SCWG as many individuals as practicable with experience managing or participating in RFP processes.

(e) ICANN shall select an ICANN staff member and a PTI staff member to serve as points of contact to facilitate formal lines of communication between the SCWG and ICANN and the SCWG and PTI. Communications between the SCWG and the ICANN and PTI points of contact shall be communicated by the SCWG co-chairs.

(f) The SCWG shall not be a standing body. Each SCWG shall be constituted when and as required under these Bylaws and shall dissolve following the end of the process for approving such SCWG's SCWG Recommendations pursuant to Section 19.4(d).

## Section 19.6. ELECTION OF CO-CHAIRS AND LIAISONS

(a) The SCWG shall be led by two co-chairs: one appointed by the GNSO from one of the members appointed pursuant to clauses (iii)-(vi) of Section 19.5(a) and one appointed by the ccNSO from one of the members appointed pursuant to clauses (i)-(ii) of Section 19.5(a).

(b) Liaisons to the SCWG shall not be members of or entitled to vote on any matters before the SCWG, but otherwise shall be entitled to participate on equal footing with SCWG members.

(c) Removal and Replacement of SCWG Members and Liaisons

(i) The SCWG members and liaisons may be removed from the SCWG by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the SCWG.

(ii) A vacancy on the SCWG shall be deemed to exist in the event of the death, resignation or removal of any SCWG member or liaison. Vacancies shall be filled by the organization that appointed such SCWG member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the SCWG co-chairs. The organization responsible

> for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

## Section 19.7. MEETINGS

(a) The SCWG shall act by consensus, which is where a small minority may disagree, but most agree.

(b) Any members of the SCWG not in favor of an action may record a minority dissent to such action, which shall be included in the SCWG minutes and/or report, as applicable.

(c) SCWG meetings and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The SCWG shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each SCWG meeting, and no later than five business days following the meeting.

(e) Except as otherwise provided in these Bylaws, the SCWG shall follow the guidelines and procedures applicable to ICANN Cross Community Working Groups that will be publicly available and may be amended from time to time.

## Section 19.8. ADMINISTRATIVE SUPPORT

ICANN shall provide administrative and operational support necessary for the SCWG to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the SCWG.

## Section 19.9. CONFLICTING PROVISIONS

In the event any SCWG Recommendation that is approved in accordance with this Article 19 requires ICANN to take any action that is inconsistent with a provision of the Bylaws (including any action taken in implementing such SCWG Recommendation), the requirements of such provision of these Bylaws shall not apply to the extent of that inconsistency.

# ARTICLE 20 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

## Section 20.1. INDEMNIFICATION GENERALLY

ICANN shall, to the maximum extent permitted by the CCC, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN, provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN's best interests and not criminal. For purposes of this Article 20, an "agent" of ICANN includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (including a member of the EC, the EC Administration, any Supporting Organization, any Advisory Committee, the Nominating Committee, any other ICANN committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN would have the power to indemnify the agent against that liability under the provisions of this Article 20.

## Section 20.2. INDEMNIFICATION WITH RESPECT TO DIRECTOR REMOVAL

If a Director initiates any proceeding in connection with his or her removal or recall pursuant to the Bylaws, to which a person who is a member of the leadership council (or equivalent body) of a Decisional Participant or representative of a Decisional Participant in the EC Administration is a party or is threatened to be made a party (as a party or witness) (a "**Director Removal Proceeding**"), ICANN shall, to the maximum extent permitted by the CCC, indemnify any such person, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by such person in connection with such Director Removal Proceeding, for actions taken by such person in his or her representative capacity within his or her Decisional Participant pursuant to the processes and procedures set forth in these Bylaws, provided that all such actions were taken by such person in good faith and in a manner that such person reasonably believed to be in ICANN's best interests and not criminal. The actual and reasonable legal fees of a single firm of counsel and other expenses actually and reasonably incurred by such person in defending against a Director Removal Proceeding shall be paid by ICANN in advance of the final disposition of such Director Removal Proceeding, provided, however, that such expenses shall be advanced only upon delivery to the Secretary of an undertaking (which shall be in writing and in a form provided by the Secretary) by such person to repay the amount of such expenses if it shall ultimately be determined that such person is not

entitled to be indemnified by ICANN. ICANN shall not be obligated to indemnify such person against any settlement of a Director Removal Proceeding, unless such settlement is approved in advance by the Board in its reasonable discretion. Notwithstanding Section 20.1, the indemnification provided in this Section 20.2 shall be ICANN's sole indemnification obligation with respect to the subject matter set forth in this Section 20.2.

# ARTICLE 21 GENERAL PROVISIONS

## Section 21.1. CONTRACTS

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of ICANN, and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind ICANN or to render it liable for any debts or obligations.

## Section 21.2. DEPOSITS

All funds of ICANN not otherwise employed shall be deposited from time to time to the credit of ICANN in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

## Section 21.3. CHECKS

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ICANN shall be signed by such Officer or Officers, agent or agents, of ICANN and in such a manner as shall from time to time be determined by resolution of the Board.

## Section 21.4. LOANS

No loans shall be made by or to ICANN and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans shall be made by ICANN to its Directors or Officers.

## Section 21.5. NOTICES

All notices to be given to the EC Administration, the Decisional Participants, or the Secretary pursuant to any provision of these Bylaws shall be given either

(a) in writing at the address of the appropriate party as set forth below or (b) via electronic mail as provided below, unless that party has given a notice of change of postal or email address, as provided in this Section 21.5. Any change in the contact information for notice below will be given by the party within 30 days of such change. Any notice required by these Bylaws will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via electronic mail, upon confirmation of receipt by the recipient's email server, provided that such notice via electronic mail shall be followed by a copy sent by regular postal mail service within three days. In the event other means of notice become practically achievable, such as notice via a secure website, the EC Administration, the Decisional Participants, and ICANN will work together to implement such notice means.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094-2536

USA

Email: [___]

Attention: Secretary

If to a Decisional Participant or the EC Administration, addressed to the contact information available at [insert Website reference].

# ARTICLE 22 FISCAL AND STRATEGIC MATTERS, INSPECTION AND INDEPENDENT INVESTIGATION

## Section 22.1. ACCOUNTING

The fiscal year end of ICANN shall be determined by the Board.

## Section 22.2. AUDIT

At the end of the fiscal year, the books of ICANN shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

## Section 22.3. ANNUAL REPORT AND ANNUAL STATEMENT

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement, a description of any payments made by ICANN to Directors (including reimbursements of expenses) and a description of ICANN's progress towards the obligations imposed under the Bylaws as revised on 1 October 2016 and the Operating Plan and Strategic Plan. ICANN shall cause the annual report and the annual statement of certain transactions as required by the CCC to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN's fiscal year.

## Section 22.4. BUDGETS

(a) ICANN Budget

(i) In furtherance of its Commitment to transparent and accountable budgeting processes, at least forty-five (45) days prior to the commencement of each fiscal year, ICANN staff shall prepare and submit to the Board a proposed annual operating plan and budget of ICANN for the next fiscal year (the "**ICANN Budget**"), which shall be posted on the Website. The ICANN Budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item.

(ii) Prior to approval of the ICANN Budget by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees during the ICANN Budget development process, and comply with the requirements of this Section 22.4(a).

(iii) Prior to approval of the ICANN Budget by the Board, a draft of the ICANN Budget shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the ICANN Budget and may direct ICANN Staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves an ICANN Budget (an "**ICANN Budget Approval**"), the Secretary shall provide a Board Notice to the

EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the ICANN Budget that is the subject of the ICANN Budget Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An ICANN Budget shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the ICANN Budget that is the subject of the ICANN Budget Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date (as defined in Section 2.2(a) of Annex D) relating to such ICANN Budget Approval and the effectiveness of such ICANN Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the ICANN Budget that is the subject of the ICANN Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such ICANN Budget Approval and the effectiveness of such ICANN Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the ICANN

Budget that is the subject of the ICANN Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such ICANN Budget Approval and the effectiveness of such ICANN Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) An ICANN Budget that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to an ICANN Budget, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the ICANN Budget in determining the substance of such new ICANN Budget, which shall be subject to the procedures of this Section 22.4(a).

(ix) If an ICANN Budget has not come into full force and effect pursuant to this Section 22.4(a) on or prior to the first date of any fiscal year of ICANN, the Board shall adopt a temporary budget in accordance with Annex E hereto ("**Caretaker ICANN Budget**"), which Caretaker ICANN Budget shall be effective until such time as an ICANN Budget has been effectively approved by the Board and not rejected by the EC pursuant to this Section 22.4(a).

(b) IANA Budget

(i) At least 45 days prior to the commencement of each fiscal year, ICANN shall prepare and submit to the Board a proposed annual operating plan and budget of PTI and the IANA department, which budget shall include itemization of the direct costs for ICANN's IANA department, all costs for PTI, direct costs for shared resources between ICANN and PTI and support functions provided by ICANN to PTI and ICANN's IANA department for the next fiscal year (the "**IANA Budget**"), which shall be posted on the Website. Separately and in addition to the general ICANN planning process, ICANN shall require PTI to prepare and submit to the PTI Board a proposed annual operating plan and budget for PTI's performance of the IANA functions for the next fiscal year ("**PTI Budget**"). ICANN shall require PTI to consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, the IAB and RIRs, during the PTI Budget

development process, and shall seek public comment on the draft PTI Budget prior to approval of the PTI Budget by PTI. ICANN shall require PTI to submit the PTI Budget to ICANN as an input prior to and for the purpose of being included in the proposed Operating Plan (as defined in Section 22.5(a)) and ICANN Budget.

(ii) Prior to approval of the IANA Budget by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, IAB and RIRs, during the IANA Budget development process, and comply with the requirements of this Section 22.4(b).

(iii) Prior to approval of the IANA Budget by the Board, a draft of the IANA Budget shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the IANA Budget and may direct ICANN staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves an IANA Budget (an "**IANA Budget Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the IANA Budget that is the subject of the IANA Budget Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An IANA Budget shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IANA Budget that is the subject of the IANA Budget Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such IANA Budget Approval and the effectiveness of such

IANA Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the IANA Budget that is the subject of the IANA Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such IANA Budget Approval and the effectiveness of such IANA Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the IANA Budget that is the subject of the IANA Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such IANA Budget Approval and the effectiveness of such IANA Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) An IANA Budget that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to an IANA Budget, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the IANA Budget in determining the substance of such new IANA Budget, which shall be subject to the procedures of this Section 22.4(b).

(ix) If an IANA Budget has not come into full force and effect pursuant to this Section 22.4(b) on or prior to the first date of any fiscal year of ICANN, the Board shall adopt a temporary budget in accordance with Annex F hereto (**"Caretaker IANA Budget"**), which Caretaker IANA Budget shall be effective until such time as an IANA Budget has been effectively approved by the Board and not rejected by the EC pursuant

to this Section 22.4(b).

(c) If an IANA Budget does not receive an EC Rejection Notice but an ICANN Budget receives an EC Rejection Notice, any subsequent revised ICANN Budget shall not alter the expenditures allocated for the IANA Budget.

(d) If an ICANN Budget does not receive an EC Rejection Notice but an IANA Budget receives an EC Rejection Notice, any subsequent revised IANA Budget shall, once approved, be deemed to automatically modify the ICANN Budget in a manner determined by the Board without any further right of the EC to reject the ICANN Budget.

(e) Under all circumstances, the Board will have the ability to make out-of-budget funding decisions for unforeseen expenses necessary to maintaining ICANN's Mission or to fulfilling ICANN's pre-existing legal obligations and protecting ICANN from harm or waste.

(f) To maintain ongoing operational excellence and financial stability of the IANA functions (so long as they are performed by ICANN or pursuant to contract with ICANN) and PTI, ICANN shall be required to plan for and allocate funds to ICANN's performance of the IANA functions and to PTI, as applicable, that are sufficient to cover future expenses and contingencies to ensure that the performance of those IANA functions and PTI in the future are not interrupted due to lack of funding.

(g) The ICANN Budget and the IANA Budget shall be published on the Website.

## Section 22.5. PLANS

(a) Operating Plan

(i) At least 45 days prior to the commencement of each fiscal year, ICANN staff shall prepare and submit to the Board a proposed operating plan of ICANN for the next five fiscal years (the "**Operating Plan**"), which shall be posted on the Website.

(ii) Prior to approval of the Operating Plan by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees during the Operating Plan development process, and comply with the requirements of this Section 22.5(a).

(iii) Prior to approval of the Operating Plan by the Board, a draft of the Operating Plan shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the Operating Plan and may direct ICANN staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves an Operating Plan (an "**Operating Plan Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Operating Plan that is the subject of the Operating Plan Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An Operating Plan shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as

of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) An Operating Plan that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to an Operating Plan, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the Operating Plan in determining the substance of such new Operating Plan, which shall be subject to the procedures of this Section 22.5(a).

(b) Strategic Plan

(i) At least 45 days prior to the commencement of each five fiscal year period, with the first such period covering fiscal years 2021 through 2025, ICANN staff shall prepare and submit to the Board a proposed strategic plan of ICANN for the next five fiscal years (the "**Strategic Plan**"), which shall be posted on the Website.

(ii) Prior to approval of the Strategic Plan by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees during the Strategic Plan development process, and comply with the requirements of this Section 22.5(b).

(iii) Prior to approval of the Strategic Plan by the Board, a draft of the Strategic Plan shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to submit a revised draft of the Strategic Plan and may direct ICANN staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves a Strategic Plan (a "**Strategic Plan Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Strategic Plan that is the subject of the Strategic Plan Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) A Strategic Plan shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action

Petition Support Period relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) A Strategic Plan that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to a Strategic Plan, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the Strategic Plan in determining the substance of such new Strategic Plan, which shall be subject to the procedures of this Section 22.5(b).

## Section 22.6. FEES AND CHARGES

The Board may set fees and charges for the services and benefits provided by ICANN, with the goal of fully recovering the reasonable costs of the operation of ICANN and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN. Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

## Section 22.7. INSPECTION

(a) A Decisional Participant (the "**Inspecting Decisional Participant**") may request to inspect the accounting books and records of ICANN, as interpreted pursuant to the provisions of Section 6333 of the CCC, and the minutes of the Board or any Board Committee for a purpose reasonably related to such

Inspecting Decisional Participant's interest as a Decisional Participant in the EC. The Inspecting Decisional Participant shall make such a request by providing written notice from the chair of the Inspecting Decisional Participant to the Secretary stating the nature of the documents the Inspecting Decisional Participant seeks to inspect ("**Inspection Request**"). Any Inspection Request must be limited to the accounting books and records of ICANN relevant to the operation of ICANN as a whole, and shall not extend to the underlying sources of such accounting books or records or to documents only relevant to a small or isolated aspect of ICANN's operations or that relate to the minutiae of ICANN's financial records or details of its management and administration (the "**Permitted Scope**"). Unless ICANN declines such request (as provided below), ICANN shall make the records requested under an Inspection Request available for inspection by such Inspecting Decisional Participant within 30 days of the date the Inspection Request is received by the Secretary or as soon as reasonably practicable thereafter. All materials and information made available by ICANN for inspection pursuant to an Inspection Request may only be used by the Inspecting Decisional Participant for purposes reasonably related to such Inspecting Decisional Participant's interest as a Decisional Participant in the EC. ICANN shall post all Inspection Requests to the Website.

(b) ICANN may decline an Inspection Request on the basis that such Inspection Request (i) is motivated by a Decisional Participant's financial, commercial or political interests, or those of one or more of its constituents, (ii) relates to documents that are not reasonably related to the purpose specified in the Inspection Request or the Inspecting Decisional Participant's interest as a Decisional Participant in the EC, (iii) requests identical records provided in a prior request of such Decisional Participant, (iv) is not within the Permitted Scope, (v) relates to personnel records, (vi) relates to documents or communications covered by attorney-client privilege, work product doctrine or other legal privilege or (vii) relates to documents or communications that ICANN may not make available under applicable law because such documents or communications contain confidential information that ICANN is required to protect. If an Inspection Request is overly broad, ICANN may request a revised Inspection Request from the Inspecting Decisional Participant.

(c) Any such inspections shall be conducted at the times and locations reasonably determined by ICANN and shall not be conducted in a manner that unreasonably interferes with ICANN's operations. All such inspections shall be subject to reasonable procedures established by ICANN, including, without limitation, the number of individuals authorized to conduct any such inspection on behalf of the Inspecting Decisional Participant. ICANN may require the inspectors to sign a non-disclosure agreement. The Inspecting Decisional

Participant may, at its own cost, copy or otherwise reproduce or make a record of materials inspected. ICANN may redact or determine not to provide requested materials on the same basis that such information is of a category or type described in Section 22.7(b), in which case ICANN will provide the Inspecting Decisional Participant a written rationale for such redactions or determination.

(d) The inspection rights provided to the Decisional Participants pursuant to this Section 22.7 are granted to the Decisional Participants and are not granted or available to any other person or entity. Notwithstanding the foregoing, nothing in this Section 22.7 shall be construed as limiting the accessibility of ICANN's document information disclosure policy ("**DIDP**").

(e) If the Inspecting Decisional Participant believes that ICANN has violated the provisions of this Section 22.7, the Inspecting Decisional Participant may seek one or more of the following remedies: (i) appeal such matter to the Ombudsman and/or the Board for a ruling on the matter, (ii) initiate the Reconsideration Request process in accordance with Section 4.2, (iii) initiate the Independent Review Process in accordance with Section 4.3, or (iv) petition the EC to initiate (A) a Community IRP pursuant to Section 4.2 of Annex D or (B) a Board Recall Process pursuant to Section 3.3 of Annex D. Any determination by the Ombudsman is not binding on ICANN staff, but may be submitted by the Inspecting Decisional Participant when appealing to the Board for a determination, if necessary.

## Section 22.8. INDEPENDENT INVESTIGATION

If three or more Decisional Participants deliver to the Secretary a joint written certification from the respective chairs of each such Decisional Participant that the constituents of such Decisional Participants have, pursuant to the internal procedures of such Decisional Participants, determined that there is a credible allegation that ICANN has committed fraud or that there has been a gross mismanagement of ICANN's resources, ICANN shall retain a third-party, independent firm to investigate such alleged fraudulent activity or gross mismanagement. ICANN shall post all such certifications to the Website. The independent firm shall issue a report to the Board. The Board shall consider the recommendations and findings set forth in such report. Such report shall be posted on the Website, which may be in a redacted form as determined by the Board, in order to preserve attorney-client privilege, work product doctrine or other legal privilege or where such information is confidential, in which case ICANN will provide the Decisional Participants that submitted the certification a written rationale for such redactions.

# ARTICLE 23 MEMBERS

ICANN shall not have members, as contemplated by Section 5310 of the CCC, notwithstanding the use of the term "member" in these Bylaws, in any ICANN document, or in any action of the Board or staff. For the avoidance of doubt, the EC is not a member of ICANN.

## ARTICLE 24 OFFICES AND SEAL

### Section 24.1. OFFICES

The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

### Section 24.2. SEAL

The Board may adopt a corporate seal and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

## ARTICLE 25 AMENDMENTS

### Section 25.1. AMENDMENTS TO THE STANDARD BYLAWS

(a) Except as otherwise provided in the Articles of Incorporation or these Bylaws, these Bylaws may be altered, amended, or repealed and new Bylaws adopted only upon approval by a two-thirds vote of all Directors and in compliance with the terms of this Section 25.1 (a "**Standard Bylaw Amendment**").

(b) Prior to approval of a Standard Bylaw Amendment by the Board, a draft of the Standard Bylaw Amendment shall be posted on the Website and shall be subject to public comment in accordance with ICANN's public comment processes.

(c) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the Standard Bylaw Amendment and may conduct one or more additional public comment periods in accordance with ICANN's public comment processes.

(d) Within seven days after the Board's approval of a Standard Bylaw Amendment ("**Standard Bylaw Amendment Approval**"), the Secretary shall (i) provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall contain the form of the approved

amendment and the Board's rationale for adopting such amendment, and (ii) post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website. The steps contemplated in Article 2 of Annex D shall then be followed.

(e) A Standard Bylaw Amendment shall become effective upon the earliest to occur of the following:

(i) (A) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the 30th day following the Rejection Action Board Notification Date relating to such Standard Bylaw Amendment Approval and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(ii) (A) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Standard Bylaw Amendment and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; or

(iii) (A) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision

> Period relating to such Standard Bylaw Amendment and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(f) If an EC Rejection Notice is timely delivered by the EC Administration to the Secretary pursuant to and compliance with Section 2.4 of Annex D, the Standard Bylaw Amendment contained in the Board Notice shall be deemed to have been rejected by the EC. A Standard Bylaw Amendment that has been rejected by the EC shall be null and void and shall not become part of these Bylaws, notwithstanding its approval by the Board.

(g) The Secretary shall promptly inform the Board of the receipt and substance of any Rejection Action Petition, Rejection Action Supported Petition or EC Rejection Notice delivered by the Rejection Action Petitioning Decisional Participant or the EC Administration, as applicable, to the Secretary hereunder.

(h) Following receipt of an EC Rejection Notice pertaining to a Standard Bylaw Amendment, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the Standard Bylaw Amendment in determining whether or not to develop a new Standard Bylaw Amendment and the substance of such new Standard Bylaw Amendment, which shall be subject to the procedures of this Section 25.1.

## Section 25.2. AMENDMENTS TO THE FUNDAMENTAL BYLAWS AND ARTICLES OF INCORPORATION

(a) Article 1; Sections 4.2, 4.3 and 4.7; Article 6; Sections 7.1 through 7.5, inclusive, and Sections 7.8, 7.11, 7.12, 7.17, 7.24 and 7.25; those portions of Sections 8.1, 9.2(b), 10.3(i), 11.3(f) and 12.2(d)(x)(A) relating to the provision to the EC of nominations of Directors by the nominating body, Articles 16, 17, 18 and 19, Sections 22.4, 22.5, 22.7 and 22.8, Article 26, Section 27.1; Annexes D, E and F; and this Article 25 are each a "**Fundamental Bylaw**" and, collectively, are the "**Fundamental Bylaws**".

(b) Notwithstanding any other provision of these Bylaws, a Fundamental Bylaw or the Articles of Incorporation may be altered, amended, or repealed (a "**Fundamental Bylaw Amendment**" or an "**Articles Amendment**"), only upon approval by a three-fourths vote of all Directors and the approval of the EC as set forth in this Section 25.2.

(c) Prior to approval of a Fundamental Bylaw Amendment, or an Articles

Amendment by the Board, a draft of the Fundamental Bylaw Amendment or Articles Amendment, as applicable, shall be posted on the Website and shall be subject to public comment in accordance with ICANN's public comment processes.

(d) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to submit a revised draft of the Fundamental Bylaw Amendment or Articles Amendment, as applicable, and may direct ICANN staff to conduct one or more additional public comment periods in accordance with ICANN's public comment processes.

(e) Within seven days after the Board's approval of a Fundamental Bylaw Amendment or Articles Amendment, as applicable, the Secretary shall (i) provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall contain the form of the approved amendment and (ii) post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website. The steps contemplated in Article 1 of Annex D shall then be followed.

(f) If the EC Administration timely delivers an EC Approval Notice (as defined in Section 1.4(b) of Annex D), the Fundamental Bylaw Amendment or Articles Amendment, as applicable, set forth in the Board Notice shall be deemed approved by the EC, and, as applicable, (i) such Fundamental Bylaw Amendment shall be in full force and effect as part of these Bylaws as of the date immediately following the Secretary's receipt of the EC Approval Notice; or (ii) the Secretary shall cause such Articles Amendment promptly to be certified by the appropriate officers of ICANN and filed with the California Secretary of State. In the event of such approval, neither the Fundamental Bylaw Amendment nor the Articles Amendment shall be subject to any further review or approval of the EC. The Secretary shall promptly inform the Board of the receipt of an EC Approval Notice.

(g) If an EC Approval Notice is not timely delivered by the EC Administration to the Secretary, the Fundamental Bylaw Amendment or Articles Amendment, as applicable, set forth in the Board Notice shall be deemed not approved by the EC, shall be null and void, and, notwithstanding its approval by the Board, the Fundamental Bylaw Amendment shall not be part of these Bylaws and the Articles Amendment shall not be filed with the Secretary of State.

(h) If a Fundamental Bylaw Amendment or Articles Amendment, as applicable, is not approved by the EC, ICANN staff and the Board shall consider the concerns raised by the EC in determining whether or not to develop a new Fundamental Bylaws Amendment or Articles Amendment, as applicable, and

the substance thereof, which shall be subject to the procedures of this Section 25.2.

## Section 25.3. AMENDMENTS RESULTING FROM A POLICY DEVELOPMENT PROCESS

The Board shall not combine an amendment of these Bylaws that was the result of a policy development process of a Supporting Organization (a "**PDP Amendment**") with any other amendment. The Board shall indicate in the applicable Board Notice whether such amendment is a PDP Amendment.

## Section 25.4. OTHER AMENDMENTS

For the avoidance of doubt, these Bylaws can only be amended as set forth in this Article 25. Neither the EC, the Decisional Participants, the Supporting Organizations, the Advisory Committees nor any other entity or person shall have the power to directly propose amendments to these Bylaws.

# ARTICLE 26 SALE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF ICANN'S ASSETS

(a) ICANN may consummate a transaction or series of transactions that would result in the sale or disposition of all or substantially all of ICANN's assets (an "**Asset Sale**") only upon approval by a three-fourths vote of all Directors and the approval of the EC as set forth in this Article 26.

(b) Prior to approval of an Asset Sale by the Board, a draft of the definitive Asset Sale agreement (an "**Asset Sale Agreement**"), shall be posted on the Website and shall be subject to public comment in accordance with ICANN's public comment processes.

(c) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to submit a revised draft of the Asset Sale Agreement, as applicable, and may direct ICANN staff to conduct one or more additional public comment periods in accordance with ICANN's public comment processes.

(d) Within seven days after the Board's approval of an Asset Sale the Secretary shall (i) provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall contain the form of the Asset Sale Agreement and (ii) post the Board Notice on the Website. The steps contemplated in Article 1 of Annex D shall then be followed.

(e) If the EC Administration timely delivers an EC Approval Notice for the

Asset Sale pursuant to and in compliance with the procedures and requirements of Section 1.4(b) of Annex D, the Asset Sale set forth in the Board Notice shall be deemed approved by the EC, and the Asset Sale may be consummated by ICANN, but only under the terms set forth in the Asset Sale Agreement. In the event of such approval, the Asset Sale shall not be subject to any further review or approval of the EC. The Secretary shall promptly inform the Board of the receipt of an EC Approval Notice.

(f) If an EC Approval Notice is not timely delivered by the EC Administration to the Secretary, the Asset Sale set forth in the Board Notice shall be deemed not approved by the EC, shall be null and void, and, notwithstanding its approval by the Board, ICANN shall not consummate the Asset Sale.

(g) If an Asset Sale is not approved by the EC, ICANN staff and the Board shall consider the concerns raised by the EC in determining whether or not to consider a new Asset Sale, and the substance thereof, which shall be subject to the procedures of this Article 26.

# ARTICLE 27 TRANSITION ARTICLE

## Section 27.1. WORK STREAM 2

(a) The Cross-Community Working Group on Enhancing ICANN Accountability ("**CCWG-Accountability**") was established pursuant to a charter dated 3 November 2014 ("**CCWG-Accountability Charter**"). The CCWG-Accountability Charter was subsequently adopted by the GNSO, ALAC, ccNSO, GAC, ASO and SSAC ("**CCWG Chartering Organizations**"). The CCWG-Accountability Charter as in effect on 3 November 2014 shall remain in effect throughout Work Stream 2 (as defined therein).

(b) The CCWG-Accountability recommended in its Supplemental Final Proposal on Work Stream 1 Recommendations to the Board, dated 23 February 2016 ("**CCWG-Accountability Final Report**") that the below matters be reviewed and developed following the adoption date of these Bylaws ("**Work Stream 2 Matters**"), in each case, to the extent set forth in the CCWG-Accountability Final Report:

> (i) Improvements to ICANN's standards for diversity at all levels;
>
> (ii) ICANN staff accountability;
>
> (iii) Supporting Organization and Advisory Committee accountability, including but not limited to improved processes for accountability,

transparency, and participation that are helpful to prevent capture;

(iv) Improvements to ICANN's transparency, focusing on enhancements to ICANN's existing DIDP, transparency of ICANN's interactions with governments, improvements to ICANN's whistleblower policy and transparency of Board deliberations;

(v) Developing and clarifying the FOI-HR (as defined in Section 27.2);

(vi) Addressing jurisdiction-related questions, including how choice of jurisdiction and applicable laws for dispute settlement impact ICANN's accountability;

(vii) Considering enhancements to the Ombudsman's role and function;

(viii) Guidelines for standards of conduct presumed to be in good faith associated with exercising removal of individual Directors; and

(ix) Reviewing the CEP (as set forth in Section 4.3).

(c) As provided in the CCWG-Accountability Charter and the Board's 2014.10.16.16 resolution, the Board shall consider consensus-based recommendations from the CCWG-Accountability on Work Stream 2 Matters ("**Work Stream 2 Recommendations**") with the same process and criteria it committed to using to consider the CCWG-Accountability recommendations in the CCWG-Accountability Final Report (**"Work Stream 1 Recommendations"**). For the avoidance of doubt, that process and criteria includes:

(i) All Work Stream 2 Recommendations must further the following principles:

(A)Support and enhance the multistakeholder model;

(B)Maintain the security, stability and resiliency of the DNS;

(C)Meet the needs and expectations of the global customers and partners of the IANA services;

(D)Maintain the openness of the Internet; and

(E)Not result in ICANN becoming a government-led or an inter-

governmental organization.

(ii) If the Board determines, by a vote of a two-thirds majority of the Board, that it is not in the global public interest to implement a Work Stream 2 Recommendation, it must initiate a dialogue with the CCWG-Accountability.

(iii) The Board shall provide detailed rationale to accompany the initiation of dialogue. The Board and the CCWG-Accountability shall mutually agree upon the method (e.g., by teleconference, email or otherwise) by which the dialogue will occur. Discussions shall be held in good faith and in a timely and efficient manner in an effort to find a mutually acceptable solution.

(iv) The CCWG-Accountability shall have an opportunity to address the Board's concerns and report back to the Board on further deliberations regarding the Board's concerns. The CCWG-Accountability shall discuss the Board's concerns within 30 days of the Board's initiation of the dialogue.

If a Work Stream 2 Recommendation is modified by the CCWG-Accountability, the CCWG-Accountability shall submit the modified Work Stream 2 Recommendation to the Board for further consideration along with detailed rationale on how the modification addresses the concerns raised by the Board.

(v) If, after the CCWG-Accountability modifies a Work Stream 2 Recommendation, the Board still believes it is not in the global public interest to implement the Work Stream 2 Recommendation, the Board may, by a vote of a two-thirds majority of the Board, send the matter back to the CCWG-Accountability for further consideration. The Board shall provide detailed rationale to accompany its action. If the Board determines not to accept a modified version of a Work Stream 2 Recommendation, unless required by its fiduciary obligations, the Board shall not establish an alternative solution on the issue addressed by the Work Stream 2 Recommendation until such time as the CCWG-Accountability and the Board reach agreement.

(d) ICANN shall provide adequate support for work on Work Stream 2 Matters, within budgeting processes and limitations reasonably acceptable to the CCWG-Accountability.

(e) The Work Stream 2 Matters specifically referenced in Section 27.1(b) shall

be the only matters subject to this Section 27.1 and any other accountability enhancements should be developed through ICANN's other procedures.

(f) The outcomes of each Work Stream 2 Matter are not limited and could include a variety of recommendations or no recommendation; provided, however, that any resulting recommendations must directly relate to the matters discussed in Section 27.1(b).

### Section 27.2. HUMAN RIGHTS

(a) The Core Value set forth in Section 1.2(b)(viii) shall have no force or effect unless and until a framework of interpretation for human rights ("**FOI-HR**") is (i) approved for submission to the Board by the CCWG-Accountability as a consensus recommendation in Work Stream 2, with the CCWG Chartering Organizations having the role described in the CCWG-Accountability Charter, and (ii) approved by the Board, in each case, using the same process and criteria as for Work Stream 1 Recommendations.>

(b) No person or entity shall be entitled to invoke the reconsideration process provided in Section 4.2, or the independent review process provided in Section 4.3, based solely on the inclusion of the Core Value set forth in Section 1.2(b)(viii) (i) until after the FOI-HR contemplated by Section 27.2(a) is in place or (ii) for actions of ICANN or the Board that occurred prior to the effectiveness of the FOI-HR.

### Section 27.3. EXISTING GROUPS AND TASK FORCES

Notwithstanding the adoption or effectiveness of these Bylaws, task forces and other groups in existence prior to the date of these Bylaws shall continue unchanged in membership, scope, and operation unless and until changes are made by ICANN in compliance with the Bylaws.

### Section 27.4. CONTRACTS WITH ICANN

Notwithstanding the adoption or effectiveness of these Bylaws, all agreements, including employment and consulting agreements, entered into by ICANN shall continue in effect according to their terms.

## Annex A: GNSO Policy Development Process

The following process shall govern the GNSO policy development process ("**PDP**") until such time as modifications are recommended to and approved by the Board. The role of the GNSO is outlined in Article 11 of these Bylaws. If the GNSO is conducting activities that are not intended to result in a

Consensus Policy, the Council may act through other processes.

Section 1. **Required Elements of a Policy Development Process**

The following elements are required at a minimum to form Consensus Policies as defined within ICANN contracts, and any other policies for which the GNSO Council requests application of this Annex A:

a. Final Issue Report requested by the Board, the GNSO Council ("Council") or Advisory Committee, which should include at a minimum a) the proposed issue raised for consideration, b) the identity of the party submitting the issue, and c) how that party Is affected by the issue;

b. Formal initiation of the Policy Development Process by the Council;

c. Formation of a Working Group or other designated work method;

d. Initial Report produced by a Working Group or other designated work method;

e. Final Report produced by a Working Group, or other designated work method, and forwarded to the Council for deliberation;

f. Council approval of PDP Recommendations contained in the Final Report, by the required thresholds;

g. PDP Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and

h. Board approval of PDP Recommendations.

Section 2. **Policy Development Process Manual**

The GNSO shall maintain a Policy Development Process Manual ("**PDP Manual**") within the operating procedures of the GNSO maintained by the GNSO Council. The PDP Manual shall contain specific additional guidance on completion of all elements of a PDP, including those elements that are not otherwise defined in these Bylaws. The PDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d).

Section 3. **Requesting an Issue Report**

*Board Request.* The Board may request an Issue Report by instructing the

GNSO Council ("Council") to begin the process outlined the PDP Manual. In the event the Board makes a request for an Issue Report, the Board should provide a mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for an Issue Report.

*Council Request.* The GNSO Council may request an Issue Report by a vote of at least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

*Advisory Committee Request.* An Advisory Committee may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO Council.

Section 4. **Creation of an Issue Report**

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a properly supported motion from the GNSO Council; or (iii) a properly supported motion from an Advisory Committee, the Staff Manager will create a report (a "**Preliminary Issue Report**"). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report.

The following elements should be considered in the Issue Report:

a. The proposed issue raised for consideration;

b. The identity of the party submitting the request for the Issue Report;

c. How that party is affected by the issue, if known;

d. Support for the issue to initiate the PDP, if known;

e. The opinion of the ICANN General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the Mission, policy process and more specifically the role of the GNSO as set forth in the Bylaws.

f. The opinion of ICANN Staff as to whether the Council should initiate the PDP on the issue.

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the Website for a public comment period that complies with the designated practice for public comment periods within ICANN.

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a Final Issue Report based upon the comments received. The Staff Manager should forward the Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO Council for consideration for initiation of a PDP.

Section 5. **Initiation of the PDP**

The Council may initiate the PDP as follows:

*Board Request*: If the Board requested an Issue Report, the Council, within the timeframe set forth in the PDP Manual, shall initiate a PDP. No vote is required for such action.

*GNSO Council or Advisory Committee Requests*: The Council may only initiate the PDP by a vote of the Council. Initiation of a PDP requires a vote as set forth in Section 11.3(i)(ii) and Section 11.3(i)(iii) in favor of initiating the PDP.

Section 6. **Reports**

An Initial Report should be delivered to the GNSO Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN, which time may be extended in accordance with the PDP Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

Section 7. **Council Deliberation**

Upon receipt of a Final Report, whether as the result of a working group or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP Manual.

The Council approval process is set forth in Section 11.3(i)(iv) through Section 11.3(vii), as supplemented by the PDP Manual.

Section 8. **Preparation of the Board Report**

If the PDP recommendations contained in the Final Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the Board.

Section 9. **Board Approval Processes**

The Board will meet to discuss the GNSO Council recommendation as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the PDP Recommendations contained within the Recommendations Report shall proceed as follows:

a. Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.

b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO Supermajority Vote or less than a GNSO Supermajority vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "**Supplemental Recommendation**") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

Section 10. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to ICANN staff to work with the GNSO Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy. The GNSO Council may, but is not required to, direct the creation of an implementation review team to assist in implementation of the policy.

Section 11. **Maintenance of Records**

Throughout the PDP, from policy suggestion to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each PDP issue. Such status page will outline the completed and upcoming steps in the PDP process, and contain links to key resources (e.g. Reports, Comments Fora, WG Discussions, etc.).

Section 12. **Additional Definitions**

"**Comment Site**", "**Comment Forum**", "**Comments For a**" and "**Website**" refer to one or more websites designated by ICANN on which notifications and comments regarding the PDP will be posted.

"**Supermajority Vote**" means a vote of more than sixty-six (66) percent of the members present at a meeting of the applicable body, with the exception of the GNSO Council.

"**Staff Manager**" means an ICANN staff person(s) who manages the PDP.

"**GNSO Supermajority Vote**" shall have the meaning set forth in the Bylaws.

Section 13. **Applicability**

The procedures of this Annex A shall be applicable to all requests for Issue Reports and PDPs initiated after 8 December 2011. For all ongoing PDPs initiated prior to 8 December 2011, the Council shall determine the feasibility of transitioning to the procedures set forth in this Annex A for all remaining steps within the PDP. If the Council determines that any ongoing PDP cannot be feasibly transitioned to these updated procedures, the PDP shall be concluded according to the procedures set forth in Annex A in force on 7 December 2011.

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## Annex A-1: GNSO Expedited Policy Development Process

The following process shall govern the specific instances where the GNSO Council invokes the GNSO Expedited Policy Development Process ("**EPDP**"). The GNSO Council may invoke the EPDP in the following limited circumstances: (1) to address a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the Board or the implementation of such an adopted recommendation; or (2) to create new or additional recommendations for a specific policy issue that had been substantially scoped previously such that extensive, pertinent background information already exists, e.g. (a) in an Issue Report for a possible PDP that was not initiated; (b) as part of a previous PDP that was not completed; or (c) through other projects such as a GGP. The following process shall be in place until such time as modifications are recommended to and approved by the Board. Where a conflict arises in relation to an EPDP between the PDP Manual (see Annex 2 of the GNSO Operating Procedures) and the procedures described in this Annex A-1, the provisions of this Annex A-1 shall prevail.

The role of the GNSO is outlined in Article 11 of these Bylaws. Provided the Council believes and documents via Council vote that the above-listed criteria are met, an EPDP may be initiated to recommend an amendment to an existing Consensus Policy; however, in all cases where the GNSO is conducting policy-making activities that do not meet the above criteria as documented in a Council vote, the Council should act through a Policy Development Process (see Annex A).

Section 1. **Required Elements of a GNSO Expedited Policy Development Process**

The following elements are required at a minimum to develop expedited GNSO policy recommendations, including recommendations that could result in amendments to an existing Consensus Policy, as part of a GNSO Expedited Policy Development Process:

a. Formal initiation of the GNSO Expedited Policy Development Process by the GNSO Council, including an EPDP scoping document;

b. Formation of an EPDP Team or other designated work method;

c. Initial Report produced by an EPDP Team or other designated work method;

d. Final EPDP Policy Recommendation(s) Report produced by an EPDP Team, or other designated work method, and forwarded to the Council for deliberation;

e. GNSO Council approval of EPDP Policy Recommendations contained in the Final EPDP Policy Recommendation(s) Report, by the required thresholds;

f. EPDP Recommendations and Final EPDP Recommendation(s) Report forwarded to the Board through a Recommendations Report approved by the Council; and

g. Board approval of EPDP Recommendation(s).

Section 2. **Expedited Policy Development Process Manual**

The GNSO shall include a specific section(s) on the EPDP process as part of its maintenance of the GNSO Policy Development Process Manual (PDP Manual), described in Annex 5 of the GNSO Operating Procedures. The EPDP Manual shall contain specific additional guidance on completion of all elements of an EPDP, including those elements that are not otherwise defined in these Bylaws. The E PDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d) .

Section 3. **Initiation of the EPDP**

The Council may initiate an EPDP as follows:

The Council may only initiate the EPDP by a vote of the Council. Initiation of an EPDP requires an affirmative Supermajority vote of the Council (as defined in Section 11.3(i)(xii) of these Bylaws) in favor of initiating the EPDP.

The request to initiate an EPDP must be accompanied by an EPDP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG / C;
2. Origin of issue (e.g. previously completed PDP);
3. Scope of the effort (detailed description of the issue or question that the EPDP is expected to address);
4. Description of how this issue meets the criteria for an EPDP, i.e. how the EPDP will address either: (1) a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the Board or the implementation of such an adopted recommendation, or (2) new or additional policy recommendations on a specific GNSO policy issue that had been

scoped previously as part of a PDP that was not completed or other similar effort, including relevant supporting information in either case;

5. If not provided as part of item 4, the opinion of the ICANN General Counsel as to whether the issue proposed for consideration is properly within the scope of the Mission, policy process and more specifically the role of the GNSO;

6. Proposed EPDP mechanism (e.g. WG, DT, individual volunteers);

7. Method of operation, if different from GNSO Working Group Guidelines;

8. Decision-making methodology for EPDP mechanism, if different from GNSO Working Group Guidelines;

9. Target completion date.

Section 4. **Council Deliberation**

Upon receipt of an EPDP Final Recommendation(s) Report, whether as the result of an EPDP Team or otherwise, the Council chair will (i) distribute the Final EPDP Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP Manual.

Approval of EPDP Recommendation(s) requires an affirmative vote of the Council meeting the thresholds set forth in Section 11.3(i)(xiv) and (xv), as supplemented by the PDP Manual.

Section 5. **Preparation of the Board Report**

If the EPDP Recommendation(s) contained in the Final EPDP Recommendation(s) Report are approved by the GNSO Council, a Recommendation(s) Report shall be approved by the GNSO Council for delivery to the Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the EPDP recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Recommendations Report from the Staff Manager. Board deliberation on the EPDP Recommendations contained within the Recommendations Report shall proceed as follows:

a. Any EPDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in

the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.

b. In the event that the Board determines, in accordance with paragraph a above, that the proposed EPDP Recommendations are not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and co mmunicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the guidance in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

Section 7. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the EPDP recommendations, the Board shall, as appropriate, give authorization or direction to ICANN staff to implement the EPDP Recommendations. If deemed necessary, the Board shall direct ICANN staff to work with the GNSO Council to create a guidance implementation plan, based upon the guidance recommendations identified in the Final EPDP Recommendation(s) Report.

Section 8. **Maintenance of Records**

Throughout the EPDP, from initiation to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each

EPDP issue. Such status page will outline the completed and upcoming steps in the EPDP process, and contain links to key resources (e.g. Reports, Comments Fora, EPDP Discussions, etc.).

Section 9. **Applicability**

The procedures of this Annex A-1 shall be applicable from 28 September 2015 onwards.

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## Annex A-2: GNSO Guidance Process

The following process shall govern the GNSO guidance process ("**GGP**") until such time as modifications are recommended to and approved by the Board . The role of the GNSO is outlined in Article 11 of these Bylaws. If the GNSO is conducting activities that are intended to result in a Consensus Policy, the Council should act through a Policy Development Process (see Annex A).

Section 1. **Required Elements of a GNSO Guidance Process**

The following elements are required at a minimum to develop GNSO guidance:

1. Formal initiation of the GNSO Guidance Process by the Council, including a GGP scoping document;
2. Identification of the types of expertise needed on the GGP Team;
3. Recruiting and formation of a GGP Team or other designated work method;
4. Proposed GNSO Guidance Recommendation(s) Report produced by a GGP Team or other designated work method;
5. Final GNSO Guidance Recommendation(s) Report produced by a GGP Team, or other designated work method, and forwarded to the Council for deliberation;
6. Council approval of GGP Recommendations contained in the Final Recommendation(s) Report, by the required thresholds;
7. GGP Recommendations and Final Recommendation(s) Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and
8. Board approval of GGP Recommendation(s).

Section 2. **GNSO Guidance Process Manual**

The GNSO shall maintain a GNSO Guidance Process (GGP Manual) within the operating procedures of the GNSO maintained by the GNSO Council. The GGP Manual shall contain specific additional guidance on completion of all elements of a GGP, including those elements that are not otherwise defined in these Bylaws. The GGP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d).

Section 3. **Initiation of the GGP**

The Council may initiate a GGP as follows:

The Council may only initiate the GGP by a vote of the Council or at the formal request of the ICANN Board. Initiation of a GGP requires a vote as set forth in Section 11.3(i)(xvi) in favor of initiating the GGP. In the case of a GGP requested by the Board, a GGP will automatically be initiated unless the GNSO Council votes against the initiation of a GGP as set forth in Section 11.3(i)(xvii).

The request to initiate a GGP must be accompanied by a GGP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG / C
2. Origin of issue (e.g., board request)
3. Scope of the effort (detailed description of the issue or question that the GGP is expected to address)
4. Proposed GGP mechanism (e.g. WG, DT, individual volunteers)
5. Method of operation, if different from GNSO Working Group Guidelines
6. Decision-making methodology for GGP mechanism, if different from GNSO Working Group Guidelines
7. Desired completion date and rationale

In the event the Board makes a request for a GGP, the Board should provide a mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for a GGP.

Section 4. **Council Deliberation**

Upon receipt of a Final Recommendation(s) Report, whether as the result of a GGP Team or otherwise, the Council chair will (i) distribute the Final Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the GGP Manual.

The Council approval process is set forth in Section 11.3(xviii) as supplemented by the GGP Manual.

Section 5. **Preparation of the Board Report**

If the GGP recommendations contained in the Final Recommendation(s) Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the GNSO Guidance recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the GGP Recommendations contained within the Recommendations Report shall proceed as follows:

a. Any GGP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such guidance is not in the best interests of the ICANN community or ICANN.

b. In the event that the Board determines, in accordance with paragraph a above, that the proposed GNSO Guidance recommendation(s) adopted by a GNSO Supermajority Vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on

the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN community or ICANN.

Section 7. **Implementation of Approved GNSO Guidance**

Upon a final decision of the Board adopting the guidance, the Board shall, as appropriate, give authorization or direction to ICANN staff to implement the GNSO Guidance. If deemed necessary, the Board may direct ICANN Staff to work with the GNSO Council to create a guidance implementation plan, if deemed necessary, based upon the guidance recommendations identified in the Final Recommendation(s) Report.

Section 8. **Maintenance of Records**

Throughout the GGP, from initiation to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each GGP issue. Such status page will outline the completed and upcoming steps in the GGP process, and contain links to key resources (e.g. Reports, Comments Fora, GGP Discussions, etc.).

Section 9. **Additional Definitions**

"**Comment Site**", "**Comment Forum**", "**Comments Fora**" and "**Website**" refer to one or more websites designated by ICANN on which notifications and comments regarding the GGP will be posted.

"**GGP Staff Manager**" means an ICANN staff person(s) who manages the GGP.

## Annex B: ccNSO Policy-Development Process (ccPDP)

The following process shall govern the ccNSO policy-development process ("**PDP**").

**1. Request for an Issue Report**

An Issue Report may be requested by any of the following:

a. *Council.* The ccNSO Council (in this Annex B, the "**Council**") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting by e-mail.

b. *Board.* The Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.

c. *Regional Organization.* One or more of the Regional Organizations representing ccTLDs in the ICANN recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

d. *ICANN Supporting Organization or Advisory Committee.* An ICANN Supporting Organization or an ICANN Advisory Committee may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

e. *Members of the ccNSO.* The members of the ccNSO may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO present at any meeting or voting by e-mail.

Any request for an Issue Report must be in writing and must set out the issue upon which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation for the purpose of determining whether or not the requested Issue Report should be created.

**2. Creation of the Issue Report and Initiation Threshold**

Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (in which case the costs of the Issue Manager shall be borne by ICANN) or such other person or persons selected by the Council (in which case the ccNSO shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

a. The proposed issue raised for consideration;

b. The identity of the party submitting the issue;

c. How that party is affected by the issue;

d. Support for the issue to initiate the PDP;

e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "**Manager**

**Recommendation**"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy process and within the scope of the ccNSO. In coming to his or her opinion, the General Counsel shall examine whether:
1) The issue is within the scope of the Mission;

2) Analysis of the relevant factors according to Section 10.6(b) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSO;

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

3) Implicates or affects an existing ICANN policy;

4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Annex C) shall be within the scope of ICANN and the ccNSO.

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Section 10.6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO shall inform the Issue Manager accordingly. General Counsel and the ccNSO Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP including both the opinion and analysis of General Counsel and Council in the Issues Report.

f. In the event that the Manager Recommendation is in favor of initiating the PDP, a proposed time line for conducting each of the stages of

PDP outlined herein ("**PDP Time Line**").

g. g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP.

**3. Initiation of PDP**

The Council shall decide whether to initiate the PDP as follows:

a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP. Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.

b. A vote of ten or more Council members in favor of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the Mission and the ccNSO Scope.

**4. Decision Whether to Appoint Task Force; Establishment of Time Line**

At the meeting of the Council where the PDP has been initiated (or, where the Council employs a vote by e-mail, in that vote) pursuant to Item 3 above, the Council shall decide, by a majority vote of members present at the meeting (or voting by e-mail), whether or not to appoint a task force to address the issue. If the Council votes:

a. In favor of convening a task force, it shall do so in accordance with Item 7 below.

b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by e-mail, approve or amend and approve the PDP Time Line set out in the Issue Report.

**5. Composition and Selection of Task Forces**

a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see Section 10.5) to appoint two individuals to participate in the task force (the "**Representatives**"). Additionally, the Council may appoint up to three advisors (the "**Advisors**") from outside the ccNSO and, following formal request for GAC participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.

b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.

c. The Council may also pursue other actions that it deems appropriate to assist in the PDP, including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the PDP Time Line.

**6. Public Notification of Initiation of the PDP and Comment Period**

After initiation of the PDP, ICANN shall post a notification of such action to the Website and to the other ICANN Supporting Organizations and Advisory Committees. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be commenced for the issue. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. The Issue Manager, or some other designated Council representative shall review the comments and incorporate them into a report (the "**Comment Report**") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

**7. Task Forces**

a. *Role of Task Force.* If a task force is created, its role shall be responsible for (i) gathering information documenting the positions of the ccNSO members within the Geographic Regions and other parties and groups; and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "**Charter**") within the time designated in the PDP Time Line. Such Charter shall include:

1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP;
2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and
3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by e-mail. The quorum requirements of Section 10.3(n) shall apply to Council actions under this Item 7(b).

c. *Appointment of Task Force Chair.* The Issue Manager shall convene the first meeting of the task force within the time designated in the PDP Time Line. At the initial meeting, the task force members shall, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. *Collection of Information*.

1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems appropriate, including the comments of the ccNSO members in that region that are not members of the Regional Organization, regarding the issue under consideration. The position of the Regional

Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "**Regional Statement**") within the time designated in the PDP Time Line. Every Regional Statement shall include at least the following:

(i) If a Supermajority Vote (as defined by the Regional Organization) was reached, a clear statement of the Regional Organization's position on the issue;

(ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by the members of the Regional Organization;

(iii) A clear statement of how the Regional Organization arrived at its position(s). Specifically, the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;

(iv) A statement of the position on the issue of any ccNSO members that are not members of the Regional Organization;

(v) An analysis of how the issue would affect the Region, including any financial impact on the Region; and

(vi) An analysis of the period of time that would likely be necessary to implement the policy.

*2. Outside Advisors.* The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP Time Line.

e. *Task Force Report.* The chair of the task force, working with the Issue Manager, shall compile the Regional Statements, the Comment Report, and other information or reports, as applicable, into a single document ("**Preliminary Task Force Report**") and distribute the Preliminary Task Force Report to the full task force within the time designated in the PDP Time Line. The task force shall have a final task force meeting to consider the issues and try and reach a Supermajority Vote. After the final task force meeting, the chair of the task force and the Issue Manager shall create the final task force report (the "**Task Force Report**") and post it on the Website and to the other ICANN Supporting Organizations and Advisory Committees. Each Task Force Report

must include:

1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue;
2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the time line for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position;
3. An analysis of how the issue would affect each Region, including any financial impact on the Region;
4. An analysis of the period of time that would likely be necessary to implement the policy; and
5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

**8. Procedure if No Task Force is Formed**

a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP Time Line.

b. The Council may, in its discretion, take other steps to assist in the PDP, including, for example, appointing a particular individual or organization, to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP Time Line.

c. The Council shall formally request the Chair of the GAC to offer opinion or advice.

d. The Issue Manager shall take all Regional Statements, the Comment Report, and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

**9. Comments to the Task Force Report or Initial Report**

a. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.

b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "**Final Report**". The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.

c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP Time Line.

**10. Council Deliberation**

a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members; (ii) call for a Council meeting within the time designated in the PDP Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC Chair an invitation to the GAC to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.

b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions, or any other means the Council may choose.

c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor; and (iii) accompanied by a detailed statement of the advisor's (a) qualifications and relevant experience and (b) potential conflicts of interest.

**11. Recommendation of the Council**

In considering whether to make a recommendation on the issue (a "**Council Recommendation**"), the Council shall seek to act by consensus. If a minority opposes a consensus position, that minority shall prepare and circulate to the Council a statement explaining its reasons for opposition. If the Council's discussion of the statement does not result in consensus, then a recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council, and shall be conveyed to the Members as the Council's Recommendation. Notwithstanding the foregoing, as outlined below, all viewpoints expressed by Council members during the PDP must be included in the Members Report.

**12. Council Report to the Members**

In the event that a Council Recommendation is adopted pursuant to Item 11 then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by the Council and then to be submitted to the Members (the "**Members Report**"). The Members Report must contain at least the following:

a. A clear statement of the Council's recommendation;

b. The Final Report submitted to the Council; and

c. A copy of the minutes of the Council's deliberation on the policy issue (see Item 10), including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

**13. Members Vote**

Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO members lodge votes in the first round of voting, the first round will not be employed and the results of a final, second round of voting, conducted after at least thirty days notice to the ccNSO members, will be employed if at least 50% of the ccNSO members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the

recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation.

**14. Board Report**

The Issue Manager shall within seven days after a ccNSO Recommendation being made in accordance with Item 13 incorporate the ccNSO Recommendation into a report to be approved by the Council and then to be submitted to the Board (the "**Board Report**"). The Board Report must contain at least the following:

a. A clear statement of the ccNSO recommendation;

b. The Final Report submitted to the Council; and

c. the Members' Report.

**15. Board Vote**

a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.

b. The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.

1. In the event that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.

2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "**Supplemental Recommendation**"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental

Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13 . In the event that more than 66% of the votes cast by ccNSO Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company.

4. In the event that the Board does not accept the ccNSO Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("**Supplemental Board Statement**").

5. In the event the Board determines not to accept a ccNSO Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

**16. Implementation of the Policy**

Upon adoption by the Board of a ccNSO Recommendation or ccNSO Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN staff to implement the policy.

**17. Maintenance of Records**

With respect to each ccPDP for which an Issue Report is requested (see Item 1), ICANN shall maintain on the Website a status web page detailing the progress of each ccPDP, which shall provide a list of relevant dates for the ccPDP and shall also link to the following documents, to the extent they have been prepared pursuant to the ccPDP:

a. Issue Report;

b. PDP Time Line;

c. Comment Report;

d. Regional Statement(s);

e. Preliminary Task Force Report;

f. Task Force Report;

g. Initial Report;

h. Final Report;

i. Members' Report;

j. Board Report;

k. Board Statement;

l. Supplemental Members' Report; and

m. Supplemental Board Statement.

In addition, ICANN shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

## Annex C: The Scope of the ccNSO

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO's policy-development role. As provided in Section 10.6(b) of the Bylaws, that scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO's authority and responsibilities must recognize the complex relation between ICANN and ccTLD managers/registries with regard to policy issues. This annex shall assist the ccNSO, the ccNSO Council, and the Board and staff in delineating relevant global policy issues.

*Policy areas*

The ccNSO's policy role should be based on an analysis of the following functional model of the DNS:

1. Data is registered/maintained to generate a zone file,
2. A zone file is in turn used in TLD name servers.

Within a **TLD** two functions have to be performed (these are addressed in greater detail below):

1. Entering data into a database ("**Data Entry Function**") and
2. Maintaining and ensuring upkeep of name-servers for the TLD ("**Name Server Function**").

These two core functions must be performed at the ccTLD registry level as well as at a higher level (IANA function and root servers) and at lower levels of the DNS hierarchy. This mechanism, as RFC 1591 points out, is recursive:

There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees fit (as long as it is true and correct).

*The Core Functions*

1. Data Entry Function (DEF):

Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions:

a. under which data will be collected and entered into a database or data changed (at the TLD level among others, data to reflect a transfer from registrant to registrant or changing registrar) in the database.

b. for making certain data generally and publicly available (be it, for example, through Whois or nameservers).

2. The Name-Server Function (NSF)

The name-server function involves essential interoperability and stability issues at the heart of the domain name system. The importance of this function extends to nameservers at the ccTLD level, but also to the root servers (and root-server system) and nameservers at lower levels.

On its own merit and because of interoperability and stability considerations, properly functioning nameservers are of utmost importance to the individual, as well as to the local and the global Internet communities.

With regard to the nameserver function, therefore, policies need to be defined and established. Most parties involved, including the majority of ccTLD registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC 1591.

*Respective Roles with Regard to Policy, Responsibilities, and Accountabilities*

It is in the interest of ICANN and ccTLD managers to ensure the stable and

proper functioning of the domain name system. ICANN and the ccTLD registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO cannot be established without reaching a common understanding of the allocation of authority between ICANN and ccTLD registries.

Three roles can be distinguished as to which responsibility must be assigned on any given issue:

- Policy role: i.e. the ability and power to define a policy;
- Executive role: i.e. the ability and power to act upon and implement the policy; and
- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue that needs to be addressed those who are involved in defining and setting the policy need to be determined and defined. Secondly, this presupposes an executive role defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to defined and determined.

The information below offers an aid to:

1. delineate and identify specific policy areas;
2. define and determine roles with regard to these specific policy areas.

This annex defines the scope of the ccNSO with regard to developing policies. The scope is limited to the policy role of the ccNSO policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.

*Name Server Function (as to ccTLDs)*

Level 1: Root Name Servers
Policy role: IETF, RSSAC (ICANN)
Executive role: Root Server System Operators
Accountability role: RSSAC (ICANN)

Level 2: ccTLD Registry Name Servers in respect to interoperability
Policy role: ccNSO Policy Development Process (ICANN), for best practices a ccNSO process can be organized

Executive role: ccTLD Manager
Accountability role: part ICANN (IANA), part Local Internet Community, including local government

Level 3: User's Name Servers
Policy role: ccTLD Manager, IETF (RFC)
Executive role: Registrant
Accountability role: ccTLD Manager

*Data Entry Function (as to ccTLDs)*

Level 1: Root Level Registry
Policy role: ccNSO Policy Development Process (ICANN)
Executive role: ICANN (IANA)
Accountability role: ICANN community, ccTLD Managers, (national authorities in some cases)

Level 2: ccTLD Registry
Policy role: Local Internet Community, including local government, and/or ccTLD Manager according to local structure
Executive role: ccTLD Manager
Accountability role: Local Internet Community, including national authorities in some cases

Level 3: Second and Lower Levels
Policy role: Registrant
Executive role: Registrant
Accountability role: Registrant, users of lower-level domain names

## ANNEX D: EC MECHANISM

### ARTICLE 1 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO APPROVE APPROVAL ACTIONS

**Section 1.1. APPROVAL ACTIONS**

The processes set forth in this Article 1 shall govern the escalation procedures for the EC's exercise of its right to approve the following (each, an "**Approval Action**") under the Bylaws:

a. Fundamental Bylaw Amendments, as contemplated by Section 25.2 of the Bylaws;

b. Articles Amendments, as contemplated by Section 25.2 of the Bylaws; and

c. Asset Sales, as contemplated by Article 26 of the Bylaws.

**Section 1.2. APPROVAL PROCESS**

Following the delivery of a Board Notice for an Approval Action ("**Approval Action Board Notice**") by the Secretary to the EC Administration and the Decisional Participants (which delivery date shall be referred to herein as the "**Approval Action Board Notification Date**"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Approval Action Board Notice. Any Approval Action Board Notice relating to a Fundamental Bylaw Amendment or Articles Amendment shall include a statement, if applicable, that the Fundamental Bylaw Amendment or Articles Amendment, as applicable, is based solely on the outcome of a PDP, citing the specific PDP and the provision in the Fundamental Bylaw Amendment or Articles Amendment subject to the Approval Action Board Notice that implements such PDP (as applicable, a "**PDP Fundamental Bylaw Statement**" or "**PDP Articles Statement**") and the name of the Supporting Organization that is a Decisional Participant that undertook the PDP relating to the Fundamental Bylaw Amendment or Articles Amendment, as applicable (as applicable, the "**Fundamental Bylaw Amendment PDP Decisional Participant**" or "**Articles Amendment PDP Decisional Participant**"). The process set forth in this Section 1.2 of this Annex D as it relates to a particular Approval Action is referred to herein as the "**Approval Process**."

**Section 1.3. APPROVAL ACTION COMMUNITY FORUM**

a. ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Approval Action (an "**Approval Action Community Forum**").

b. If the EC Administration requests a publicly-available conference call by providing a notice to the Secretary, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Approval Action Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website.

c. The Approval Action Community Forum shall be convened and concluded during the period beginning upon the Approval Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the Approval Action Board Notification Date ("**Approval Action Community Forum Period**"). If the EC Administration requests that the Approval Action Community Forum be held during the next

scheduled ICANN public meeting, the Approval Action Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the EC Administration. If the Approval Action Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the Approval Action Board Notification Date, the Approval Action Community Forum Period for the Approval Action shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

d. The Approval Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects, and/or, only if the Approval Action Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Approval Action Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of such Approval Action Community Forum, which ICANN shall promptly post on the Website.

e. The EC Administration shall manage and moderate the Approval Action Community Forum in a fair and neutral manner.

f. ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Approval Action prior to the convening of and during the Approval Action Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

g. ICANN staff and Directors representing the Board are expected to attend the Approval Action Community Forum in order to address any questions or concerns regarding the Approval Action.

h. For the avoidance of doubt, the Approval Action Community Forum is not a decisional body.

i. During the Approval Action Community Forum Period, an additional one or two Community Forums may be held at the discretion of the Board or the EC Administration. If the Board decides to hold an additional one or two Approval Action Community Forums, it shall provide a rationale for such decision, which rationale ICANN shall

promptly post on the Website.

j. ICANN will provide support services for the Approval Action Community Forum and shall promptly post on the Website a public record of the Approval Action Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Approval Action Community Forum.

**Section 1.4. DECISION WHETHER TO APPROVE AN APPROVAL ACTION**

(a) Following the expiration of the Approval Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Approval Action Community Forum Period (such period, the "**Approval Action Decision Period**"), with respect to each Approval Action, each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Approval Action, (ii) objects to such Approval Action or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Approval Action), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to the expiration of the Approval Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Approval Action Decision Period).

(b) The EC Administration shall, within twenty-four (24) hours of the expiration of the Approval Action Decision Period, deliver a written notice ("**EC Approval Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Article 1 of this Annex D, the EC has approved the Approval Action if:

(i) The Approval Action does not relate to a Fundamental Bylaw Amendment or Articles Amendment and is (A) supported by three or more Decisional Participants and (B) not objected to by more than one Decisional Participant;

(ii) The Approval Action relates to a Fundamental Bylaw Amendment and is (A) supported by three or more Decisional Participants (including the Fundamental Bylaw Amendment PDP Decisional Participant if the Board Notice included a PDP Fundamental Bylaw Statement) and (B)

not objected to by more than one Decisional Participant; or

(iii) The Approval Action relates to an Articles Amendment and is (A) supported by three or more Decisional Participants (including the Articles Amendment PDP Decisional Participant if the Board Notice included a PDP Articles Statement) and (B) not objected to by more than one Decisional Participant.

(c) If the Approval Action does not obtain the support required by Section 1.4(b)(i), (ii) or (iii) of this Annex D, as applicable, the Approval Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Approval Action Decision Period, deliver to the Secretary a notice certifying that the Approval Process has been terminated with respect to the Approval Action ("**Approval Process Termination Notice**").

(d) ICANN shall promptly post to the Website any (i) Approval Action Board Notice, (ii) EC Approval Notice, (iii) Approval Process Termination Notice, (iv) written explanation provided by the EC Administration related to any of the foregoing, and (v) other notices the Secretary receives under this Article 1.

## ARTICLE 2 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO REJECT SPECIFIED ACTIONS

### Section 2.1. Rejection Actions

The processes set forth in this Article 2 shall govern the escalation procedures for the EC's exercise of its right to reject the following (each, a "**Rejection Action**") under the Bylaws:

a. PTI Governance Actions, as contemplated by Section 16.2(d) of the Bylaws;

b. IFR Recommendation Decisions, as contemplated by Section 18.6(d) of the Bylaws;

c. Special IFR Recommendation Decisions, as contemplated by Section 18.12(e) of the Bylaws;

d. SCWG Creation Decisions, as contemplated by Section 19.1(d) of the Bylaws;

e. SCWG Recommendation Decisions, as contemplated by Section 19.4(d) of the Bylaws;

f. ICANN Budgets, as contemplated by Section 22.4(a)(v) of the Bylaws;

g. IANA Budgets, as contemplated by Section 22.4(b)(v) of the Bylaws;

h. Operating Plans, as contemplated by Section 22.5(a)(v) of the Bylaws;

i. Strategic Plans, as contemplated by Section 22.5(b)(v) of the Bylaws; and

j. Standard Bylaw Amendments, as contemplated by Section 25.1(e) of the Bylaws.

**Section 2.2. PETITION PROCESS FOR SPECIFIED ACTIONS**

(a) Following the delivery of a Board Notice for a Rejection Action ("**Rejection Action Board Notice**") by the Secretary to the EC Administration and Decisional Participants (which delivery date shall be referred to herein as the "**Rejection Action Board Notification Date**"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Rejection Action Board Notice. The process set forth in this Section 2.2 of this Annex D as it relates to a particular Rejection Action is referred to herein as the "**Rejection Process**."

(b) During the period beginning on the Rejection Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the date that is the 21st day after the Rejection Action Board Notification Date (as it relates to a particular Rejection Action, the "**Rejection Action Petition Period**"), subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant, seeking to reject the Rejection Action and initiate the Rejection Process (a "**Rejection Action Petition**").

(c) A Decisional Participant that has received a Rejection Action Petition shall either accept or reject such Rejection Action Petition; provided that a Decisional Participant may only accept such Rejection Action Petition if it was received by such Decisional Participant during the Rejection Action Petition Period.

> (i) If, in accordance with the requirements of Section 2.2(c) of this Annex D, a Decisional Participant accepts a Rejection Action Petition during the Rejection Action Petition Period, the Decisional Participant shall promptly provide to the EC Administration, the other Decisional Participants and the Secretary written notice ("**Rejection Action**

**Petition Notice**") of such acceptance (such Decisional Participant, the "**Rejection Action Petitioning Decisional Participant**"), and ICANN shall promptly post such Rejection Action Petition Notice on the Website. The Rejection Action Petition Notice shall also include:

(A) the rationale upon which rejection of the Rejection Action is sought. Where the Rejection Action Petition Notice relates to an ICANN Budget, an IANA Budget, an Operating Plan or a Strategic Plan, the Rejection Action Petition Notice shall not be valid and shall not be accepted by the EC Administration unless the rationale set forth in the Rejection Action Petition Notice is based on one or more significant issues that were specifically raised in the applicable public comment period(s) relating to perceived inconsistencies with the Mission, purpose and role set forth in ICANN's Articles of Incorporation and Bylaws, the global public interest, the needs of ICANN's stakeholders, financial stability, or other matter of concern to the community; and

(B) where the Rejection Action Petition Notice relates to a Standard Bylaw Amendment, a statement, if applicable, that the Standard Bylaw Amendment is based solely on the outcome of a PDP, citing the specific PDP and the provision in the Standard Bylaw Amendment subject to the Board Notice that implements such PDP ("**PDP Standard Bylaw Statement**") and the name of the Supporting Organization that is a Decisional Participant that undertook the PDP relating to the Standard Bylaw Amendment ("**Standard Bylaw Amendment PDP Decisional Participant**").

The Rejection Process shall thereafter continue pursuant to Section 2.2(d) of this Annex D.

(ii) If the EC Administration has not received a Rejection Action Petition Notice pursuant to Section 2.2(c)(i) of this Annex D during the Rejection Action Petition Period, the Rejection Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Period, deliver to the Secretary a notice certifying that the Rejection Process has been terminated with respect to the Rejection Action contained in the Approval Notice ("**Rejection Process Termination Notice**"). ICANN shall promptly post such Rejection Process Termination Notice on the Website.

(d) Following the delivery of a Rejection Action Petition Notice to the EC Administration pursuant to Section 2.2(c)(i) of this Annex D, the Rejection

Action Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Rejection Action Petition. The Rejection Action Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

(i) If the Rejection Action Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Rejection Action Supporting Decisional Participant**") during the period beginning upon the expiration of the Rejection Action Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 7th day after the expiration of the Rejection Action Petition Period (the "**Rejection Action Petition Support Period**"), the Rejection Action Petitioning Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Rejection Action Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Rejection Action Supporting Decisional Participant, and ICANN shall promptly post such Rejection Action Supported Petition on the Website. Each Rejection Action Supporting Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Rejection Action Petition, and ICANN shall promptly post each such notice on the Website. Such Rejection Action Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Rejection Action Petitioning Decisional Participant who shall act as a liaison with respect to the Rejection Action Supported Petition;

(C) a statement as to whether or not the Rejection Action Petitioning Decisional Participant and/or the Rejection Action Supporting Decisional Participant requests that ICANN organize a publicly-available conference call prior to the Rejection Action Community Forum (as defined in Section 2.3 of this Annex D) for the community to discuss the Rejection Action Supported Petition;

(D) a statement as to whether the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant have determined to hold the Rejection Action Community

Forum during the next scheduled ICANN public meeting, taking into account the limitation on holding such a Rejection Action Community Forum when the Rejection Action Supported Petition relates to an ICANN Budget or IANA Budget as described in Section 2.3(c) of this Annex D; and

(E) a PDP Standard Bylaw Statement, if applicable.

The Rejection Process shall thereafter continue for such Rejection Action Supported Petition pursuant to Section 2.3 of this Annex D. The foregoing process may result in more than one Rejection Action Supported Petition relating to the same Rejection Action.

(ii) The Rejection Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Support Period, deliver to the Secretary a Rejection Process Termination Notice, which ICANN shall promptly post on the Website, if:

(A) no Rejection Action Petitioning Decisional Participant is able to obtain the support of at least one other Decisional Participant for its Rejection Action Petition during the Rejection Action Petition Support Period; or

(B) where the Rejection Action Supported Petition includes a PDP Standard Bylaw Statement, the Standard Bylaw Amendment PDP Decisional Participant is not (x) the Rejection Action Petitioning Decisional Participant or (y) one of the Rejection Action Supporting Decisional Participants.

**Section 2.3. REJECTION ACTION COMMUNITY FORUM**

a. If the EC Administration receives a Rejection Action Supported Petition under Section 2.2(d) of this Annex D during the Rejection Action Petition Support Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Rejection Action Supported Petition ("**Rejection Action Community Forum**"). If the EC Administration receives more than one Rejection Action Supported Petition relating to the same Rejection Action, all such Rejection Action Supported Petitions shall be discussed at the same Rejection Action Community Forum.

b. If a publicly-available conference call has been requested in a

Rejection Action Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Rejection Action Community Forum relating to that Rejection Action Supported Petition, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website. If a conference call has been requested in relation to more than one Rejection Action Supported Petition relating to the same Rejection Action, all such Rejection Action Supported Petitions shall be discussed during the same conference call.

c. The Rejection Action Community Forum shall be convened and concluded during the period beginning upon the expiration of the Rejection Action Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period ("**Rejection Action Community Forum Period**") unless all Rejection Action Supported Petitions relating to the same Rejection Action requested that the Rejection Action Community Forum be held during the next scheduled ICANN public meeting, in which case the Rejection Action Community Forum shall be held during the next scheduled ICANN public meeting (except as otherwise provided below with respect to a Rejection Action Supported Petition relating to an ICANN Budget or IANA Budget) on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Rejection Action Petitioning Decisional Participant(s) and the Rejection Action Supporting Decisional Participant(s). If the Rejection Action Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period, the Rejection Action Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting. Notwithstanding the foregoing and notwithstanding any statement in the Rejection Action Supported Petition, a Rejection Action Community Forum to discuss a Rejection Action Supported Petition relating to an ICANN Budget or IANA Budget may only be held at a scheduled ICANN public meeting if such Rejection Action Community Forum occurs during the Rejection Action Community Forum Period, without any extension of such Rejection Action Community Forum Period.

d. The Rejection Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting

room and/or such other form of remote participation as the EC Administration selects, and/or, only if the Rejection Action Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Rejection Action Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of such Rejection Action Community Forum, which ICANN shall promptly post on the Website.

e. The EC Administration shall manage and moderate the Rejection Action Community Forum in a fair and neutral manner.

f. ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Rejection Action Supported Petition prior to the convening of and during the Rejection Action Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

g. ICANN staff (including the CFO when the Rejection Action Supported Petition relates to an ICANN Budget, IANA Budget or Operating Plan) and Directors representing the Board are expected to attend the Rejection Action Community Forum in order to address the concerns raised in the Rejection Action Supported Petition.

h. If the Rejection Action Petitioning Decisional Participant and each of the Rejection Action Supporting Decisional Participants for an applicable Rejection Action Supported Petition agree before, during or after the Rejection Action Community Forum that the issue raised in such Rejection Action Supported Petition has been resolved, such Rejection Action Supported Petition shall be deemed withdrawn and the Rejection Process with respect to such Rejection Action Supported Petition will be terminated. If all Rejection Action Supported Petitions relating to a Rejection Action are withdrawn, the Rejection Process will automatically be terminated. If a Rejection Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Rejection Action Supported Petition, deliver to the Secretary a Rejection Process Termination Notice. For the avoidance of doubt, the Rejection Action Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant(s).

i. During the Rejection Action Community Forum Period, an additional

one or two Rejection Action Community Forums may be held at the discretion of a Rejection Action Petitioning Decisional Participant and a related Rejection Action Supporting Decisional Participant, or the EC Administration.

j. ICANN will provide support services for the Rejection Action Community Forum and shall promptly post on the Website a public record of the Rejection Action Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Rejection Action Community Forum.

**Section 2.4. DECISION WHETHER TO REJECT A REJECTION ACTION**

(a) Following the expiration of the Rejection Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Community Forum Period (such period, the "**Rejection Action Decision Period**"), with respect to each Rejection Action Supported Petition, each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Rejection Action Supported Petition and has determined to reject the Rejection Action, (ii) objects to such Rejection Action Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Rejection Action Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to expiration of the Rejection Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Rejection Action Decision Period).

(b) The EC Administration, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, shall promptly deliver a written notice ("**EC Rejection Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Article 2 of Annex D, the EC has resolved to reject the Rejection Action if (after accounting for any adjustments to the below as required by the GAC Carve-out pursuant to Section 3.6(e) of the Bylaws if the Rejection Action Supported Petition included a GAC Consensus Statement):

> (i) A Rejection Action Supported Petition relating to a Rejection Action

other than a Standard Bylaw Amendment is (A) supported by four or more Decisional Participants and (B) not objected to by more than one Decisional Participant; or

(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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Who We Are
Get Started
Learning
Participate
Groups
Board
President's Corner
Staff
Careers

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Offices
Global Support
Security Team
PGP Keys
Certificate Authority
Registry Liaison
Specific Reviews
Organizational

Accountability & Transparency
Accountability Mechanisms
Independent Review Process
Request for Reconsideration
Ombudsman

Governance
Documents
Agreements
Specific Reviews
Annual Report
Financials
Document Disclosure
Planning
KPI Dashboard

Help
Dispute Resolution
Domain Name Dispute Resolution
Name Collision
Registrar Problems
WHOIS

Newsletter
Development and Public Responsibility
Reviews
Request a Speaker
For Journalists
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# R-82

RESPONDENT'S EXHIBIT

# Summary of Changes to Applicant Guidebook

Showing changes from 30 May 2011 version to version 2011-09-19

| Section | Topic | Change to Text | Rationale and Comments |
|---|---|---|---|
| *Module 1* | | | |
| Introductory section | | ~~A glossary of relevant terms is included at the end of this Applicant Guidebook.~~ | A glossary is included in the reference material available to applicants on the New gTLD Program page. |
| 1.1.1 | Application Submission Dates | The user registration and application submission periods open at 00:01~~[time]~~ UTC 12 January 2012 ~~[date]~~.<br><br>The user registration period closes at 23:59 ~~{[time]~~ UTC 29 March 2012~~[date]~~. New users to TAS will not be accepted beyond this time. Users already registered will be able to complete the application submission process.<br><br>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. | Updated to include dates based on Board resolution http://www.icann.org/en/minutes/resolutions-20jun11-en.htm |

# Summary of Changes to Applicant Guidebook

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| | | 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.<br><br>The application submission period closes at 23:59~~[time]~~ UTC 12 April 2012~~[date]~~. | |
| 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).<br><br>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 | Deleted reference to 60-day application submission period in accordance with 20 June 2011 Board resolution. |

# Summary of Changes to Applicant Guidebook

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| | | also be submitted through the online application system as instructed in the relevant questions.<br><br>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.<br><br>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.<br><br>~~The application submission period is expected to last for 60 days.~~<br>Following the close of the application submission period, ICANN will provide applicants w th periodic status updates on the progress of their applications. | |
| 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 | Added terminology for Application Comment period. |

# Summary of Changes to Applicant Guidebook

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| | | 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.<br><br>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 c~~C~~omments 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 | |

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| | | comment forum within the stated time period. | |
| 1.1.2.4 | GAC Early Warning | 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. | This change is an addition suggested by some GAC members. |
| 1.1.2.5 | Initial Evaluation | If batching is required, a~~A~~ process external to the application submission process will be employed to establish evaluation priority. This process will be based on an online ticketing system or other objective criteria. | Revised to clarify that the process for prioritizing applications only occurs if batching is required. |
| 1.2.1 | Eligibility | j. has been convicted, within the respective timeframes, of aiding, | Clarification in response to questions received. |

[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."

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| | | abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes ~~within the respective timeframes specified 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);<br>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 ~~within the respective timeframes listed 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); | |
| 1.2.10 | Resources for Applicant Assistance | A variety of support resources are available to gTLD applicants. For example, ICANN is~~may~~ establishing a means for providing financial assistance to eligible applicants, through a process independent of this Guidebook. In addition, ICANN will maintain ~~as well as providing~~ a webpage as an informational resource for applicants seeking assistance, and organizations offering support. More | Updated to reflect commitment by ICANN to establishing a program to ensure support for applicants from developing countries.<br>http://www.icann.org/en/minutes/resolutions-20jun11-en.htm |

# Summary of Changes to Applicant Guidebook

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| | | information will be available on ICANN's website at http://www.icann.org/en/topics/new-gtld-program.htm. | |
| 1.4.1.1 | TAS User Registration | No new user registrations will be accepted after 23:59 UTC 29 March 2012 ~~[date to be inserted in final version of Applicant Guidebook]~~. | Updated to reflect time and date for expected implementation timeframe. |
| 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~~[time]~~ UTC 12 April 2012~~[date]~~. | Updated to reflect time and date for expected implementation timeframe. |

# Summary of Changes to Applicant Guidebook

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| *Module 2* | | | |
| 2.1.1 | General Business Diligence and Criminal History | 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. | Updated to reflect discussions regarding potential ICANN collaboration with INTERPOL in the background screening process. |
| 2.2.1.2 | Reserved Names and Other Unavailable Strings | Reserved Names and Other Unavailable Strings<br><br>Certain names are not available as gTLD strings, as detailed in this section. | Heading and introduction updated to reflect content in section. |
| 2.2.1.2.1 | Reserved Names | | Section renumbered to incorporate additional content. |
| 2.2.1.2.2 | Declared Variants | | Section renumbered to incorporate additional content. |
| 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 | Updated in accordance with Board resolution direction regarding incorporation of text concerning protection for specific requested Red Cross and IOC names for the top level only during the initial application round, until the GNSO and GAC develop policy advice based on the global public interest.<br>http://www.icann.org/en/minutes/resolutions-20jun11-en.htm |

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| | | 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. [List included] | |
| 2.2.1.4.3 | Documentation Requirements | No text changes | Updated link in footnote 10. |
| *Annex to Module 2: Separable Country Names List* | | | |
| Introductory text | | ~~Under various proposed ICANN policies,~~ 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. | Updated to remove conditional language. |
| Entry for BQ | | Bonaire, S~~a~~int Eustatius and Saba | Updated in accordance with ISO 3166-1 Newsletter VI-9 http://www.iso.org/iso/newsletter_vi-9_fiji-myanmar_and_other_minor_corrections-incl_bulgaria.pdf |
| *Attachment to Module 2: Evaluation Questions and Criteria* | | | |
| 11(e) | Applicant Background | x. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, | Clarification in response to questions received. |

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| | | conspiring to commit, or failing to report any of the listed crimes ~~within the respective timeframes specified 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);<br>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 ~~within the respective timeframes listed 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); | |
| 12 | Evaluation Fee | 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.<br><br>The full amount in USD must be received by ICANN. Applicant is responsible for all transaction fees and exchange rate fluctuation. | Added detail in response to requests for additional guidance to applicants on wire transfer mechanisms. |

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| | | 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. | |
| 18 (b)-(c) | Mission/Purpose | No text changes | Moved detail to notes column for consistency with other questions. |
| 22 | Protection of Geographic Names | No text changes | Updated links to GAC documents. |
| 24-50 | Evaluation Questions | A complete answer is expected to be ~~approximately [x] to~~no more than [y] pages. | Updated page range estimates for responses to provide a maximum. |
| 29 | Registry Continuity | Registry Continuity: describe how the applicant will comply with registry continuity obligations as described in Specification 6 (section ~~1.~~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. | Updated to correct reference. |

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| *Module 3* | | | |
| 3.1 | GAC Advice on New gTLDs | The GAC has expressed the intention to develop a standard vocabulary and set of rules for use in providing its advice in this program. These will be published and, as a result, this section might be updated to reflect the terms established by the GAC.<br><br>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.<br><br>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.<br><br>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 | Updated in accordance with Board resolution direction to delete text indicating that future Early Warnings or Advice must contain particular information or take specified forms. http://www.icann.org/en/minutes/resolutions-20jun11-en.htm |

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| | | GAC advice to forward to the ICANN Board of Directors.<br><br>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).<br><br>~~ICANN's transparency requirements indicate that GAC Advice on New gTLDs should identify objecting countries, the public policy basis for the objection, and the process by which consensus was reached. To be helpful to the Board, the explanation might include, for example, sources of data and the information on which the GAC relied in formulating its advice.~~<br><br>~~The GAC has expressed the intention to create, in discussion with the ICANN Board, "a mutually agreed and understandable formulation for the communication of actionable GAC consensus advice regarding proposed new gTLD strings."~~<br><br>GAC Advice may take several forms, | |

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| | | among them:<br><br>I. The GAC advises ICANN that it is the consensus2 of the GAC that a particular application should not proceed~~, (or other terms created by the GAC to express that intent)~~. This will create a strong presumption for ICANN that the application should not be approved. In the event that the ICANN Board determines to approve an application despite the consensus advice of the GAC, pursuant to the ICANN Bylaws, the GAC and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. In the event the Board determines not to accept the GAC Advice, the Board will provide a rationale for its decision.<br><br>II.The GAC provides advice that ~~does not indicate the presence of a GAC consensus, or any advice that does not state that the application should not proceed (or other terms created by the GAC to express that intent).~~indicates that some | |

[2] The GAC will clarify the basis on which consensus advice is developed.

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| | | governments are concerned about a particular application. Such advice will be passed on to the applicant but will not create the presumption that the application should be denied, and such advice would not require the Board to undertake the process for attempting to find a mutually acceptable solution with the GAC should the application be approved. Note that in any case, that the Board will take seriously any other advice that GAC might provide and will consider entering into dialogue with the GAC to understand the scope of the concerns expressed.<br><br>III. The GAC advises ICANN ~~that GAC consensus is~~ that an application should not proceed unless remediated ~~(or other terms created by the GAC to express that intent)~~. This will raise a strong presumption for the Board that the application should not proceed. If there is a remediation method available in the Guidebook (such as securing government approval), that action may be taken. However, material amendments to applications are generally prohibited and if there is | |

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| | | no remediation method available, the application will not go forward and the applicant can re-apply in the second round.<br><br>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.<br><br>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). | |

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| 3.2.2 | Standing to 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. | This section was amended due to questions about the standing available to existing TLD operators or new gTLD applicants and whether parties requesting strings in the IDN ccTLD Fast Track would be permitted to object on this basis. For consistent treatment, these parties should also have standing to file a string confusion objection, in the case where the Fast Track request is lodged before the applied-for gTLD strings are announced. |
| 3.3 | Filing Procedures | For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce[3] (ICC), as supplemented by the ICC as needed.<br><br>For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce[4] (ICC), as supplemented by the ICC as needed. | Revised to indicate that the ICC may draft supplemental rules or other relevant documents in addition to the Rules for Expertise. |
| *Attachment to Module 3: New gTLD Dispute Resolution Procedure* | | | |
| 4(b)(iii) | Applicable Rules | For a Limited Public Interest Objection, the applicable DRSP Rules | Revised to indicate that the ICC may draft supplemental rules or other relevant documents in addition to the Rules |

[3] *See* http://www.iccwbo.org/court/expertise/id4379/index.html

[4] *Ibid.*

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| | | are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.<br><br>For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce[5] (ICC), as supplemented by the ICC as needed. | for Expertise. |
| 7(e) | Filing of the Objection | 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 ~~its~~ 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 ~~its~~ 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. | Revised to clarify that the 7 days are from the Objector's receipt of the error notice. |

[5] *Ibid.*

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| *Attachment to Module 5: Uniform Rapid Suspension System (URS)* | | | |
| 2.2 | Fees | ~~A limited "loser pays" model has been adopted for the URS.~~ Complaints listing fifteen~~twenty six~~ (15~~26~~) or more disputed domain names registered by the same registrant will be subject to a~~n~~ Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant. | Updated in accordance with Board resolution directing modification of the "loser pays" provision in the URS to apply to complaints involving 15 (instead of 26) or more domain names with the same registrant. http://www.icann.org/en/minutes/resolutions-20jun11-en.htm |
| *Attachment to Module 5: Registry Restrictions Dispute Resolution Procedure (RRDRP)* | | | |
| 1 | Parties to the Dispute | The parties to the dispute will be the harmed established institution~~organization or individual~~ and the gTLD registry operator. ICANN shall not be a party. | In response to public comment and recommendations, standing for the RRDRP was changed to established institutions only in the April 2011 draft of the Applicant Guidebook. When that change was made, section 5.1 was revised, but Section 1 was not updated accordingly. This change to section 1 is made to conform the language to the intent. |

# R-83

RESPONDENT'S EXHIBIT

# Minutes | Regular Meeting of the New gTLD Program Committee

This page is available in: English | العربية | Español | Français | Русский | 中文

14 May 2014

**Note: On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of Incorporation, Bylaws or ICANN's Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee's authority is set forth in its charter at http://www.icann.org/en/groups/board/new-gTLD.**

**A Regular Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held telephonically on 14 May 2014 at 13:00 UTC.**

**Committee Chairman Cherine Chalaby promptly called the meeting to order.**

**In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO, ICANN), Steve Crocker (Board Chairman), Chris Disspain, Bill Graham, Olga Madruga-Forti, Gonzalo Navarro, George Sadowsky, and Mike Silber.**

**Bruno Lanvin, Erika Mann, Ray Plzak and Kuo-Wei Wu sent apologies.**

**Jonne Soininen (IETF Liaison) and Suzanne Woolf (RSSAC Liaison) were in attendance as non-voting liaisons to the Committee. Heather Dryden was in attendance as an observer to the Committee.**

**Invited Guests: Rinalia Abdul Rahim (observing).**

**Secretary: John Jeffrey (General Counsel and Secretary).**

**ICANN Executives and Staff in attendance for all or part of the meeting: Akram Atallah (President, Global Domains Division); Megan Bishop (Board Support Coordinator); Michelle Bright (Board Support Manager); Samantha Eisner (Senior Counsel); Allen Grogan (Chief Contracting Counsel); Dan Halloran (Deputy General Counsel); Jamie Hedlund (Advisor to the President/CEO); Elizabeth Le (Senior Counsel); Cyrus Namazi (Vice President, DNS Industry Engagement); Olof Nordling (Senior Director, GAC Relations); Erika Randall (Counsel); Amy Stathos (Deputy General Counsel); and Christine Willett (Vice President, gTLD Operations).**

**These are the Minutes of the Meeting of the New gTLD Program Committee, which**

Help

**took place on 14 May 2014.**

1. **Consent Agenda**
   a. Approval of Minutes

2. **Main Agenda**
   a. Remaining Items from Beijing, Durban, Buenos Aires, and Singapore GAC Advice
      Rationale for Resolution 2014.05.14.NG02
   b. GAC Advice on .AMAZON (and related IDNs)
      Rationale for Resolution 2014.05.14.NG03
   c. Perceived Inconsistent String Confusion Objection Expert Determinations – Review Mechanism
   d. New gTLD Auction Rules
   e. New gTLD Program Financial Update

## 1. Consent Agenda

### a. Approval of Minutes

The Chair introduced the items on the Consent Agenda. Chris Disspain moved and Olga Madruga-Forti seconded the resolution to adopt the items on the consent agenda. The Committee took the following action:

> Resolved (2014.05.14.NG01), the ICANN Board New gTLD Program Committee (NGPC) approves the minutes of the 22 March, 26 March and 3-4 April 2014 NGPC meetings.
>
> **All members of the Committee present voted in favor of Resolution 2014.05.14.NG01. Bruno Lanvin, Erika Mann, Ray Plzak and Kuo-Wei Wu were unavailable to vote on the Resolution. The Resolution carried.**

## 2. Main Agenda

### a. Remaining Items from Beijing, Durban, Buenos Aires, and Singapore GAC Advice

The Committee continued its discussion of advice issued by the Governmental Advisory Committee (GAC) to the Board concerning the New gTLD Program. The Committee reviewed the proposed new iteration of the

scorecard to respond to the new advice from the GAC delivered in the Singapore Communiqué. Chris Disspain highlighted each of the new items of advice in the scorecard, and the Committee considered its proposed responses and actions.

The Committee's consideration of the Singapore Communiqué, included discussion of the GAC's advice on specific strings - .SPA, .RAM, and .INDIANS, and the comments submitted by the applicants. The Committee considered the negotiations with the impacted parties noted in the applicant responses, and discussed whether the Committee should encourage or provide opportunity for additional discussions.

Chris also highlighted certain remaining open items of GAC advice from the Beijing Communiqué, the Durban Communiqué, and the Buenos Aires Communiqué. He provided an update on the ongoing work to develop a response to address the GAC's advice regarding protections for Intergovernmental Organizations (IGOs) in light of the Board's action approving certain GNSO consensus policy recommendations on protections for IGOs-INGOs.

Olga Madruga-Forti noted that some members of the community continue to inquire about how the Committee intends to address the Category 2 Safeguard Advice concerning exclusive registry access. She requested that the Committee devote time at an upcoming meeting to explore potential options for addressing the advice.

Chris Disspain moved, and Bill Graham seconded the proposed resolution. Members of the Committee suggested edits to the scorecard, and the Committee took the following action:

> Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué").
>
> Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").
>
> Whereas, the GAC met during the ICANN 48 meeting in Buenos Aires and issued a Communiqué on 20 November 2013 ("Buenos Aires Communiqué").
>
> Whereas, the GAC met during the ICANN 49 meeting in Singapore and issued a Communiqué on 27 March 2014, which was amended on 16 April 2014 ("Singapore Communiqué").
>
> Whereas, the NGPC adopted scorecards to respond to certain items of the GAC's advice, which were adopted on 4 June 2013, 10 September 2013, 28 September 2013 and 5 February 2014.
>
> Whereas, the NGPC has developed another iteration of the scorecard to respond to certain remaining items of GAC advice in the Beijing Communiqué, the Durban Communiqué, the Buenos Aires Communiqué, and new advice in the Singapore Communiqué.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.05.14.NG02), the NGPC adopts the scorecard titled "GAC Advice (Beijing, Durban, Buenos Aires and Singapore): Actions and Updates" (14 May 2014), attached as Annex 1 [PDF, 436 KB] to this Resolution, in response to open items of Beijing, Durban, Buenos Aires and Singapore GAC advice as presented in the scorecard.

**All members of the Committee present voted in favor of Resolution 2014.05.14.NG02. Bruno Lanvin, Erika Mann, Ray Plzak and Kuo-Wei Wu were unavailable to vote on the Resolution. The Resolution carried.**

## Rationale for Resolution 2014.05.14.NG02

Article XI, Section 2.1 of the ICANN Bylaws http://www.icann.org/en/about/governance/bylaws#XI permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, its Buenos Aires Communiqué dated 20 November 2013, and its Singapore Communiqué dated 27 March 2014 (as amended 16 April 2014). The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The NGPC has previously addressed items of the GAC's Beijing, Durban, and Buenos Aires advice, but there are some items that the NGPC continues to work through. Additionally, the GAC issued new advice in its Singapore Communiqué that relates to the New gTLD Program. The NGPC is being asked to consider accepting some of the remaining open items of the Beijing, Durban, and Buenos Aires GAC advice, and new items of advice from Singapore as described in the scorecard in Annex 1 [PDF, 436 KB], dated 14 May 2014.

As part of its consideration of the GAC advice, ICANN posted the GAC advice on its website and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The Beijing GAC advice was posted on 18 April 2013 http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en, the Durban GAC advice was posted on 1 August 2013 http://newgtlds.icann.org/en/announcements-and-

media/announcement-01aug13-en, the Buenos Aires GAC advice was posted on 11 December 2013, and the Singapore advice was posted on 11 April 2014. The complete set of applicant responses is provided at: http://newgtlds.icann.org/en/applicants/gac-advice/.

In addition, on 23 April 2013, ICANN initiated a public comment forum to solicit community input on how the NGPC should address Beijing GAC advice regarding safeguards applicable to broad categories of new gTLD strings http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm. The NGPC has considered applicant responses in addition to the community feedback in formulating its response to the remaining items of GAC advice.

As part of its deliberations, the NGPC reviewed various materials, including, but not limited to, the following materials and documents:

- GAC Beijing Communiqué: https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_ Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2 [PDF, 238 KB]
- GAC Durban Communiqué: https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_ Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2 [PDF, 104 KB]
- GAC Buenos Aires Communiqué: https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_ GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2 [PDF, 97 KB]
- GAC Singapore Communiqué (as amended): https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2 [PDF, 147 KB]
- Applicant responses to GAC advice: http://newgtlds.icann.org/en/applicants/gac-advice/
- Applicant Guidebook, Module 3: http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf [PDF, 261 KB]

In adopting its response to remaining items of Beijing, Durban, and Buenos Aires GAC advice, and the new Singapore advice, the NGPC considered the applicant comments submitted, the GAC's advice transmitted in the Communiqués, and the procedures established in the AGB and the ICANN Bylaws. The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in a manner that permits the greatest possible number of new gTLD applications to continue to move forward as soon as possible.

> There are no foreseen fiscal impacts associated with the adoption of this resolution, but fiscal impacts of the possible solutions discussed will be further analyzed if adopted. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS.
>
> As part of ICANN's organizational administrative function, ICANN posted the Singapore Communiqué and officially notified applicants of the advice on 11 April 2014. The Buenos Aires Communiqué, the Durban Communiqué, and the Beijing Communiqué were posted on 11 December 2013, 18 April 2013 and 1 August 2013, respectively. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

b. GAC Advice on .AMAZON (and related IDNs)

The Committee continued its discussions of the advice issued by the GAC in the Durban Communiqué concerning the applications for .AMAZON and related IDNs in Japanese and Chinese. In the Durban Communiqué, the GAC advised that it had reached consensus on "GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook" on the applications for .AMAZON and related IDNs in Japanese and Chinese.

Chris Disspain outlined potential alternatives for the Committee to discuss to address the GAC's advice, which were revised to take into account the Committee's comments during its previous discussions of the matter. The Committee revisited the next steps and potential consequences associated with each of the alternative approaches.

The Committee engaged in a discussion about options to acknowledge, as appropriate, that there may be continuing dialogue between the concerned governments and Amazon S.á. r.l. Members of the Committee expressed their viewpoints on the merits of this approach. Olga Madruga-Forti made note of Module 3.1 of the Applicant Guidebook, and suggested that the GAC's advice should be considered in this context.

The Committee discussed a proposed resolution to respond to the GAC advice. After additional discussion, Gonzalo Navarro moved, and Olga Madruga-Forti seconded the resolution, and the Committee took the following action:

> Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").
>
> Whereas, the GAC advised the ICANN Board in its Durban Communiqué that the GAC reached "consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications: [t]he application for .amazon (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-

5591)." This item of GAC advice is identified in the GAC Register of Advice as 2013-07-18-Obj-Amazon.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.05.14.NG03), the NGPC accepts the GAC advice identified in the GAC Register of Advice as 2013-07-18-Obj-Amazon, and directs the President and CEO, or his designee, that the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591) filed by Amazon EU S.à r.l. should not proceed. By adopting the GAC advice, the NGPC notes that the decision is without prejudice to the continuing efforts by Amazon EU S.à r.l. and members of the GAC to pursue dialogue on the relevant issues.

**All members of the Committee present voted in favor of Resolution 2014.05.14.NG03. Bruno Lanvin, Erika Mann, Ray Plzak and Kuo-Wei Wu were unavailable to vote on the Resolution. The Resolution carried.**

## Rationale for Resolution 2014.05.14.NG03

The NGPC's action today, addressing open items of GAC advice concerning .AMAZON (and related IDNs in Japanese and Chinese), is part of the ICANN Board's role to address advice put to it by the Governmental Advisory Committee (GAC). Article XI, Section 2.1 of the ICANN Bylaws http://www.icann.org/en/about/governance/bylaws#XI permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The action being approved today is to accept the GAC's advice to the ICANN Board contained in the GAC's Durban Communiqué stating that it is the consensus of the GAC that the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591) should not proceed. The New gTLD Applicant Guidebook (AGB) provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application

should not be approved." (AGB § 3.1) To implement this advice, the NGPC is directing the ICANN President and CEO (or his designee) that the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591) filed by Amazon EU S.à r.l. should not proceed. By adopting the GAC advice, the NGPC notes that the decision is without prejudice to the continuing efforts by Amazon EU S.à r.l. and members of the GAC to pursue dialogue on the relevant issues.

As part of its consideration of the GAC advice, ICANN posted the GAC advice and officially notified applicants of the advice, including Amazon EU S.à r.l. (the applicant for .AMAZON (and related IDNs)), triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. Amazon's response to the Board is provided at: http://newgtlds.icann.org/en/applicants/gac-advice/, and the NGPC has considered this response as part of its deliberations on the GAC advice. In its response to the Board, Amazon asserted that the GAC advice should be rejected because: (1) it is inconsistent with international law; (2) the acceptance of GAC advice would be non-transparent and discriminatory, which conflicts with ICANN' governing documents; and (3) the GAC Advice contravenes policy recommendations implemented within the Applicant Guidebook and achieved through international consensus over many years.

The NGPC previously decided to further study and analyze the issues raised by the applicant and the GAC advice, and in a recent iteration of the GAC-NGPC Scorecard [PDF, 371 KB] adopted by the NGPC on 5 February 2014 noted that "ICANN has commissioned an independent, third-party expert to provide additional analysis on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments." The independent, third-party expert analysis [PDF, 737 KB] ("Expert Analysis") explores relevant international and local law on geographical indications, related international treaties, and principles of intellectual property law to address the specific issues of application of law at issue. Among other things, the Expert Analysis considers whether the consensus advice issued by the GAC is of such nature as to oblige ICANN to reject the application filed by Amazon, or to the contrary, whether the rules and principles cited by Amazon in its response of 23 August 2013 to the GAC's advice oblige ICANN to approve the applications for .AMAZON (and related IDNs). The Expert Analysis concludes the following:

> *As regards the application for assignment of the new gTLD '.amazon' filed by the Amazon company:*
>
> > *i) there is no rule of international, or even regional or national, law applicable in the field of geographical indications which obliges ICANN to reject the application;*

> *ii) there is no rule of international, or even regional or national, law applicable in the field of intellectual property and in particular of trade marks or in the field of fundamental rights, which obliges ICANN to accept this application.*

The Expert Analysis, which was considered as part of the NGPC's deliberations in adopting this resolution, was provided to the GAC as well as Amazon on 7 April 2014. ICANN provided the Expert Analysis to keep the parties informed and noted that it welcomed any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC's advice.

In response to the 7 April 2014 communication to the GAC and Amazon, ICANN received related correspondence, including the following, which were considered as part of the NGPC's action:

- Letter [PDF, 66 KB] dated 11 April 2014 from Mr. Fernando Rojas Samanéz (Vice Minister of Foreign Affairs, Peru). The letter comments on the independent, third party advice and requests that the NGPC reject the applications for .AMAZON. The letter comments on the Expert Analysis and requests that the NGPC reject the applications for .AMAZON.
- Letter dated 14 April 2014 from Mr. Benedicto Fonseca Filho (Director, Department of Scientific and Technological Themes, Ministry of External Relations, Federative Republic of Brazil) and Mr. Virgilio Fernandes Almeida (National Secretary for Information Technology Policies, Ministry of Science, Technology and Innovation, Federative Republic of Brazil). The letter reiterates Brazil's objection to the applications for .AMAZON.
- Letter dated 14 April 2014 from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon). The letter comments on the Expert Analysis and requests that the NGPC allow the applications for .AMAZON to continue to move forward.

The NGPC considered several significant factors during its deliberations about how to address the GAC advice concerning .AMAZON (and related IDNs). The NGPC had to balance the competing interests of each factor to arrive at a decision. The concerns raised by the relevant parties highlight the difficulty of the issue. In addition to the factors highlighted above, the following are among the factors the NGPC found to be significant:

- Although the NGPC does not have the benefit of the rationale relied upon by the GAC in issuing its consensus advice in the Durban Communiqué on the applications for .AMAZON (and related IDNs), the NGPC considered the reason/rationale provided in the GAC Early Warning [PDF, 79 KB] submitted on

behalf of the governments of Brazil and Peru on 20 November 2012 expressing concern regarding Amazon's application for the .AMAZON gTLD. In the Early Warning, the concerned governments indicated that among other reasons, it was requesting that Amazon withdraw its application because " [g]ranting exclusive rights to this specific gTLD to a private company would prevent the use of this domain for the purposes of public interest related to the protection, promotion and awareness raising on issues related to the Amazon biome. It would also hinder the possibility of use of this domain to congregate web pages related to the population inhabiting that geographical region." The Early Warning also explains that the applied-for string "matches part of the name, in English, of the 'Amazon Cooperation Treaty Organization', an international organization which coordinates initiatives in the framework of the Amazon Cooperation Treaty…."

- The NGPC also considered correspondence received on the matter, and takes particular note of correspondence from Amazon dated 4 July 2013 and 3 December 2013, wherein Amazon describes its "attempts to find a mutual resolution with the Governments of Brazil and Peru" concerning the .AMAZON applications, and the public interest commitments it is willing to include as contractually enforceable provisions in the Registry Agreement. Amazon indicates that it is willing to be contractually committed to do the following:
    - *Limit the registration of culturally sensitive terms such as "Amazonia," "Amazonas," and "Amazonica" under the .AMAZON new gTLD to OTCA [Organização do Tratado de Cooperação Amazônica's] and its Member Governments.*
    - *Continue to engage in good faith discussions with the OTCA and its member governments to identify any other existing terms of specific cultural sensitivity.*
    - *Present a Memorandum of Understanding to ICANN setting out Amazon's non-objection to any future application filed by the OTCA and/or its Member Governments for the terms ".AMAZONIA", ".AMAZONAS", or ".AMAZONICA".*
- The NGPC considered the community-developed processes established in the Applicant Guidebook, including Section 5.1 of the Applicant Guidebook, which provides that, "ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism."

As part of its deliberations, the NGPC's review of significant materials

included, but is not limited to the following, letters, materials and documents:

- GAC Early Warning: https://gacweb.icann.org/download/attachments/27131927/Amazon-BR-PE-58086.pdf?version=1&modificationDate=1353452622000&api=v2 [PDF, 79 KB]
- GAC Beijing Communiqué: https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_ Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2 [PDF, 238 KB]
- GAC Durban Communiqué: https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_ Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2 [PDF, 104 KB]
- GAC Buenos Aires Communiqué: https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_ GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2 [PDF, 97 KB]
- GAC Singapore Communiqué (Amended): https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2 [PDF, 147 KB]
- Applicant Guidebook, Module 3: http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf [PDF, 261 KB]
- Applicant responses to GAC advice: http://newgtlds.icann.org/en/applicants/gac-advice/
- Letter [PDF, 94 KB] dated 3 March 2013 from Stacey King (Sr. Corporate Counsel – Amazon).
- Letter [PDF, 68 KB] dated 4 July 2013 from Stacey King (Sr. Corporate Counsel – Amazon).
- Letter [PDF, 465 KB] dated 4 October 2013 from Mr. Ernesto H.F. Araújo (Chargé D' Affaires, a.i., Brazilian Embassy).
- Letter dated 3 December 2013 from Stacey King (Sr. Corporate Counsel – Amazon).
- Letter dated 24 December 2013 from Mr. Fernando Rojas Samanez (Vice Minister of Foreign Affairs, Peru).
- Letter [PDF, 72 KB] dated 10 January 2014 from Stacey King (Sr. Corporate Counsel – Amazon).

- Letter dated 3 March 2014 from Mr. Fernando Rojas Samanéz (Vice Minister of Foreign Affairs, Peru).
- Letter [PDF, 459 KB] dated 25 March 2014 from Ambassador Robby Ramlakhan (Secretary General, Amazon Cooperation Treaty Organization).
- Letter [PDF, 66 KB] dated 11 April 2014 from Mr. Fernando Rojas Samanéz (Vice Minister of Foreign Affairs, Peru).
- Letter dated 14 April 2014 from Mr. Benedicto Fonseca Filho (Director, Department of Scientific and Technological Themes, Ministry of External Relations, Federative Republic of Brazil) and Mr. Virgilio Fernandes Almeida (National Secretary for Information Technology Policies, Ministry of Science, Technology and Innovation, Federative Republic of Brazil).
- Letter dated 14 April 2014 from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon).

There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS. As part of ICANN's organizational administrative function, ICANN posted the Singapore Communiqué, the Buenos Aires Communiqué, the Durban Communiqué, and the Beijing Communiqué and officially notified applicants of the advice. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. Additionally, as noted above, the Expert Analysis was provided to the GAC as well as Amazon on 7 April 2014. ICANN provided the analysis to keep the parties informed and noted that it welcomed any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC's advice.

## c. Perceived Inconsistent String Confusion Objection Expert Determinations – Review Mechanism

Amy Stathos provided a report to the Committee about the public comments received on a possible review mechanism to address perceived inconsistent String Confusion Objection Expert Determinations. In her report she discussed the general themes and categories of comments submitted by the community, which included a discussion of the comments urging that the Committee not adopt the review mechanism, as well as those comments urging that a review mechanism with an expanded scope should be adopted to address additional String Confusion Objections and Expert Determinations in general. Amy highlighted the reasons provided by some of the public commenters in support of their recommended positions, and the Committee engaged in a discussion of the public comments and the potential consequences associated with the actions recommended by the comments.

The Chair inquired about whether public comments were submitted by the

applicants and registry operator that would be directly impacted if the review mechanism were adopted to address the perceived inconsistencies in the .CAR/.CARS and .CAM/.COM String Confusion Objection Expert Determinations. Amy reported on the comments received from those parties who would be directly impacted by the review mechanism. Chris Disspain asked whether the public comments presented a clear consensus on any one position.

The Committee engaged in a discussion about the development of the objection processes in the Applicant Guidebook, including the objection consolidation procedures noted in the Applicant Guidebook. George Sadowsky inquired whether there were policy matters implicated that may require some form of outreach to the GNSO, and the Committee engaged in a discussion of the same.

The Committee requested that additional briefing materials be prepared in light of the discussion so that the matter could be acted upon at a subsequent meeting.

## d. New gTLD Auction Rules

Christine Willett provided an update to the Committee on the New gTLD auction rules, noting that the auction rules were published in March 2014 and are consistent with the Applicant Guidebook. She highlighted some of the changes made to the auction rules in response to public comments, including rotating auction start times to better accommodate the fact that potential auction participants may be disbursed across different time zones. Christine noted that the Bidder's Agreement also was revised in response to public comments. She reported that as a next step, staff intended to publish a set of rules concerning indirect contention sets.

Christine provided an estimated timeline for auctions, and informed the Committee that the first auction was scheduled for 4 June 2014. She noted, however, that there were potentially some items that could impact the auction schedule, such as finalizing the name collision framework. Akram Atallah noted that there were alternative auction services being offered in the community.

George Sadowsky asked for clarification about how much of the auctions would be visible to the community on a real-time basis. Christine stated that the auction would be visible to the auction participants, but that the results would be published to the community. In response to questions from the Committee, Christine also provided additional clarity about what happens if an applicant defaults on payment of the bid.

## e. New gTLD Program Financial Update

The Committee did not consider this agenda item and decided that it should be considered at a subsequent meeting.

The Chair called the meeting to a close.

Published on 23 June 2014

You Tube
Twitter
LinkedIn
Flickr
Facebook
RSS Feeds
Community Wiki
ICANN Blog

Who We Are
Get Started
Learning
Participate
Groups
Board
President's Corner
Staff
Careers
Newsletter
Development and Public Responsibility

Contact Us
Offices
Global Support
Security Team
PGP Keys
Certificate Authority
Registry Liaison
Specific Reviews
Organizational Reviews
Request a Speaker
For Journalists

Accountability & Transparency
Accountability Mechanisms
Independent Review Process
Request for Reconsideration
Ombudsman

Governance
Documents
Agreements
Specific Reviews
Annual Report
Financials
Document Disclosure
Planning
KPI Dashboard
RFPs
Litigation
Correspondence

Help
Dispute Resolution
Domain Name Dispute Resolution
Name Collision
Registrar Problems
WHOIS

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# R-84

RESPONDENT'S EXHIBIT

Network Working Group
Request for Comments: 1591
Category: Informational

J. Postel
ISI

March 1994

# Domain Name System Structure and Delegation

## Status of this Memo

This memo provides information for the Internet community. This memo does not specify an Internet standard of any kind. Distribution of this memo is unlimited.

## 1. Introduction

This memo provides some information on the structure of the names in the Domain Name System (DNS), specifically the top-level domain names; and on the administration of domains. The Internet Assigned Numbers Authority (IANA) is the overall authority for the IP Addresses, the Domain Names, and many other parameters, used in the Internet. The day-to-day responsibility for the assignment of IP Addresses, Autonomous System Numbers, and most top and second level Domain Names are handled by the Internet Registry (IR) and regional registries.

## 2. The Top Level Structure of the Domain Names

In the Domain Name System (DNS) naming of computers there is a hierarchy of names. The root of system is unnamed. There are a set of what are called "top-level domain names" (TLDs). These are the generic TLDs (EDU, COM, NET, ORG, GOV, MIL, and INT), and the two letter country codes from ISO-3166. It is extremely unlikely that any other TLDs will be created.

Under each TLD may be created a hierarchy of names. Generally, under the generic TLDs the structure is very flat. That is, many organizations are registered directly under the TLD, and any further structure is up to the individual organizations.

In the country TLDs, there is a wide variation in the structure, in some countries the structure is very flat, in others there is substantial structural organization. In some country domains the second levels are generic categories (such as, AC, CO, GO, and RE), in others they are based on political geography, and in still others, organization names are listed directly under the country code. The organization for the US country domain is described in RFC 1480 [1].

Each of the generic TLDs was created for a general category of organizations. The country code domains (for example, FR, NL, KR, US) are each organized by an administrator for that country. These administrators may further delegate the management of portions of the naming tree. These administrators are performing a public service on behalf of the Internet community. Descriptions of the generic domains and the US country domain follow.

Of these generic domains, five are international in nature, and two are restricted to use by entities in the United States.

World Wide Generic Domains:

COM - This domain is intended for commercial entities, that is companies. This domain has grown very large and there is concern about the administrative load and system performance if the current growth pattern is continued. Consideration is being taken to subdivide the COM domain and only allow future commercial registrations in the subdomains.

EDU - This domain was originally intended for all educational institutions. Many Universities, colleges, schools, educational service organizations, and educational consortia have registered here. More recently a decision has been taken to limit further registrations to 4 year colleges and universities. Schools and 2-year colleges will be registered in the country domains (see US Domain, especially K12 and CC, below).

NET - This domain is intended to hold only the computers of network providers, that is the NIC and NOC computers, the administrative computers, and the network node computers. The customers of the network provider would have domain names of their own (not in the NET TLD).

ORG - This domain is intended as the miscellaneous TLD for organizations that didn't fit anywhere else. Some non-government organizations may fit here.

INT - This domain is for organizations established by international treaties, or international databases.

United States Only Generic Domains:

GOV - This domain was originally intended for any kind of government office or agency. More recently a decision was taken to register only agencies of the US Federal government in this domain. State and local agencies are registered in the country

domains (see US Domain, below).

MIL - This domain is used by the US military.

Example country code Domain:

US - As an example of a country domain, the US domain provides for the registration of all kinds of entities in the United States on the basis of political geography, that is, a hierarchy of <entity-name>.<locality>.<state-code>.US. For example, "IBM.Armonk.NY.US". In addition, branches of the US domain are provided within each state for schools (K12), community colleges (CC), technical schools (TEC), state government agencies (STATE), councils of governments (COG),libraries (LIB), museums (MUS), and several other generic types of entities (see RFC 1480 for details [1]).

To find a contact for a TLD use the "whois" program to access the database on the host rs.internic.net. Append "-dom" to the name of TLD you are interested in. For example:

```
whois -h rs.internic.net us-dom
```

or

```
whois -h rs.internic.net edu-dom
```

## 3. The Administration of Delegated Domains

The Internet Assigned Numbers Authority (IANA) is responsible for the overall coordination and management of the Domain Name System (DNS), and especially the delegation of portions of the name space called top-level domains. Most of these top-level domains are two-letter country codes taken from the ISO standard 3166.

A central Internet Registry (IR) has been selected and designated to handled the bulk of the day-to-day administration of the Domain Name System. Applications for new top-level domains (for example, country code domains) are handled by the IR with consultation with the IANA. The central IR is INTERNIC.NET. Second level domains in COM, EDU, ORG, NET, and GOV are registered by the Internet Registry at the InterNIC. The second level domains in the MIL are registered by the DDN registry at NIC.DDN.MIL. Second level names in INT are registered by the PVM at ISI.EDU.

While all requests for new top-level domains must be sent to the Internic (at hostmaster@internic.net), the regional registries are often enlisted to assist in the administration of the DNS, especially in solving problems with a country administration. Currently, the RIPE NCC is the regional registry for Europe and the APNIC is the

Exhibit R-84



regional registry for the Asia-Pacific region, while the INTERNIC administers the North America region, and all the as yet undelegated regions.

The contact mailboxes for these regional registries are:

| | |
|---|---|
| INTERNIC | hostmaster@internic.net |
| APNIC | hostmaster@apnic.net |
| RIPE NCC | ncc@ripe.net |

The policy concerns involved when a new top-level domain is established are described in the following. Also mentioned are concerns raised when it is necessary to change the delegation of an established domain from one party to another.

A new top-level domain is usually created and its management delegated to a "designated manager" all at once.

Most of these same concerns are relevant when a sub-domain is delegated and in general the principles described here apply recursively to all delegations of the Internet DNS name space.

The major concern in selecting a designated manager for a domain is that it be able to carry out the necessary responsibilities, and have the ability to do a equitable, just, honest, and competent job.

1) The key requirement is that for each domain there be a designated manager for supervising that domain's name space. In the case of top-level domains that are country codes this means that there is a manager that supervises the domain names and operates the domain name system in that country.

   The manager must, of course, be on the Internet. There must be Internet Protocol (IP) connectivity to the nameservers and email connectivity to the management and staff of the manager.

   There must be an administrative contact and a technical contact for each domain. For top-level domains that are country codes at least the administrative contact must reside in the country involved.

2) These designated authorities are trustees for the delegated domain, and have a duty to serve the community.

   The designated manager is the trustee of the top-level domain for both the nation, in the case of a country code, and the global Internet community.

Concerns about "rights" and "ownership" of domains are inappropriate. It is appropriate to be concerned about "responsibilities" and "service" to the community.

3) The designated manager must be equitable to all groups in the domain that request domain names.

   This means that the same rules are applied to all requests, all requests must be processed in a non-discriminatory fashion, and academic and commercial (and other) users are treated on an equal basis. No bias shall be shown regarding requests that may come from customers of some other business related to the manager -- e.g., no preferential service for customers of a particular data network provider. There can be no requirement that a particular mail system (or other application), protocol, or product be used.

   There are no requirements on subdomains 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 subdomains shall be allowed to operate their own domain name servers, providing in them whatever information the subdomain manager sees fit (as long as it is true and correct).

4) Significantly interested parties in the domain should agree that the designated manager is the appropriate party.

   The IANA tries to have any contending parties reach agreement among themselves, and generally takes no action to change things unless all the contending parties agree; only in cases where the designated manager has substantially mis-behaved would the IANA step in.

   However, it is also appropriate for interested parties to have some voice in selecting the designated manager.

   There are two cases where the IANA and the central IR may establish a new top-level domain and delegate only a portion of it: (1) there are contending parties that cannot agree, or (2) the applying party may not be able to represent or serve the whole country. The later case sometimes arises when a party outside a country is trying to be helpful in getting networking started in a country -- this is sometimes called a "proxy" DNS service.

   The Internet DNS Names Review Board (IDNB), a committee established by the IANA, will act as a review panel for cases in which the parties can not reach agreement among themselves. The IDNB’s decisions will be binding.

5) 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 the central IR (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.

   There must be a primary and a secondary nameserver that have IP connectivity to the Internet and can be easily checked for operational status and database accuracy by the IR and the IANA.

   In cases when there are persistent problems with the proper operation of a domain, the delegation may be revoked, and possibly delegated to another designated manager.

6) For any transfer of the designated manager trusteeship from one organization to another, the higher-level domain manager (the IANA in the case of top-level domains) must receive communications from both the old organization and the new organization that assure the IANA that the transfer in mutually agreed, and that the new organization understands its responsibilities.

   It is also very helpful for the IANA to receive communications from other parties that may be concerned or affected by the transfer.

## 4. Rights to Names

1) Names and Trademarks

   In case of a dispute between domain name registrants as to the rights to a particular name, the registration authority shall have no role or responsibility other than to provide the contact information to both parties.

   The registration of a domain name does not have any Trademark status. It is up to the requestor to be sure he is not violating anyone else’s Trademark.

2) Country Codes

   The IANA is not in the business of deciding what is and what is not a country.

The selection of the ISO 3166 list as a basis for country code top-level domain names was made with the knowledge that ISO has a procedure for determining which entities should be and should not be on that list.

## 5. Security Considerations

Security issues are not discussed in this memo.

## 6. Acknowledgements

Many people have made comments on draft version of these descriptions and procedures. Steve Goldstein and John Klensin have been particularly helpful.

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[1] Cooper, A., and J. Postel, "The US Domain", RFC 1480, USC/Information Sciences Institute, June 1993.

[2] Reynolds, J., and J. Postel, "Assigned Numbers", STD 2, RFC 1340, USC/Information Sciences Institute, July 1992.

[3] Mockapetris, P., "Domain Names - Concepts and Facilities", STD 13, RFC 1034, USC/Information Sciences Institute, November 1987.

[4] Mockapetris, P., "Domain Names - Implementation and Specification", STD 13, RFC 1035, USC/Information Sciences Institute, November 1987.

[6] Partridge, C., "Mail Routing and the Domain System", STD 14, RFC 974, CSNET CIC BBN, January 1986.

[7] Braden, R., Editor, "Requirements for Internet Hosts -- Application and Support", STD 3, RFC 1123, Internet Engineering Task Force, October 1989.

# R-85

RESPONDENT'S EXHIBIT

# Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

This document contains the ICANN reply notes to the:

- "GAC indicative scorecard on new gTLD outstanding issues" of 23 February 2011, and
- "GAC comments on the ICANN Board's response to the GAC Scorecard" of 12 April 2011.

The original "Notes" document has been revised to reflect the ICANN reasoning based on discussions in San Francisco and the GAC Response dated 12 April 2011. In order to keep the document from becoming unwieldy and to make it relatively easy to follow, the original Board Notes column has been "redlined." However the rest of the document remains the same and does not contain the most recent "GAC comments", which are posted at the link indicated above. (Note: the simple formatting has some drawbacks. For example, the issue numbers no longer completely match those in the new "GAC comments" where the GAC have realigned the comments in a way that makes more sense.)

As before, each GAC scorecard item is noted with a "1A", "1B", or "2". Some scores have been adjusted to reflect changes made by the GAC and Board.

- "1A" indicates that the Board's position is consistent with GAC advice as described in the Scorecard.
- "1B" indicates that the Board's position is consistent with GAC advice as described in the Scorecard in principle, but that the implementation of the advice might be different than the GAC's recommendation.
- "2" indicates that the Board's current position is not consistent with GAC advice as described in the Scorecard and GAC Response.

**Results:**

The recent ICANN Board – GAC consultations were successful in a number of ways. They were substantive, effective, results-oriented working sessions that created the gravamen for an effective ICANN - government working model going forward.

These consultations have resulted in several victories for ICANN and the GAC: the GAC agreed that ICANN should prepare for an economic study to be undertaken after the first round to measure program effectiveness and indicate improvements;

# Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

ICANN agreed to implement a "GAC Advice for New gTLDs" process. In these and other areas, both sides have made accommodations and also reached areas of agreement.

It should be noted that in any negotiation of 80 separate points, such as we have here, the final score is not going to be 80 to zero. At the end of the day, it seems the Board is going to have to say in some cases, "we are going against GAC advice," but the Board has made serious and effective changes in response to the first GAC scorecard – as has the GAC. It is important to recognize that although there are "2's" remaining, some of the solutions generated were intended to address the set of GAC concerns, even if they do not specifically address each point.

For example, the GAC Early Warning and the GAC Advice processes are intended to address specific GAC concerns about their role vis-à-vis the Board, but these processes were designed to address other GAC issues as well, e.g., broadening definitions of community and geographic TLDs. So while the Scorecard indicates that there are still areas of disagreement (i.e., "2s") some of those areas are addressed in the broad nature of some of the solutions.

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| **1.** | **The objection procedures including the requirements for governments to pay fees** | | |
| 1. | Delete the procedures related to "Limited Public Interest Objections" in Module 3. | **1A** | The GAC indicated in Brussels and its 12 April "GAC comments" that it would be consistent with GAC advice to leave the provision for Limited Public Interest Objections in the Guidebook for entities other than GAC members and other governments, instead of the original GAC recommendation that the entire section be deleted. New, proposed GAC review procedures have been created (please see below). ICANN will also adopt the GAC recommendation that ICANN amend the title of Module 3 to "Objection Procedures" to more accurately reflect the intention to provide the GAC with a separate procedure for objections based on public policy concerns. |
| **2.** | **Procedures for the review of sensitive strings** | | |

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| 2.1.1 | ***1. String Evaluation and Objections Procedure***<br>Amend the following procedures related to the Initial Evaluation called for in Module 2 to include review by governments, via the GAC.<br>At the beginning of the Initial Evaluation Period, ICANN will provide the GAC with a detailed summary of all new gTLD applications.<br>Any GAC member may raise an objection to a proposed string for any reason. The GAC will consider any objection raised by a GAC member or members, and agree on advice to forward to the ICANN Board. | **1B** | The Board certainly respects that there are no mandated timeframes for GAC policy advice, nor a requirement to provide consensus advice to the Board. It is nonetheless useful for the efficiency of the process that GAC advice be timely, useful and documented. The Board appreciates that the GAC will endeavor to respond within the comment period and agrees that ICANN should attempt to set the time for the early warning period to be at 60 days.<br><br>Coincident with the posting of this summary is also a proposal where the current application evaluation process flow would be augmented to include a GAC Early Warning procedure and a GAC Advice on New gTLDs (i.e., objection) procedure. GAC Early Warning and GAC Advice on New gTLDs can be applied to any application, e.g., sensitive, community, sector, or geographic strings of any type.<br><br>The Early Warning Notice does not require GAC consensus; it requires a GAC decision to issue a notice based upon statements of member states or governments.<br><br>The GAC Advice on New gTLDs procedure does not require GAC consensus but GAC advice that is stated to be a "GAC consensus" position and that states "this application should not proceed," will create a strong presumption for the Board that the application should not be approved. If the Board then decides to approve the application, a Bylaws-required good faith attempt at reconciliation would be triggered.<br><br>Additional detail and rationale for the positions is included in the companion paper posted with this summary. |
| 2.1.2 | GAC advice could also suggest measures to | **2** | The Board appreciates that the Bylaws do not limit the GAC's ability to |

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| | mitigate GAC concerns. For example, the GAC could advise that additional scrutiny and conditions should apply to strings that could impact on public trust (e.g. '.bank'). | | provide advice on public policy matters. We hope that GAC Early Warning would encourage applicants to resolve the issue or withdraw if appropriate. The refund is set at a higher rate than the otherwise maximum refund in order to encourage withdrawal in the face of the potential government-level objection.<br><br>If the GAC were to provide suggested changes to mitigate concerns that lead to changes in the application, we are concerned that the advice would lead to ad hoc changes to the evaluation process based on subjective assessments.<br><br>The current process, for good reason, provides very limited ability for applicants to amend their application. Allowing amendments would encourage abuses and, we believe, actually increase the number of controversial applications. For example, if the GAC Early Warning required government approval for an application to go forward, that could be remedied. However, if the GAC advised that the string itself raised impermissible sensitivities, the applicant is not allowed to amend the application to change the string. That applicant could withdraw for a greater refund. |
| 2.1.3 | In the event the Board determines to take an action that is not consistent with GAC advice pursuant to Article XI Section 2.1 j and k, the Board will provide a rationale for its decision. | **1A** | This is settled. |
| 2.2 | ***2. Expand Categories of Community-based Strings*** | | |

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| | Amend the provisions and procedures contained in Modules 1 and 3 to clarify the following: | | |
| 2.2.1 | "Community-based strings" include those that purport to represent or that embody a particular group of people or interests based on historical, cultural or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non exhaustive). In addition, those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse, should also be considered "community-based" strings. | **2** | It is true that the Board has rejected the idea that community name definitions be expanded to include other sectors and regulated business, but it the Board does not suggest substituting a Community objections procedure for the more proactive and preventative mechanism that would require an affirmative demonstration of Community support.<br><br>Expansion of categories in a clear way is extremely difficult. This is reflected in the public comment received. Community definitions have been drawn narrowly in the Guidebook to prevent abuses. Even expansion of categories will probably not address GAC concerns in some way as even the expanded definition might leave some genuine area of sensitivity unaddressed.<br><br>The proposed GAC Early Warning and GAC Advice on New gTLDs procedures are designed to address the GAC concern, i.e., so the GAC can provide input on any application for any reason, eliminating the need for specific definitions. Therefore, the procedures will address sensitive, community, geographic and sector (regulated industry) string issues and give indications to applicants on ways to avoid formal objections. |
| 2.2.2 | Applicants seeking such strings should be required to affirmatively identify them as "community-based strings" and must demonstrate their affiliation with the affected community, the specific purpose | **2** | See section above. The GAC Early Warning and GAC Advice procedures can be applied to any application, regardless of whether the applicant has been self-designated as a community TLD.<br><br>The GAC's suggestion would require applicants to designate |

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| | of the proposed TLD, and –when opportune evidence of support or non-objection from the relevant authority/ies that the applicant is the appropriate or agreed entity for purposes of managing the TLD. | | themselves as a community, even if they might not be.<br><br>Strings may have many meanings, not all of which might implicate a community.<br><br>Reducing the context for how strings may be used is contrary to an important goal of the new gTLD program, which is to help encourage competition, innovation and consumer choice. |
| 2.2.3 | In the event the proposed string is either too broad to effectively identify a single entity as the relevant authority or appropriate manager, or is sufficiently contentious that an appropriate manager cannot be identified and/or agreed, the application should be rejected. | **2** | As described above and in the accompanying paper, the GAC may object to any application. |
| 2.2.4 | The requirement that objectors must demonstrate "material detriment to the broader Internet community" should be amended to reflect simply "material detriment", as the former represents an extremely vague standard that may prove impossible to satisfy. | **1A** | Applicant Guidebook has been revised to clarify this aspect of the standards.<br><br>The new standard in the Guidebook reads: "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." |
| 2.2.5 | Individual governments that choose to file objections to any proposed "community-based" string should not be required to pay fees. | **1B** | A companion paper considers several models that balance the government interests and the need for ICANN to maintain a reasonable extent of control over expenditures. It recommends that a pre-determined amount of funding be designated by ICANN for each individual government, for the purpose of funding objection fees where a government wished to file a formal objection. Each |

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| | | | government would be allotted an equal amount, and could continue to draw on such funds up to the maximum at its discretion, with the guarantee that at least one objection be fully funded. By fixing the funding amount (instead of the number of objections), governments could tailor the objections to minimize dispute resolution costs.<br>This would provide ability for governments to object without cost and even collaborate on which governments will file objections, while putting a ceiling on the maximum costs.<br><br>This leaves several options for governments: GAC Early Warning and GAC Advice on New gTLDs (no fee); the loser pays model where governments who win their objections pay no fees; limited number of objections paid by ICANN; and, in an option to be explored further, the possibility that governments faced with high numbers of objectionable applications in their region request extraordinary funding from ICANN or some other source to be identified.<br><br>Detail and rationale are provided in the paper. |
| **3.** | **Root Zone Scaling** | | |
| 3.1.1 | The Board should continue implementing a monitoring and alerting system and ensure a) that ICANN can react predictably and quickly when there are indicators that new additions and changes are straining the root zone system, and | **1A** | Root zone monitoring systems are currently in place. ICANN will work with root zone operators to identify relevant reporting metrics and establish a process to report such metrics to the GAC and the Internet community.<br><br>Furthermore, a process will be implemented that enables the delegation of TLDs to be slowed or stopped in the event there is a strain to the root zone system.<br><br>ICANN also commits to review the effects of the new gTLD program on the operations of the root zone system, and defer the delegations in |

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| | | | the second round until it is determined that the delegations in the first round did not jeopardize root zone system security or stability.<br><br>Pleased with concurrence on this issue and taking the next step to execute on its commitments, ICANN has drafted a companion paper to this document describing root zone scaling efforts: monitoring root zone stability and planning ICANN operations for increased delegation rates and provision of services to larger numbers of registries. This plan includes a hold on new delegations after the first round until stability is tested and assured. Included as an annex to that paper is a draft document: Root Server System Management Strategy. This document is the first draft of the plan to monitor root zone performance. |
| 3.1.2 | b) that the processes and possible resulting restorative measures that flow from its results are fully described in the Application Guidebook before the start of the first application round. | | See 3.1.1 |
| 3.2 | The Board commits to defer the launch of a second round or batch of applications unless an evaluation shows that there are indications from monitoring the root system etc. that a first (limited) round did not in any way jeopardize the security and stability of the root zone system. | | See 3.1.1 |
| 3.3 | The Board commits to make the second round or batch of applications contingent on a clean sheet from full technical and administrative assessment of impact of the first round with recommendations which should go out to public comment for | | See 3.1.1 |

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| | approval. | | |
| 3.4 | The Board commits to avoid the possibility that other activities will be impacted by the possible diversion of resources to processing new gTLD applications. | **1A** | ICANN commits that the operation of the IANA functions and ICANN's coordination of the root zone system will not be negatively affected. The companion paper on Root Zone Scaling describes staffing plans to ensure ongoing day-to-day operations at ICANN. These operations include delegation, redelegation, root zone changes, contractual compliance and registry liaison. Be advised that these calculations of manpower are not yet part of the ICANN operational plan. ICANN will continue to test these assumptions in order to create and execute an operating plan that addresses these requirements. |
| 3.5 | The Board should ensure that ICANN can effectively address the specific needs of applicants from different, perhaps non-English speaking cultures, and with different legal environments. | **1A** | ICANN's planning routinely takes into account non-English speaking and different legal environments. We will ensure that planning is included for handling new gTLDs. |
| 3.6 | The Board should monitor the pace and effectiveness of ICANN's management of contract negotiations for new gTLDs in a potential situation of 200 to 300 simultaneous applications and evaluations. | **1A** | |
| 3.7 | The Board is confident that all relevant actors (IANA, root server operators, etc) are sufficiently informed about what is expected from them in terms of work loadings and resources in order to fulfil their respective roles, in particular the pre delegation checking, approvals, implementation of potentially 200 to 300 | **1A** | |

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| | root zone changes a year and expected post-delegation changes. | | |
| **4.** | **Market and Economic Impacts** | | |
| 4.1 | Amend the final Draft Applicant Guidebook to incorporate the following:<br><br>Criteria to facilitate the weighing of the potential costs and benefits to the public in the evaluation and award of new gTLDs. | **1A** | The Board notes and appreciates the revised GAC proposal that the Board should identify criteria to facilitate the weighing of the potential costs and benefits to the public in the evaluation and award of new gTLDs as part of the new gTLD program review as specified in section 9.3 of the Affirmation of Commitments.<br><br>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." |
| 4.2 | A requirement that new gTLD applicants provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers. | **1A** | The Guidebook will be amended, i.e., the applicant questions will be augmented, to include questions requiring new gTLD applicants to provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers.<br><br>ICANN retained economists familiar with these issues to suggest which questions should be asked.<br><br>After some discussion and iteration, questions have been developed and are provided in the annex to the explanatory memorandum on this topic. The questions will be public facing, i.e., the answers will be published. The answers will not be used to score or otherwise evaluate the applications. |

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| | | | Two series or sets of questions are now included in the Guidebook, (see explanatory memorandum on this subject) headed by:<br><br>1. How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?<br><br>2. 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? |
| 4.3 | Due diligence or other operating restrictions to ensure that Community-based gTLDs will in fact serve their targeted communities and will not broaden their operations in a manner that makes it more likely for the registries to impose costs on existing domain owners in other TLDs. | **1A** | ICANN will continue to work to ensure that post-delegation dispute mechanisms adequately address this concern. The ICANN Board resolved that the GNSO should be provided a briefing paper and should examine this question (see, http://icann.org/en/minutes/resolutions-10dec10-en.htm - 8). The GNSO was provided that paper, including a proposed model for determining under which circumstances a community TLD registry operator may amend the registration restriction in the registry agreement. The procedure is intended to allow changes to Community TLD restrictions, recognizing that changes will be necessary to best meet community needs. |
| **5.** | **Registry – Registrar Separation** | | |
| | Amend the proposed new registry agreement to restrict cross-ownership between registries and registrars, in those cases where it can be determined that the registry does have, or is likely to obtain, market power. | **2** | As indicated in the original Board Notes: "ICANN sought to implement a marketplace model that would enhance competition, opportunities for innovation and increase choice for consumers while preventing abuses in cases where the registry could wield market power. While lifting restrictions on cross-ownership, ICANN reserves the right to refer issues to appropriate competition authorities if there are apparent abuses of market power. As previously resolved by the Board, registry agreements will include requirements and restrictions on any inappropriate or abusive conduct arising out of registry-registrar cross |

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| | | | ownership, including without limitations provisions protecting against misuse of data or violations of a registry code of conduct."<br><br>The GAC Comments from 12 April 2011 stated that "The Board response is considered insufficient by the colleagues of some GAC members who are responsible for Competition and anti-Trust issues. They have requested that ICANN provide a more reasoned argument as to why they have rejected the GAC's proposal and why the Board feels that ex-ante measures are less preferable to ex-post measures for minimising problems associated with anti-competitive behavior."<br><br>To answer: ICANN considered several options with respect to the vertical separation issue, including a blanket prohibition against cross-ownership by registries with market power. The problem with such an ex ante prohibition is that it is overly restrictive; that is, a prohibition of vertical integration based purely on market power is likely to deprive consumers of the competitive benefits of cross-ownership. From a consumer welfare perspective, a better approach is to allow generally pro-competitive vertical integration while referring any potentially suspect arrangements to expert competition enforcement authorities, who can then take action when their ex post expert evaluation determines it is appropriate. This is particularly important because it is difficult to accurately measure market power. Market definition and the evaluation of market power are contentious issues in most antitrust cases and often require complex economic and econometric analysis. Market share can be used as a proxy, but antitrust authorities around the world recognize that it is an imperfect proxy. Moreover, there are various ways to measure market share. Delegating this expert analysis and post ante determination to competition authorities avoids the problem of mistakenly ex ante deterring competitively beneficial vertical integration while also ensuring that consumers are protected |

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| | | | when economic conditions merit competition policy intervention. |
| **6.** | **Protection of Rights Owners and consumer protection issue** | | |
| 6.1.1 | ***1. Rights Protection: Trademark Clearing House (TC)***<br><br>The TC should be permitted to accept all types of intellectual property rights that are recognized under the national law of the country or countries under which the registry is organized or has its principal place of business. The only mandatory requirement for new registry operators will be to recognize national and supranational trademark registrations issued before June 26, 2008 and court-validated common law trademarks. | **1A** | Overall - Based on the GAC Indicative Scorecard, discussions in the Silicon Valley meeting, and follow-up with stakeholder groups, ICANN has made several changes in Trademark Protections in an effort to meet GAC Scorecard requests.<br><br>(a) All nationally or multi-nationally registered trademarks will be accepted into the Clearinghouse. The proposed date cut-off will not be utilized as a requirement for entry into the Clearinghouse.<br><br>(b) All trademarks that have been validated via court proceeding, or have protection under statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, will be accepted into the Clearinghouse.<br><br>(c) All marks that constitute intellectual property will now be accepted into the Clearinghouse.<br><br>(d) 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.<br><br>For Trademark Claims services - Registries must recognize and honor all marks in (a) and (b) above.<br><br>For Sunrise services – Registries must recognize and honor all marks in (a) and (b) above, provided that:<br>(i) the holders of marks in (a) above have submitted proof of |

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| | | | use of the mark, which can be demonstrated by a declaration and one specimen of current use; and<br>(ii) the holders of marks in (b) above have been validated by a court or protected by a statute or treaty on or before 26 June 2008.<br><br>The Clearinghouse must clearly note when entering the marks into the database, which marks are registered trademarks and which marks have been submitted with proof of use. |
| 6.1.2 | Sunrise services and IP claims should both be mandatory for registry operators because they serve different functions with IP claims serving a useful notice function beyond the introductory phase. | **1A** | The IRT and STI suggested an either/or approach. After discussion with the GAC and some other community members, including those representing trademark interests, the Board has determined to make both a limited Trademark Claims service, and Sunrise service, mandatory. All registries will be required to offer: (i) a Sunrise program, and (ii) for at least 60 days from launch, a Trademark Claims service using the Clearinghouse database. Thereafter, utilization of Trademark Claims services will be at the registry's discretion.<br><br>The adjusted program provides flexibility to holders of registered trademarks from all jurisdictions because it provides the trademark holders with the option to receive notice through the Clearinghouse when someone else is attempting to register a domain name using the mark, rather than paying to obtain a sunrise registration itself. |
| 6.1.3 | IP claims services and sunrise services should go beyond exact matches to include exact match plus key terms associated with goods or services identified by the mark) e.g. "Kodakonlineshop") and typographical variations identified by the rights holder. | **2** | Sunrise services provide trademark holders with "first rights" in domain names, and as such must be limited to identical matches. Moreover, unlike the URS, where a qualified Examiner will be capable of using discretion to determine if a mark is identical or confusingly similar, no such discretion is afforded the Trademark Clearinghouse that will be used for the mandatory 60-day Trademark Claims services. The Clearinghouse should not and will not have discretion in what marks |

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| | | | are deemed anything but an identical match. |
| 6.1.4 | All trademark registrations of national and supranational effect, regardless of whether examined on substantive or relative grounds, must be eligible to participate in the pre-launch sunrise mechanisms. | **1A** | All nationally or multi-nationally (supranational) registered trademarks, regardless of where registered and whether examined on substantive or relative grounds, will be eligible to participate in either the 60-day Trademark Claims service or Sunrise service, subject to the following:<br><br>(a) For marks in the Clearinghouse to be recognized and honored in Sunrise services, proof of current use of those mark must have been submitted to the Clearinghouse before the Sunrise service begins.<br>(b) Use of the trademark may be demonstrated by providing a declaration from the trademark holder and one specimen of current use. |
| 6.1.5 | Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings. | **1A** | Agreed. |
| 6.1.6 | The IP claims service should notify the potential domain name registrant of the rights holder's claim and also notify the rights holder of the registrant's application for the domain name. | **1A** | Agreed. Note: the notification to the rights holder will be sent promptly after the potential registrant has acknowledged the Trademark Claim and registers the name. |
| 6.1.7.1 | The TC should continue after the initial launch of each gTLD. | **1A** | The Trademark Clearinghouse will be an ongoing operation. The Sunrise services operate as a pre-launch mechanism and Trademark |

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| | | | Claims services operate during the first 60 days that registration in the registry is open for general registration.<br><br>Trademark holders will continue to be able to subscribe to ongoing "watch" services that will be able to utilize the Centralized Zone File Access system in order to efficiently monitor registrations across multiple gTLDs.<br><br>The Board originally marked this as a 2 and asked for clarification from the GAC. Based on discussions and comments, the Board has determined that the parties were in agreement and thus this item should have been marked 1A. |
| 6.1.7.2 | Rights holders, registries and registrars should all contribute to the cost of the TC because they all benefit from it. | **1B** | Trademark holders will pay the Trademark Clearinghouse when the rights holders register their marks, registries will pay the Trademark Clearinghouse when administering their Trademark Claims and Sunrise services. In turn registrars will pay the registries when using their rights protection mechanisms, and registrants will pay the registrars when using the registrars' services to manage access to rights protection mechanisms. |
| 6.2.1 | ***2. Rights Protection: Uniform Rapid Suspension (URS):***<br><br>Significantly reduce the timescales. See attached table for proposed changes. | **1A** | Agreed. |
| 6.2.2 | The complaint should be simplified by replacing the 5,000 word free text limit + unlimited attachments [para 1.2] with a simple pro forma standardised wording | **1A** | Agreed. Note: The word limit will not apply to respondents. |

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| | with the opportunity for not more than 500 words of freeform text and limit the attachments to copies of the offending website. | | |
| 6.2.3 | Decisions should be taken by a suitably qualified 'Examiner' and not require panel appointments. | **1A** | Examiners with demonstrably relevant legal background, such as in trademark law, will be appointed by the URS Provider. Only one Examiner will be appointed per URS proceeding. |
| 6.2.4 | Where the complaint is based upon a valid registration, the requirement that the jurisdiction of registration incorporate substantive examination (paras 1.2f (i) and 8.1a) should be removed. | **1A** | There is no requirement that any registration of a trademark must include substantive evaluation.<br><br>Each trademark registration must be supported by evidence of use in order to be the basis of a URS complaint.<br><br>Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use that the Clearinghouse will validate upon receipt. Proof may also be provided directly with the URS Complaint.<br><br>After review of the comments above, the Board has determined that this item be changed to 1A. |
| 6.2.5 | If, as is expected in the majority of cases, there is no response from the registrant, the default should be in favour of the complainant and the website locked. The examination of possible defences in default cases according to para 8.4(2) would otherwise give an unjustified privilege to the non-cooperating defendant. | **1A** | An Examiner will review the merits of each Complaint to ensure that the standard is met, even in the event of a default. The Examiner will not be required to imagine possible defenses.<br><br>Seeking clarification on this GAC advice, the Board posed the following question to the GAC during the Brussels meeting **"**Is the GAC advising that, when no response is filed, there be no Examination of a complaint? Or it is just advising that the reference to possible defenses |

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| | | | be omitted?" http://icann.org/en/topics/new-gtlds/questions-on-scorecard-protection-of-rights-28feb11-en.pdf<br><br>In response, the GAC stated "The GAC is advising that the Guidebook be amended by deleting 8.4 (2) because the Examiner should not be placed in the position of having to anticipate all potential defences where none was presented. However, the Examiner should still evaluate the complaint on its merits. The complainant must still meet his/her burden." http://icann.org/en/topics/new-gtlds/gac-replies-rights-protection-questions-09mar11-en.pdf<br><br>In light of the GAC's clarification, this point has been changed to 1A. |
| 6.2.6 | The standard of proof (para 8.2) should be lowered from "clear and convincing evidence" to a preponderance of evidence". | **2** | The principle of the URS is that it should only apply to clear-cut cases of abuse.<br><br>"Clear and convincing" is the burden of proof that was recommended by the IRT and endorsed by the STI. |
| 6.2.7 | The "bad faith" requirement in paras 1.2f), 1.2g) and 8.1c) is not acceptable. Complainants will in only rare cases prevail in URS proceedings if the standards to be fulfilled by registrants are lax. Correspondingly, the factors listed in paras 5.7a) ("bona fide") and b) "been commonly known by the domain name") can hardly allow a domain name owner to prevail over the holders of colliding trademarks. | **2** | The standard applied for the URS is based on the UDRP standard. Both require a finding of bad faith. Given that the URS is meant only to apply to the most clear-cut cases of abuse, bad faith shall remain a requirement. |
| 6.2.8 | A 'loser pays' mechanism should be added. | **1B** | A straight loser pays mechanism was considered and discussed |

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| | | | extensively by the IRT, but ultimately not recommended. Rationale includes that the UDRP does not have a loser-pays mechanism and the fact that it is unlikely complainants would be able to effectively collect based on clear-cut cases of abuse, since the names in question will already have been suspended.<br><br>Notwithstanding, after participating in further consultations with the GAC and representative of trademark interests, the Board has decided to include a limited "loser pays" mechanism that was originally developed by the IRT. Specifically, complaints involving twenty-six (26) or more domain names 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.<br><br>Given the inclusion of the Response Fee, this item is now 1B. |
| 6.2.9 | Registrants who have lost five or more URS proceedings should be deemed to have waived the opportunity to respond to future URS complaints (this amendment corresponds to the "two strikes" provision which applies to rights holders). | **2** | Due process principles require that every registrant should always have the opportunity to present a defense. |
| 6.2.10.1 | However, there should be a clear rationale for appeal by the complainant. | **1A** | In response to the Board's request for clarification, the GAC clarified that either party seeking appeal should demonstrate a clear basis for objecting to the decision. The Board agrees that an appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.<br><br>In light of the GAC's clarification, this item is now 1A. |
| 6.2.10.2 | The time for filing an appeal in default | **1B** | The IRT originally suggested a URS without any appeal process. The STI |

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| | cases must be reduced from 2 years to not more than 6 months. | | suggested the inclusion of an appeal process (without any mention of a limitation on the ability to seek relief from a default). In response to comments, the Applicant Guidebook was revised to include a two-year limitation period on the opportunity to seek relief from a default.<br><br>After consideration of the GAC advice, the Board has determined that the time for a Registrant to seek relief from default should be limited to six months, but the Respondent may seek an extension of up to a further six months (for the total of up to one year) if the Respondent requests the additional time before the initial six month period has expired. |
| 6.2.10.3 | In addition, the examination of possible defences in default cases according to para 8.4(2) means an unjustified privilege of the non-cooperating defendant. | **1A** | See 6.2.5 |
| 6.2.11 | The URS filing fee should be US$200-US$300 and minor administrative deficiencies should not result in dismissal of the URS complaint. | **1B** | ICANN will negotiate with URS service providers for the best prices and services. The fee range mentioned will be a target. |
| 6.2.12 | A successful complainant should have the right of first refusal for transfer of the disputed domain name after the suspension period so that the complainant is not forced to pursue a UDRP proceeding to secure a transfer. | **2** | The Board initially agreed to this item in the GAC scorecard. Upon consideration of significant community feedback, however, the Board has determined that the Guidebook position on the available remedy in a URS proceeding should stand. That is, domains shall be suspended for the duration of the registration period and the successful complainant will be provided an option to extend the registration period of the name for an additional year after expiration of the initial registration period (at commercial rates). The suspension remedy was what the IRT recommended and the additional one-year extended-registration was recommended by the STI. Moreover, as stated in |

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| | | | public comments on this issue, the URS was and is not meant to replace or mirror the UDRP transfer remedy. Accordingly, this item has been changed to a 2. |
| 6.2.13 | The URS should go beyond 'exact' matches and should at least include exact + goods/other generic words e.g. "Kodakonlineshop". | **1A** | As recommended by the IRT, the URS applies to registrations that are identical or confusingly similar to protected marks as described in the Guidebook. As part of the public comment period, trademark owners stated that they agree that this standard is appropriate here, and that this is what was meant by this GAC comment. |
| 6.3.1 | ***3. Rights Protection: Post-delegation Dispute Resolution Procedure (PDDRP)***<br><br>The standard of proof be changed from "clear and convincing evidence" to a "preponderance of evidence". | **2** | This was the standard developed by the IRT and will not be revised. |
| 6.3.2 | The second level registrations that form the underlying basis of a successful PDDRP complaint should be deleted. | **2** | The registrants are not parties to the proceedings, thus keeping a registrant from using the domain name or stripping the name from the registrant should be effected through an alternative proceeding, such as URS or UDRP. Note that to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator, then deletion of registrations may be a recommended remedy. |
| 6.3.3 | The requirement of "substantive examination" in para 9.2.1(i) should be deleted. | **1A** | There is no requirement that any registration of a trademark must include substantive evaluation.<br><br>Each trademark registration must be supported by evidence of use in the Clearinghouse in order to be the basis of a PDDRP complaint. |

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| | | | Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use. Further discussion should take place relating to proof of use. |
| 6.3.4 | A new para 6.1 a) be added: "being identical to the complainant's mark in relation to goods and services which are identical to those for which the complainant's mark is registered. This would not apply if the registrant has a better right to the mark. In particular the registrant will in normal circumstances have a better right if the mark has been registered prior to the registration of the complainant's mark." | **2** | Section 6.1 sets out the standards for filing a PDDRP against a Registry Operator relating to the top-level domain. The GAC is requesting that, in some cases, a PDDRP complainant would prevail merely by having a mark identical to the registration and "a better right" to that mark. The existing standard requires that some harm must result to the trademark holder as a result of the registration. The Board does not believe that being identical to the complainant's mark is proper as a sole basis for allowing a PDDRP complaint. If a competing trademark holder wants to challenge the Registry Operator for simply operating the TLD, it has the right to file a Protection of rights pre-delegation objection and seek a variety of other court remedies. |
| 6.3.5 | Regarding the second level (para 6.2), the registrant operator should be liable if he/she acts in bad faith or is grossly negligent in relation to the circumstances listed in para 6.a)-d). | **2** | Changing the standard from requiring "affirmative conduct" to "gross negligence" would effectively create a new policy imposing liability on registries based on actions of registrants. |
| 6.3.6 | The requirement in para 7.2.3 lit.d) that the complainant has to notify the registry operator at least 30 days prior to filing a complaint is burdensome and should be reduced to 10 days if not deleted entirely. | **2** | The current requirement is in place to provide the registry with a reasonable amount of time to investigate and take appropriate action if a trademark holder notifies the registry that there may be infringing names in the registry. |
| 6.3.7 | Para 19.5 should be amended as follows: "In cases where the Expert Determination decides that a registry operator is liable | **1A** | ICANN agrees that it will impose appropriate remedies that are "in line" with the determination. It should be noted however that ICANN is ultimately responsible for determining the appropriate remedy. |

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| | under the standards of the Trademark PDDRP, ICANN will impose appropriate remedies that are in line with the Determination. | | |
| 6.4.1 | ***4. Consumer Protection***<br><br>Amend the "Maintain an abuse point of contact" paragraph in the DAG to include government agencies which address consumer protection: | **1B** | In its letter dated 12 April 2011, the GAC has provided suggested changes to the Registry Agreement as follows:<br><br>A registry operator must respond in a timely manner to a request concerning any name registered in the TLD from any government agency that is conducting a lawful investigation or official proceeding inquiring into a violation of or failure to comply with any criminal or civil statute or any regulation, rule, or order legally issued pursuant thereto.<br><br>lCANN appreciates this input and has amended to the text to require Registry Operators to take reasonable steps and respond to any reports (including from law enforcement and governmental consumer protection agencies) of illegal conduct utilizing the Registry TLD.<br><br>The purpose of this text amendment is to ensure that all reports of abuse are appropriately considered within a reasonable time period. |
| 6.4.2 | A registry operator must assist law enforcement, government agencies and agencies endorsed by governments with their enquiries about abuse complaints concerning all names registered in the TLD, including taking timely action, as required, to resolve abuse issues. | **1B** | See 6.4.1 |
| 6.4.3 | Ensure that ICANN's contract compliance | **1A** | In its letter dated 12 April 2011, the GAC respectfully requests ICANN, |

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| | function is adequately resourced to build confidence in ICANN's ability to enforce agreements between ICANN and registries and registrars. | | in the upcoming weeks, to identify the amount of personnel it intends to hire to support the compliance function and the timeline for hiring. In addition the GAC would like to know how many staff ICANN intends to have in place prior to the expected launch of new gTLDs.<br><br>ICANN has undertaken studies across various departments, including contract compliance, to determine the impact to processes, people, and systems resulting from the delegation of strings. An initial analysis projects contract compliance staff to grow from its current level to specified numbers indicated in an explanatory memo. These numbers will continue to be refined as analysis continues.<br><br>Note, the delegation of new strings may not occur until approximately one year after the launch of the program. However, ICANN will continue to update these plans as the number of delegations becomes clearer and processes change and those plans will be shared with the GAC and other community members when available. |
| 6.4.4 | **Vetting of certain strings**<br>gTLD strings which relate to any generally regulated industry (e.g. .bank, .dentist, .law) should be subject to more intensive vetting than other non-geographical gTLDs. | **1B** | In its letter dated 12 April 2011, the GAC has requested that ICANN conduct more stringent vetting of all new gTLD applicants to ensure that registries are not operated by entities/individuals who will use the platform for criminal purposes or otherwise abuse the domain name system.<br><br>ICANN agrees with this recommendation. Although it is nearly impossible to ensure no "bad actors" secure a new top-level domain ICANN has implemented several measures to minimize this risk. Those measures include:<br>• Expanding the scope of the background screening check to include other crimes as suggested by the GAC. This also includes obtaining input from selected law enforcement on the selection of a |

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| | | | background screening service provider – see 11.3.<br>• Adding language to the Registry Agreement that requires Registry Operators to take reasonable steps and respond to any reports (including from law enforcement and governmental consumer protection agencies) of illegal conduct utilizing the Registry TLD. Failing to comply with this provision could lead to termination of the Registry Agreement.<br>• Making public the names and titles of key officers, directors, partners and controlling shareholders of each applicant for comment.<br>• Providing a GAC Early Warning process that allows members of the GAC or any individual government through the GAC to provide a notice to certain applicants. |
| **7.** | **Post-Delegation Disputes** | | |
| 7.1 | Change the wording in the sample letter of Government support in AG back to the wording in DAGv4 and keeping the new paragraph 7.13 of the new gTLD registry agreement with the changed wording from "may implement" to "will comply". E.g change the wording from "may implement" back to "will comply" with a legally binding decision in the relevant jurisdiction. | **1B** | ICANN has previously indicated that it will modify the suggested wording of the letter of support or non-objection, and make clear its commitments to governments in additional text of the Applicant Guidebook, and in its response the GAC has acknowledged and accepted that modification.<br><br>The original Board Notes stated that "the registry agreement will continue to indicate that ICANN 'may implement' instead of 'will comply' with such decisions for legal reasons. As discussed previously with the GAC, ICANN's commitment to comply with legally binding decisions is made to governments, not to registries, Therefore, it is not necessarily in the interests of ICANN, or of governments, to place that obligation in registry agreements, giving registry operators the ability, and perhaps duty, to force ICANN to implement decisions in every |

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| | | | case. (ICANN has a mechanism to enforce its contracts with registry operators.)"<br><br>In order to attempt to address the GAC's concerns and provide further comfort to governments that ICANN will implement court orders, ICANN proposes to modify section 7.13 of the registry agreement to read as follows: "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."<br><br>In its response, the GAC position is that ICANN change the agreement provision from a right of ICANN (ICANN may implement) into a duty that ICANN will owe the registry (ICANN will implement). The GAC's rationale asserts that this will give governments assurance that governments will be able to "enforce the conditions given when providing a letter of support or non-objection." The GAC argues that if ICANN does not give registry operators the power to force ICANN to implement such court orders that this will discourage governments from granting the support that governments have asked ICANN to require as a condition necessary for ICANN to delegate certain "geographic" TLD strings.<br><br>ICANN has previously suggested that governments could enforce any conditions agreed to with the registry operator through other means, either through an enforceable bilateral agreement between the |

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| | | | government and operator, or by insisting that the operator subject itself to the government's jurisdiction either through consent or a requirement that the operator maintain a presence inside the jurisdiction. |
| 7.2 | In addition describe in the AG that ICANN will comply with a legally binding decision in the relevant jurisdiction where there has been a dispute between the relevant government or public authority and registry operator. | **1B** | The Guidebook language now states that, “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.”<br><br>The initial Board Notes stated that this required further discussion as it may in some cases amount to a redelegation request. The notes also stated that there could be multiple jurisdictions that have given their support to one application (e.g., multiple "Springfield"s), thus, it may not be appropriate to implement a particular action based on one such decision.<br><br>The GAC response suggests changing the wording to “final legally binding decision”.<br><br>The GAC is essentially asking ICANN to expand the respect afforded to court orders to also include any "final legally binding decision", which the GAC notes would include "an administrative decision." ICANN is concerned that such a provision could have a very broad scope (including "decisions" from multiple overlapping or competing local and national governmental agencies. (For example, agencies from the |

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| | | | governments of the City of Los Angeles and the County of Los Angeles might theoretically issue inconsistent administrative decisions regarding the operation of a TLD registry operating in Los Angeles.) ICANN is not equipped to sort out what constitutes a "final legally binding decision" in every jurisdiction in the world, and will be on much clearer ground working with orders from courts. Courts would presumably be available to confirm any legally binding decisions, and as noted above ICANN has committed to respect such orders. |
| **8.** | **Use of geographic names** | | |
| 8.1.1.1 | ***1. Definition of geographic names*** Implement a free of charge objection mechanism would allow governments to protect their interest | **1B** | As described in Issue 2 above, ICANN proposes procedures for GAC Early Warning and GAC Advice that may be applied to geographic names. In addition, the response to issue 2 also describes a process where, for individual governments, ICANN will provide limited financial support for objections. |
| 8.1.1.2 | and to define names that are to be considered geographic names. | **2** | The proposed GAC Early Warning and GAC Advice on New gTLDs procedures are designed to address the GAC concern, i.e., so the GAC can provide input any application for any reason, eliminating the need for specific definitions. Therefore, the procedures will address sensitive, community, geographic and sector (regulated industry) string issues and encourage efforts to prevent formal objections. |
| 8.1.2 | This implies that ICANN will exclude an applied for string from entering the new gTLD process when the government formally states that this string is considered to be a name for which this country is commonly known as. | **1B** | The Board appreciates the need to ensure national interests in those cases where country names are not listed in the established list.<br><br>Language has been added to the Guidebook, augmenting the definition of geographic names that, “A string shall be considered to be a country or territory name if: … 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.” |
| 8.1.3 | Review the proposal in the DAG in order to ensure that this potential [city name | **2** | The Board notes the GAC comment that the post-delegation mechanisms might not be effective in cases where the application has |

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| | applicants avoiding government support requirement by stating that use is for non-community purposes] does not arise. Provide further explanations on statements that applicants are required to provide a description/purpose for the TLD, and to adhere to the terms and condition of submitting an application including confirming that all statements and representations contained in the application are true and accurate. | | not been designated as a community-based TLD or a geographic TLD, or where the government has some legal right to the name. The GAC Early Warning and GAC Advice on New gTLDs processes provide the best opportunities to address the situation. Applications including city-names as TLD strings can be the subject of both those processes.<br><br>It should be noted that the application requires applicants to describe the purpose of the TLDs, this information will be used to inform evaluation, objections, and importantly, the GAC as it considers public policy implications of the application and string. |
| 8.1.4 | Governments should not be required to pay a fee for raising objections to new gTLD applications. Implement a free objection mechanism would allow governments to protect their interest. | **1B** | Borrowing from the same issue as in section 2:<br><br>A companion paper considers several models that balance the government interests and the need for ICANN to maintain a reasonable extent of control over expenditures. It recommends that a pre-determined amount of funding be designated by ICANN for each individual government, for the purpose of funding objection fees where a government wished to file a formal objection. Each government would be allotted an equal amount, and could continue to draw on such funds up to the maximum at its discretion, with the guarantee that at least one objection be fully funded. By fixing the funding amount (instead of the number of objections), governments could tailor the objections to minimize dispute resolution costs. This would provide ability for governments to object without cost and even collaborate on which governments will file objections, while putting a ceiling on the maximum costs.<br><br>Detail and rationale are provided in the paper. |

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| 8.2.1 | ***2. Further requirements regarding geographic names***<br>The GAC clarifies that it is a question of national sovereignty to decide which level of government or which administration is responsible for the filing of letters of support or non-objection. There may be countries that require that such documentation has to be filed by the central government - also for regional geoTLDs; in other countries the responsibility for filing letters of support may rest with sub-national level administrations even if the name of the capital is concerned. GAC requests some clarification on this in the next version of the Applicants Guidebook. | **1A** | This principle is agreed, and this can be clarified in the Guidebook. ICANN invites governments to identify appropriate points of contact on this issue. |
| 8.2.2 | According to the current DAG applications will be suspended (pending resolution by the applicants), if there is more than one application for a string representing a certain geographic name, and the applications have requisite government approvals. The GAC understands such a position for applications that have support of different administrations or governmental entities. In such circumstances it is not considered appropriate for ICANN to determine the most relevant governmental entity; the | **1A** | ICANN will continue to suspend processing of applications with inconsistent/conflicting support, but will allow multiple applicants all endorsed by the same authority to go forward, when requested by the government.<br><br>This area needs further discussion on the potential situations that could lead to redelegation requests. |

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| | same applies, if one string represents different geographic regions or cities. Some governments, however, may prefer not to select amongst applicants and support every application that fulfils certain requirements. Such a policy may facilitate decisions in some administrations and avoid time-consuming calls for tenders. GAC encourages ICANN to process those applications as other competing applications that apply for the same string. | | |
| **9.** | **Legal Recourse for Applications** | | |
| 9. | Seek legal advice in major jurisdiction whether such a provision might cause legal conflicts – in particular but not limited to US and European competition laws. If ICANN explains that it has already examined these legal questions carefully and considering the results of these examinations still adheres to that provision, GAC will no longer insist on its position. However, the GAC expects that ICANN will continue to adhere to the rule of law and follow broad principles of natural justice. For example, if ICANN deviates from its agreed processes in coming to a decision, the GAC expects that ICANN will provide an appropriate mechanism for any complaints to be heard. | **1A** | As discussed with the GAC, ICANN has examined these legal questions carefully and considering the results of these examinations still adheres to this provision. ICANN will clarify in the Applicant Guidebook that: if ICANN deviates from its agreed processes in coming to a decision, ICANN's internal accountability mechanisms will allow complaints to be heard.<br><br>In its response, the GAC stated that it "welcomes the Board's clarification that the legal implications of the clause have been considered for various jurisdictions. The GAC appreciates the Board's notice that the Applicant Guidebook will be amended to clarify that internal accountability mechanisms will allow complaints to be heard." |

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| **10.** | **Providing opportunities for all stakeholders including those from developing countries** | | |
| 10.1 | ***Main issues***<br>**1. Cost Considerations**<br>Set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude stakeholders from developing countries from participating in the new gTLD process. | **TBD** | ICANN's Board recognized the importance of an inclusive New gTLD Program and issued a Resolution forming a Joint Working Group (JAS WG) which is underway. ICANN would like to receive the report of the JAS WG as soon as possible. JAS WG is requested to provide a possible deadline for his work during the ICANN meeting in SFO allowing the Board to act.<br><br>It is noted that one of the challenges in developing support mechanisms for applicants is to ensure that such support is actually received by those applicants with the most need, rather than being used advantageously by other participants. This issue has also been taken into account in the work of the JAS WG.<br><br>The minimum technical requirements for operating a registry are expected to be consistent across applications.<br><br>The Board notes that the GAC recommends a 70% fees reduction for developing country applicants, free for least developed countries and shares the concern to determine real needy applicants. The fees reductions recommended by the GAC have been passed on to the JAS WG. The Board is looking forward to receiving the Final Report and notes that, given the cost recovery policy, sources of funds must be identified.<br><br>The Board notes the GAC seeks further clarification about the certain mechanisms for technical and logistical support. ICANN has budgeted a sum of $300,000 to provide non-financial support to potential applicants. The Board has resolved that the targets include outreach and education to encourage participation across all regions. |

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| | | | ICANN will publish a list of organizations that request assistance and organizations that state an interest in assisting with additional program development, for example pro-bono consulting advice, pro-bono in-kind support, or financial assistance so that those needing assistance and those willing to provide assistance can identify each other and work together. |
| 10.2.1 | **2. Language diversity**<br>Key documents produced by ICANN must be available in all UN languages within a reasonable period in advance of the launch of the gTLD round. | **1A** | Some documents are already available in the 6 UN languages. The Final Application Guidebook will be also in due course, and the web site will be organize to find easily all the documents available in each language. The Board notes GAC's recommendation to extend the communications beyond the 6 UN languages and is taking into account the additional language needs in its communications strategy. |
| 10.2.2 | The GAC strongly recommends that the communications strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority. | **1A** | The Board agrees with the GAC and staff is committed to a global communications approach. The goal of that approach is ensure that any person that would take steps to take advantage of or mitigate cost due to the new gTLD program, is aware of the program. |
| 10.3 | **3. Technical and logistics support** | **1B** | ICANN has agreed to provide certain mechanisms for technical and logistical support, such as assisting with matching needs to providers. ICANN is also considering setting up regional help desks to provide more responsive and relevant technical support to new gTLD applicants in developing countries.<br><br>The Board agrees with the GAC and has directed staff to produce a webpage where entities willing to assist applicants and applicants seeking assistance can find each other. The webpage is expected by end of June.<br><br>Other targets include outreach and education to encourage participation across all regions. |

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| 10.4 | **4. Outreach – as per Joint AC/SO recommendations** | **1A** | |
| 10.5 | **5. Joint AC/SO Working Group on support for new gTLD applicants**.<br>GAC urged ICANN to adopt recommendations of the Joint AC/SO Working Group. | **TBD** | This item from the GAC Scorecard appears to reflect the interim report (Milestone Report) of the JAS WG published 11 Nov 2010 http://www.icann.org/en/announcements/announcement-11nov10-en.htm. ICANN is awaiting their final report that is targeted to be published by end of May. |
| 10.6 | **6. Applications from Governments or National authorities (especially municipal councils and provincial authorities) – special consideration for applications from developing countries**<br>The GAC commented that the new gTLD process should meet the global public interest consistent with the Affirmation of Commitments. It therefore urged ICANN to set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude developing country stakeholders from participating in the new gTLD-process. Key documents should be available in all UN languages. The GAC urges that the communications and outreach strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority.<br><br>ii. Nairobi Communiqué | **TBD** | This set of issues overlaps with and is addressed in the other items in this section. The JAS WG interim report (Milestone Report) has addressed the fees. The Board is looking forward to receiving the Final Report with a more detailed proposal.<br><br>The Board notes the GAC is recommending a different cost structure given to Governments and National Authorities from developing and least developed countries. This recommendation has been passed to the JAS WG and the Board is looking forward to receiving the Final Report. The Board notes that, given the cost recovery policy, sources of funds must be identified. |

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| | The GAC believed that instead of the then proposal of single-fee requirement, a cost-based structure of fees appropriate to each category of TLD would:<br>a) prevent cross subsidization and<br>b) better reflect the project scale,<br>This would improve logistical requirements and financial position of local community and developing country stakeholders who should not be disenfranchised from the new TLD round.<br>Further the board believes that :<br>a. New gTLD process is developed on a cost recovery model.<br>b. Experience gained from first round will inform decisions on fee levels, and the scope for discounts and subsidies in subsequent rounds.<br>c. Non-financial means of support are being made available to deserving cases.<br>i. Proposed that the following be entertained to achieve cost reduction:<br>• Waiving the cost of Program Development ($26k).<br>• Waiving the Risk/Contingency cost ($60k).<br>• Lowering the application cost ($100k)<br>• Waiving the Registry fixed fees ($25k per calendar year), and charge the Registry- Level | | |

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| | Transaction Fee only ($0.25 per domain name registration or renewal).<br>ii. Proposed that the reduced cost be paid incrementally, which will give the applicants/communities from developing countries more time to raise money, and investors will be more encouraged to fund an application that passes the initial evaluation.<br>iii. Believe that communities from developing countries apply for new gTLDs according to an appropriate business model taking into consideration the realities of their regions. ICANN's commitment towards supporting gTLD applicants in communities from developing countries will be a milestone to the development of the overall Internet community in Africa and other developing regions. | | |
| 10.7 | **A. Other Developing world Community comments**<br>Rolling out new gTLD and IDNs was done in a hurry and without basis on a careful feasibility study on the impact that this rollout will have on developing countries. For some representatives, this is a massive roll out of gTLDs and IDNs that will find many developing countries unprepared and unable to absorb it. There is the fear that | **1B** | ICANN is investigating and intends to provide mechanisms for assisting with matching needs to providers, and will continue to investigate mechanisms for providing additional forms of support (such as providing documents in additional languages beyond the official U.N. languages).<br><br>As described above, the Board has directed staff to produce a webpage where entities willing to assist applicants and applicants seeking assistance can find each other. The webpage is expected by end of June. |

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| Item # | GAC Scorecard Actionable Item | Position | Notes |
|---|---|---|---|
| | there might be serious consequence in terms of economic impact to developing countries. | | |
| **11.** | **Law enforcement due diligence recommendations [to amend the Registrar Accreditation Agreement as noted in the Brussels Communiqué]** (Note: ICANN will provide an update on the status of the RAA-related recommendations from law enforcement) | | |
| 11.1 | Include other criminal convictions as criteria for disqualification, such as Internet-related crimes (felony or misdemeanor) or drugs. | **1A** | In its letter dated 12 April 2011 the GAC is confirming responses held in the Brussels and San Francisco meetings to add a broad number of convictions to the background screening process. The inclusion of certain crimes without a standard definition across international, and in some cases, national jurisdictions remains a concern, for the following reasons:<br><br>• It will lead to a background screening process that will not be consistent and fair for all applicants and<br>• It puts ICANN in a position of trying to implement a set of standards that are not agreed to among various nations, including members of the GAC<br><br>However, ICANN has continued to investigate this concern and has, with the help of subject matter experts, agreed to expand the scope of the background screening to cover some of the concerns raised by the GAC. Accordingly, the following will now be included in the background screening process:<br><br>• 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[1];<br>• Has ever been convicted or successfully extradited for any offense |

# Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

| Item # | GAC Scorecard Actionable Item | Position | Notes |
|---|---|---|---|
| | | | described in the United Nations Convention against Transnational Organized Crime (all Protocols)[2]; and<br>• Has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications, or the Internet to facilitate the commission of crimes.<br><br>[1] http://www.unodc.org/unodc/en/treaties/illicit-trafficking.html<br>[2] http://www.unodc.org/unodc/en/treaties/CTOC/index.html<br><br>It is recognized that not all countries have signed on to the UN conventions reference above. These conventions are solely being used for identifying a list of crimes for which background checks will be performed. It is not intended that an applicant have been convicted pursuant to the UN convention but merely convicted of a crime listed under these conventions.<br><br>Other crimes suggested by the GAC have not been included due to the lack of any consistent internationally accepted definitions for such crimes or based on significant public comment against such an inclusion (i.e., terrorism) when last placed in the Guidebook. |
| 11.2.1 | Assign higher weight to applicants offering the highest levels of security to minimize the potential for malicious activity, particularly for those strings that present a higher risk of serving as venues for criminal, fraudulent or illegal conduct (e.g. such as those related to children, health-care, financial services, etc.) | **1B** | In its letter dated 12 April 2011, the GAC has reiterated its request to provide a greater weight to those applicants who offer more security. The GAC also requests that ICANN publicly disclose whether the applicant has offered augmented security levels. ICANN has carefully considered this advice and has amended the following in the AGB:<br><br>• Security –the application questionnaire has been amended to reflect two sections for Security;<br>1. A section, open to comment, that describes the:<br>a. Augmented security levels or capabilities commensurate with the nature of the applied-for string including the |

# Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

| Item # | GAC Scorecard Actionable Item | Position | Notes |
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| | | | identification of international or industry-relevant standards and<br>b. The commitments made to registrants concerning security levels.<br>2. A section that will continue to remain confidential which requires that applicants provide the security policy that aligns with the first section of this question.<br><br>• Abuse Prevention and Mitigation – the application questionnaire has been amended to provide an extra point to applicants where they include measures that promote Whois accuracy and include:<br><br>1. A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Agreements for resolution or<br>2. Adequate controls to ensure proper access to domain functions.<br><br>The additional information being provided by the applicant in these questions in conjunction with application comments received from the Internet community will enable careful consideration by the evaluation panels of the measures to be implemented by applicants.<br><br>It should be noted that results from the evaluation process will be in the form of "Pass" or "Fail" for each application. The scoring methodology requires that an application receive at least a minimum passing score for each question as well as an "exceeds" score for at least two questions to pass the technical/operational evaluation. Therefore, the scoring methodology (while not assigning a "higher weight" to applicants offering the highest levels of security), does create a limited incentive to meet the higher standard. |
| 11.3 | Add domestic screening services, local to | **1A** | In its letter dated 12 April 2011, the GAC has requested more |

| Item # | GAC Scorecard Actionable Item | Position | Notes |
|---|---|---|---|
| | the applicant, to the international screening services. | | information on the type of background screening services to be used by ICANN and has indicated services used by other organizations such as ARIN which uses sources that essentially conducts searches of publically available data such as KnowX, Dun & Bradstreet, Westlaw, and relevant federal and state websites for corporate and financial information.<br><br>It has always been ICANN's intent to use a background screening service that conducts searches of publically available data such as those used by the services mentioned in the GAC example.<br><br>ICANN is in the process of drafting a Request for Proposal (RFP) from International Background Screening providers to provide such a service. The RFP, currently being circulated to a select number of law enforcement and security professionals for input, will be posted in the next few weeks.<br><br>The RFP calls for providers to, at a minimum, have significant experience conducting international record checks of criminal and civil courts, law enforcement agencies and regulatory authorities in all countries where such records are available; have significant experience performing and possess a thorough knowledge of global, regional, and country specific background screening processes; provide background screening services in an expedited, orderly, consistent, and cost effective manner; and can efficiently scale to meet the demands of an unknown number of applications. |
| 11.4 | Add criminal background checks to the Initial Evaluation | **1A** | See response to 11.1. |
| 11.5 | Amend the statement that the results of due diligence efforts will not be posted to a positive commitment to make such results | **1A** | In its letter dated 12 April 2011 the GAC requests that at a minimum, the identification of the individuals named in the application, e.g., officers, controlling shareholders, should be released for comment. |

# Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

| Item # | GAC Scorecard Actionable Item | Position | Notes |
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| | publicly available | | ICANN agrees with this recommendation and will make available the names and titles of the key officers, directors, partners and controlling shareholders for comment.<br><br>The GAC also reiterates its endorsement of Law Enforcement Agency recommendations for due diligence and amendments to the Registrar Accreditation Agreement and requests that the Board provide in writing its indication of how it intends to implements these recommendations prior to the Singapore meeting. ICANN and the Board appreciate this reminder, however, this is beyond the scope of this scorecard and will be separately addressed by the Board in due course. |
| 11.6 | Maintain requirements that WHOIS data be accurate and publicly available. | **1A** | From the Affirmation of Commitments: "ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information." |
| **12.** | **The need for an early warning to applicants whether a proposed string would be considered controversial or to raise sensitivities (including geographical names)** | | |
| 12.1 | Reconsider its objection to an "early warning" opportunity for governments to review potential new gTLD strings and to advise applicants whether their proposed strings would be considered controversial or to raise national sensitivities. | **1B** | Please see the Board's notes above with respect to the GAC's advice on "Procedures for the review of sensitive strings." |

# Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

The score as estimated by ICANN (without GAC agreement or consultation):

| | 1A | 1B | 2 | TBD |
|---|---|---|---|---|
| Post Brussels Consultation | 25 | 28 | 23 | 4 |
| Post Silicon Valley Consultation | 42 | 18 | 17 | 3 |

# R-86

RESPONDENT'S EXHIBIT

KeyC te Ye ow F ag Negat ve Treatment
D sagreed W th by U.S. v. Cates, D.Md., May 23, 988

680 F.2d 1268
United States Court of Appeals,
Ninth Circuit.

William H. and Avilda L. EDWARDS, Petitioners-Appellants,
v.
COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.

Nos. CA 81-7353, CA 81-7354.
|
Submitted May 3, 1982.
|
Decided July 7, 1982.

Taxpayers appealed from Tax Court's dismissal of their petition for redetermination of deficiencies. The Court of Appeals held that: (1) "protest type" returns filed by taxpayers who claimed Fifth Amendment privilege on all relevant line entries were not valid returns and did not activate the statute of limitations; (2) order requiring taxpayers to produce their books did not violate their Fourth or Fifth Amendment rights; (3) tax court properly sustained deficiencies; and (4) appeal was frivolous.

Ordered accordingly.

**Attorneys and Law Firms**

***1269** Avilda L. Edwards, pro se.

John F. Murray, Michael L. Paup, Carlton D. Powell, R. Russell Mather, Dept. of Justice, Washington, D. C., for respondent-appellee.

Appeal from the United States Tax Court.

Before ANDERSON, SKOPIL and CANBY, Circuit Judges.

**Opinion**

PER CURIAM:

William and Avilda Edwards appeal from the Tax Court's dismissal of their petition for a redetermination of deficiencies asserted against them by the Commissioner. We affirm in all respects.

FACTS

Appellants are the former owners of an auto repair business in Arizona. Neither of them reported any income from this business for the years 1971-1976. In each of these years, Mr. Edwards filed "protest type" returns in which he claimed the fifth amendment on most relevant line entries. Mrs. Edwards filed no returns from 1971-1975. In 1976, she filed a return in which she reported a small amount of wages from employment unrelated to the auto repair business. In April 1979, the Commissioner filed a Notice of Deficiency and assessed penalties. Appellants petitioned the Tax Court for a redetermination of the deficiencies, but refused to produce the books and records of the auto repair business. The Tax Court dismissed the case for failure to prosecute and sustained the deficiencies. Appellants raise four contentions on appeal: (1) the

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statute of limitations bars collection of the deficiencies; (2) the dismissal of their petition for failure to produce records violates their constitutional rights; (3) use of the Consumer Price Index to calculate increases in their income was arbitrary; and (4) Mrs. Edwards cannot be held liable for the deficiencies because she did not participate in the family business. Each of these contentions is without merit.

## STATUTE OF LIMITATIONS

**[1]** **[2]** Normally, taxes must be assessed within three years after a return is filed. I.R.C. s 6501(a). Where no return is filed, however, the tax may be assessed at any time. Id. s 6501(c)(3).[1] Tax forms that do not contain information upon which tax liability ***1270** may be computed are not returns within the meaning of the Internal Revenue Code. United States v. Klee, 494 F.2d 394, 397 (9th Cir.), cert. denied, 419 U.S. 835, 95 S.Ct. 62, 42 L.Ed.2d 61 (1974). Accord, United States v. Francisco, 614 F.2d 617, 618 (8th Cir.), cert. denied, 446 U.S. 922, 100 S.Ct. 1861, 64 L.Ed.2d 278 (1980); United States v. Johnson, 577 F.2d 1304, 1311 (5th Cir. 1978); United States v. Silkman, 543 F.2d 1218, 1219 (8th Cir. 1976), cert. denied, 431 U.S. 919, 97 S.Ct. 2185, 53 L.Ed.2d 230 (1980); United States v. Jordan, 508 F.2d 750, 752 (7th Cir.), cert. denied, 423 U.S. 842, 96 S.Ct. 76, 46 L.Ed.2d 62 (1975); United States v. Porth, 426 F.2d 519, 523 (10th Cir.) cert. denied, 400 U.S. 824, 91 S.Ct. 47, 27 L.Ed.2d 53 (1970). The "protest type" returns filed by Mr. Edwards are simply not valid returns and do not activate the statute of limitations.

1 Clearly no statute of limitations applies to Mrs. Edwards for those years in which she filed no returns at all. We do not need to decide whether her 1976 filing was a proper return because the Commissioner filed a Notice of Deficiency within three years.

## CONSTITUTIONAL OBJECTIONS

**[3]** **[4]** Appellants claim that dismissal of their petition for failure to produce records violates their fifth amendment privilege against self-incrimination. To invoke the fifth amendment privilege, the taxpayer must be faced with substantial hazards of self-incrimination that are real and appreciable, and must have reasonable cause to apprehend such danger. United States v. Neff, 615 F.2d 1235, 1239 (9th Cir.), cert. denied, 447 U.S. 925, 100 S.Ct. 3018, 65 L.Ed.2d 1117 (1980). Appellants steadfastly assert that they have engaged in no criminal activity relating to their auto repair business, nor is any criminal investigation pending. Their fifth amendment claim merely rests on a generalized fear that if forced to turn over their business records, they somehow would be more likely to have criminal charges brought against them for tax evasion. Because there is no indication that production of their records would reveal criminal activity in their auto repair business and because the fifth amendment privilege may not itself be used as a method of evading payment of lawful taxes, United States v. Carlson, 617 F.2d 518, 523 (9th Cir.) cert. denied, 449 U.S. 1010, 101 S.Ct. 564, 66 L.Ed.2d 468 (1980), we reject appellants' fifth amendment claim as frivolous.

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**[5]** Appellants' fourth amendment claim is without foundation and utterly devoid of merit. Requiring taxpayers, who institute civil proceedings protesting deficiency notices, to produce records or face dismissal constitutes no invasion of privacy or unlawful search or seizure.

To the extent that appellants' rather inartfully drafted briefs may be read to claim that the income tax, the Internal Revenue Code, or statutes establishing the Tax Court are unconstitutional, we summarily reject such arguments. They have been raised and rejected many times. E.g., Tyee Realty Co. v. Anderson, 240 U.S. 115, 117-18, 36 S.Ct. 281, 282, 60 L.Ed. 554 (1916) (income tax constitutional); Ginter v. Southern, 611 F.2d 1226, 1229 (8th Cir. 1979) (tax protestor's claims concerning constitutionality of Internal Revenue Code and establishment of Tax Court so frivolous as not to require discussion), cert. denied, 446 U.S. 967, 100 S.Ct. 2946, 64 L.Ed.2d 827 (1980).

## CONSUMER PRICE INDEX

**[6]** **[7]** **[8]** On audit, the Commissioner determined that in each of the years 1971-1976, appellants had received but had not reported taxable income from their auto repair business. Appellants refused to provide the Internal Revenue Service auditor with any information relating to their tax liabilities for the years under investigation. The auditor estimated their taxable income by taking the business' gross receipts and costs of goods sold as reported by the Edwards on their joint income tax return filed for 1970, and adjusting both figures upward for each year in conformance with the percentage increase in the Consumer Price Index. Appellants claim that the use of the Consumer Price Index was arbitrary. We note, however, that the Commissioner's assertion of deficiencies are presumptively correct once some substantive evidence is introduced demonstrating that the taxpayer received unreported income. Weimerskirch v. Commissioner, 596 F.2d 358, 360 (9th Cir. 1979). ***1271** It is undisputed that Mr. Edwards owned an income-generating auto repair business during the years in question. Therefore, the Commissioner was entitled to rely on the presumption. Because appellants failed to offer any evidence to rebut this presumption and refused to comply with a court order to produce the records of the business, the Tax Court was correct in sustaining the deficiencies and dismissing appellants' petition.[2] See Rule 104(c)(3), Rules of Practice of the United States Tax Court.

2 Taxpayers also contend that they should not be liable for penalties under I.R.C. s 6651(a) because they were reasonable in relying upon their interpretation of the Constitution in not filing meaningful returns and therefore should not be charged with willful neglect. Reliance on their misguided constitutional beliefs was not reasonable. See United States v. Porth, 426 F.2d 519, 523 (10th Cir.), cert. denied, 400 U.S. 824, 91 S.Ct. 47, 27 L.Ed.2d 53 (1970).

## LIABILITY OF MRS. EDWARDS

**[9]** **[10]** A married individual is taxable on the earnings of his or her spouse to the

extent that the laws of the state of residence grants that individual a vested property or ownership interest in the spouse's earnings. United States v. Mitchell, 403 U.S. 190, 196-97, 91 S.Ct. 1763, 1767-68, 29 L.Ed.2d 406 (1971). The community property laws of Arizona grant such an interest. Goodell v. Koch, 282 U.S. 118, 119, 51 S.Ct. 62, 75 L.Ed. 247 (1930). Under Arizona law, there is a strong presumption, rebuttable only by clear and convincing evidence, that all property acquired during marriage is community property. Evans v. Evans, 79 Ariz. 284, 286, 288 P.2d 775, 777 (1955). Appellants failed to discharge this burden of rebuttal. The Tax Court correctly sustained the Commissioner's determination that Mrs. Edwards has a vested one-half interest in the income generated by her spouse's auto repair business.

## CONCLUSION

**[11]** Meritless appeals of this nature are becoming increasingly burdensome on the federal court system. We find this appeal frivolous, Fed.R.App.P. 38, and accordingly award double costs to appellee. Renken v. Harvey Aluminum, Inc., 475 F.2d 766, 766-67 (9th Cir. 1973); Lowe v. Willacy, 239 F.2d 179, 180 (9th Cir. 1956).

### All Citations

680 F.2d 1268, 50 A.F.T.R.2d 82-5390, 82-2 USTC P 9472

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# R-87

RESPONDENT'S EXHIBIT

KeyC te Ye ow F ag Negat ve Treatment
D sagreement Recogn zed by Matter of the App cat on of WP Company LLC, D.D.C., August 8, 20 6

447 F.3d 1172
United States Court of Appeals,
Ninth Circuit.

Kenneth KAMAKANA,
Plaintiff–Appellee,
United States of America,
Intervenor–Appellant,
Gannett Pacific Corporation,
dba The Honolulu Advertiser,
Intervenor–Appellee,
v.
CITY AND COUNTY OF HONOLULU;
Lee Donohue, in his official capacity;
Milton Olmos, in his official
capacity, Defendants–Appellants,
and
Lee Donahue, individually; Milton
Olmos, individually, Defendants.

No. 04–15241.
|
Argued Nov. 17, 2005.
|
Submitted May 11, 2006.
|
Filed May 17, 2006.

## Synopsis

**Background:** Following settlement of civil rights suit brought by city police detective against city, alleging retaliation for his whistleblower activities, a newspaper, moved to intervene and for order to release documents which were sealed under protective order. The United States District Court for the District of Hawaii, Leslie E. Kobayashi, United States Magistrate Judge, granted motions. Defendants appealed.

**Holdings:** The Court of Appeals, McKeown, Circuit Judge, held that:

[1] release of deposition testimony and documents attached to dispositive motions was warranted;

[2] claimed reliance by non-party on stipulated protective order was not a compelling reason sufficient to overcome the presumption of public access;

[3] proposed redactions to deposition testimony and documents attached to dispositive motions were not warranted; and

[4] District Court was not bound by its prior order sealing documents attached to non-dispositive motions.

Affirmed.

## Attorneys and Law Firms

***1175** Jerold T. Matayoshi, Fukunaga, Matayoshi, Hershey & Ching, Honolulu, HI, for the defendant-appellant.

Steve Frank, U.S. Department of Justice, Civil Division, Washington, DC, for the intervenor-appellant.

William J. McCorriston, McCorriston Miller Mukai MacKinnon, Honolulu, HI, for the plaintiff-appellee.

Jeffrey S. Portnoy, Cades, Schutte, Fleming & Wright, Honolulu, HI, for the intervenor-appellee.

Appeal from the United States District Court for the District of Hawaii; Leslie E. Kobayashi, Magistrate Judge, Presiding. D.C. No. CV 00 00729 LEB.

Before BEEZER, HAWKINS, and McKEOWN, Circuit Judges.

**Opinion**

McKEOWN, Circuit Judge.

We consider whether court records, originally filed under seal as attachments to motions in a civil action alleging police corruption, must be released to a newspaper under the common law right of access. This appeal stems from a suit by Kenneth Kamakana, a Honolulu police detective, claiming retaliation by the City and County of Honolulu for his whistleblower activities. Although that suit settled and its merits are not at issue here, during the litigation scores of documents were filed under seal in accord with a stipulated protective order. On the motion of intervenor Gannett Pacific Corporation/The Honolulu Advertiser ("Honolulu Advertiser"), the magistrate judge undertook a detailed and exhaustive review and unsealed virtually all of the pleadings and documents. The City and County of Honolulu, as well as Lee Donohue and Milton Olmos in their official capacities (collectively the "City"), with the United States as intervenor, challenge that order. We affirm.

## BACKGROUND

### I. KAMAKANA'S CASE

Kamakana was a detective in the Honolulu Police Department (HPD). From 1991 to 2000, he was in the elite Criminal Intelligence Unit (CIU), which investigates organized crime. In September 2000, Kamakana was transferred out of CIU. The following year, the department's Internal Affairs division initiated criminal and administrative investigations against Kamakana.

***1176** Shortly after his transfer in 2000, Kamakana filed a civil rights action against the City and others, alleging that the City violated his free speech rights, conspired to violate his civil rights, and retaliated against him as a whistleblower. The crux of his claim was that his transfer was in retaliation for his reporting misconduct and illegal acts by other HPD officers to his superiors and the Federal Bureau of Investigation.

After discovery and other pre-trial proceedings, the parties filed motions for summary judgment under seal. The district court denied, in large part, the City's motion and Kamakana's cross-motion for partial summary judgment on his whistleblowing claim. The case settled before trial and Kamakana stipulated to dismiss all of his claims.

### II. SEALED DOCUMENTS AND THE HONOLULU ADVERTISER'S INTERVENTION

We recount in detail the procedural background as it provides context for the unsealing order. In June 2001, the magistrate judge approved an amended, stipulated protective order, which restricted access to discovery materials to parties and counsel and limited their use solely for the litigation. Discovery began in earnest following entry of the protective order. In December 2001, the City served the United States, a third party, with requests for witness depositions and documents.

In accord with the protective order, the parties sought court permission to file their summary judgment pleadings under seal. The district court granted the motion but stated, "The court reserves the right to unseal materials filed under seal if, upon reviewing the sealed materials, the court determines that they should be available to the public or otherwise do not merit sealed status."

In the fall of 2002, the Honolulu Advertiser filed a motion to intervene for the limited purpose of modifying the protective order and unsealing the judicial record. The magistrate judge granted the motion to intervene and modified the protective order. Because the parties had simply stipulated to the protective order, a particularized showing of "good cause" to keep the documents under seal had never been made to the court as required by Federal Rule of Civil Procedure 26(c). The magistrate judge ordered the parties to submit all materials they wished to keep sealed along with "specific averments as to why good cause exists." The order noted that "[t]he burden of showing good cause will be on the party seeking to keep the information and/or documents confidential." The court declined at that time to determine whether the public had a common law right to access the documents because "such a determination is necessary only after it is shown that good cause exists to restrict disclosure."

Slightly different procedures applied to the City and the United States. The court ordered the City to submit its materials to a special discovery master for good cause determinations under Rule 26(c). Though not yet an intervenor at the time, the United States was directed to submit materials directly to the magistrate judge for an *in camera* good cause analysis.

In February 2003, the United States submitted transcripts and documents for the *in camera* review. In June 2003, the magistrate judge ordered, subject to limited specified exceptions, the transcripts and documents to be unsealed.

After *in camera* inspection of the City's documents, the discovery master issued a report and recommendation in February 2003 that listed general categories of documents to remain sealed and redactions to be made. The magistrate judge rejected the report and ordered the special master to identify specific documents to be sealed. ***1177** Following this directive, the special master submitted an amended report and recommendation, categorizing each document as sealed, unsealed, or unsealed with redactions based on the good cause standard. The magistrate judge adopted the

report and the City immediately filed a motion to reconsider, which the judge took under advisement.

The City and the Honolulu Advertiser then met with the special master who took another look at various documents and issued another report and recommendation. In October 2003, the magistrate judge adopted this report. In the same order, the magistrate judge noted that the Ninth Circuit had decided in *Foltz v. State Farm Mutual Auto. Insurance Company,* 331 F.3d 1122, 1135 (9th Cir.2003), that "the presumption of access is not rebutted where documents which are the subject of a protective order are filed with the court as attachments to summary judgment motions" and that "to retain any protected status for documents attached to a summary judgment motion, the proponent must meet the 'compelling reasons' standard and not the lesser 'good cause' determination."

In response to this articulation of the controlling standard, the City and United States both sought reconsideration. The City's motion did not set forth "compelling reasons" to keep its documents secret. Instead, it asserted that the magistrate judge had not given the City enough notice to make such a showing. Similarly the United States' submission detailed no compelling reasons, arguing only that the Honolulu Advertiser had not objected to the United States' proposed redactions.

In an order dated January 22, 2004, the magistrate judge directed the production of most of the City's documents that were under seal. The magistrate judge reasoned that an intervening change in controlling law, the *Foltz* case, compelled her to reconsider and conclude that almost all of the documents attached to the dispositive motions should be unsealed because no "compelling reason" rebutted the presumption of public access. After an *in camera* inspection of the sealed documents, described as an "exhausting if not exhaustive" process, the magistrate judge held that there was no good cause to keep sealed most of the other materials, mainly non-dispositive motions and attachments. The magistrate judge displayed the fruits of her *in camera* labors in three detailed indices attached to the order Exhibits A, B and C. [1]

1 Exhibit A, entitled "Documents Submitted for In Camera Review, is a 19 page index listing all documents the City wanted sealed or redacted, and specific rulings as to each of the 121 documents. Each document fell into one of three categories: (1) to be unsealed because the City had not shown good cause; (2) to be unsealed because it was attached to a dispositive pleading; or (3) to be redacted because the City had shown good cause. Eight documents were in the third group.

Exhibit B, entitled "Attachments to Dispositive Motions, is an 18 page index describing (1) each of the 85 documents the City sought to keep sealed or redact that were attached to dispositive pleadings, (2) the relevant dispositive pleading, and (3) the magistrate judge's ruling as to each document either "no compelling reason or the page number and specific information to be redacted because compelling reasons had been presented. Three of the documents were to be redacted.

Exhibit C, entitled "Pleadings & Attachments To Be Unsealed, is a 24 page index listing each pleading to be unsealed by docket number and document title. The index explains which documents attached to each of the 72 pleadings would be redacted. Four pleadings had attachments that were to be redacted and replaced.

As to the United States, in an order dated January 28, 2004, the magistrate judge required the unsealing of all the documents the United States had asked to keep protected, granting redactions related ***1178** to the home addresses and Social Security numbers of law enforcement officers and Kamakana. No detailed index was necessary because the United States requested redaction of a manageable number of documents, all of which were attached to dispositive pleadings.

The magistrate judge ordered the record unsealed by February 5, 2004. In advance of the deadline, the City, with the United States as *amicus curiae,* requested an emergency stay, which we granted. We also granted the United States' motion for intervention on appeal.

## ANALYSIS

**[1]** The broad issue before us is whether the magistrate judge [2] abused her discretion in determining that continued secrecy was no longer warranted for almost all of the documents currently under seal. [3] To answer the question, we first provide a general overview of the common law right of access to judicial records and then consider whether the documents the City and the United States seek to protect are subject to the right of access.

2 We have jurisdiction to hear this appeal directly from the magistrate judge's order because two conditions are met: (1) the district court explicitly designated a magistrate to conduct a jury trial or proceed to final judgment, and (2) the parties explicitly consented to magistrate judge jurisdiction. 28 U.S.C. § 636(c)(1); *Alaniz v. Cal. Processors, Inc.,* 690 F.2d 717, 720 (9th Cir.1982). The Honolulu Advertiser and the United States, as limited intervenors, are not parties whose consent is required for appellate jurisdiction. *Cf. San Jose Mercury News, Inc. v. U.S. Dist. Ct.,* 187 F.3d 1096, 1100 (9th Cir.1999); *Beckman Indus., Inc. v. Int l Ins. Co.,* 966 F.2d 470, 473 (9th Cir.1992).

3 We review for abuse of discretion both the decision to modify the protective order, *Phillips v. General Motors Corp.,* 307 F.3d 1206, 1210 (9th Cir.2002), and the decision to unseal the judicial record, *San Jose Mercury News,* 187 F.3d at 1102.

### I. OVERVIEW OF THE RIGHT OF ACCESS TO JUDICIAL RECORDS

Historically, courts have recognized a "general right to inspect and copy public records and documents, including judicial records and documents." *Nixon v. Warner Commc'ns, Inc.,* 435 U.S. 589, 597 & n. 7, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978). This right is justified by the interest of citizens in "keep[ing] a watchful eye on the workings of public agencies." *Id.* at 598, 98 S.Ct. 1306. Such vigilance is aided by the efforts of newspapers to "publish information concerning the operation of government." *Id.*

**[2]** **[3]** Nonetheless, access to judicial records is not absolute. A narrow range of documents is not subject to the right of public access at all because the records have "traditionally been kept secret for important policy reasons." *Times Mirror Co. v. United States,* 873 F.2d 1210, 1219 (9th Cir.1989). Our case law has identified two categories of documents that fall in this category: grand jury transcripts and warrant materials in the midst of a pre-indictment investigation. *Id.*

**[4] [5] [6] [7] [8]** Unless a particular court record is one "traditionally kept secret," a "strong presumption in favor of access" is the starting point. *Foltz,* 331 F.3d at 1135 (citing *Hagestad v. Tragesser,* 49 F.3d 1430, 1434 (9th Cir.1995)). A party seeking to seal a judicial record then bears the burden of overcoming this strong presumption by meeting the "compelling reasons" standard. *Foltz,* 331 F.3d at 1135. That is, the party must "articulate[ ] compelling reasons supported by specific factual findings," *id.* (citing *San Jose Mercury News, Inc. v. U.S. Dist. Ct.,* 187 F.3d 1096, 1102 03 (9th Cir.1999)), that outweigh the general history of access and the public ***1179** policies favoring disclosure, such as the " 'public interest in understanding the judicial process.' " *Hagestad,* 49 F.3d at 1434 (quoting *EEOC v. Erection Co.,* 900 F.2d 168, 170 (9th Cir.1990)). In turn, the court must "conscientiously balance[ ] the competing interests" of the public and the party who seeks to keep certain judicial records secret. *Foltz,* 331 F.3d at 1135. After considering these interests, if the court decides to seal certain judicial records, it must "base its decision on a compelling reason and articulate the factual basis for its ruling, without relying on hypothesis or conjecture." *Hagestad,* 49 F.3d at 1434 (citing *Valley Broadcasting Co. v. U.S. Dist. Ct.,* 798 F.2d 1289, 1295 (9th Cir.1986)).

**[9] [10]** In general, "compelling reasons" sufficient to outweigh the public's interest in disclosure and justify sealing court records exist when such "court files might have become a vehicle for improper purposes," such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets. *Nixon,* 435 U.S. at 598, 98 S.Ct. 1306; *accord Valley Broadcasting Co.,* 798 F.2d at 1294. The mere fact that the production of records may lead to a litigant's embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records. *Foltz,* 331 F.3d at 1136.

**[11]** We acknowledged explicitly in *San Jose Mercury News,* 187 F.3d at 1102, and later confirmed in *Foltz,* 331 F.3d at 1136, that the strong presumption of access to judicial records applies fully to dispositive pleadings, including motions for summary judgment and related attachments. We adopted this principle of disclosure because the resolution of a dispute on the merits, whether by trial or summary judgment, is at the heart of the interest in ensuring the "public's understanding of the judicial process and of significant public events." *Valley Broadcasting,* 798 F.2d at 1294; *accord Foltz,* 331 F.3d at 1135 36 (noting that " 'summary judgment adjudicates substantive rights and serves as a substitute for trial' ") (quoting *Rushford v. The New Yorker Magazine,* 846 F.2d 249, 252 (4th Cir.1988)). Thus, "compelling reasons" must be shown to seal judicial records attached to a dispositive motion. *Foltz,* 331 F.3d at 1136. The "compelling reasons" standard is invoked even if the dispositive motion, or its attachments, were previously filed under seal or protective order. *Id.* ("[T]he presumption of access is not rebutted where ... documents subject to a protective order are filed under seal as

attachments to a dispositive motion. The ... 'compelling reasons' standard continues to apply.") (internal citations omitted).

**[12]** We have, however, "carved out an exception to the presumption of access" to judicial records, *Foltz,* 331 F.3d at 1135, for a "*sealed discovery document* [attached] to a *non-dispositive* motion," such that "the usual presumption of the public's right of access is rebutted." *Phillips v. General Motors Corp.,* 307 F.3d 1206, 1213 (9th Cir.2002) (emphasis added). There are, as we explained in *Foltz,* "good reasons to distinguish between dispositive and non-dispositive motions." 331 F.3d at 1135. Specifically, the public has less of a need for access to court records attached only to non-dispositive motions because those documents are often " 'unrelated, or only tangentially related, to the underlying cause of action.' " *Id.* (quoting *Seattle Times Co. v. Rhinehart,* 467 U.S. 20, 33, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984)).

**[13]** The public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials. *Phillips,* 307 F.3d at 1213. We reasoned in *Phillips* that when a district court grants a protective order to seal documents ***1180** during discovery, "it already has determined that 'good cause' exists to protect this information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality." *Id.* The application of a strong presumption of access to sealed records, not directly relevant to the merits of the case, would eviscerate the "broad power of the district court to fashion protective orders." *Id.* Thus a "particularized showing," *Foltz,* 331 F.3d at 1138, under the "good cause" standard of Rule 26(c) will "suffice[ ] to warrant preserving the secrecy of sealed discovery material attached to non-dispositive motions." *Id.* at 1135.

**[14]** In sum, we treat judicial records attached to dispositive motions differently from records attached to non-dispositive motions. Those who seek to maintain the secrecy of documents attached to dispositive motions must meet the high threshold of showing that "compelling reasons" support secrecy. *Id.* at 1136. A "good cause" showing under Rule 26(c) will suffice to keep sealed records attached to non-dispositive motions. *Id.* at 1135.

It is important to emphasize the difference between the "compelling reasons" standard and the "good cause" standard, especially because the City suggests that they essentially collapse in this case.[4] A "good cause" showing will suffice to seal documents produced in discovery. Fed.R.Civ.P. 26(c) (stating that if "good cause" is shown in discovery, a district court may issue "any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense"). Rule 26(c) gives the district court much flexibility in balancing and protecting the interests of private parties. *Id.*

4 Acknowledging that "compelling reasons are required to keep under seal dispositive motions and attachments, the City argues that a previous

showing of "good cause suffices to satisfy the more demanding "compelling reasons test. The City notes that it already had shown "good cause before the January 22, 2004 order and that such a showing sufficed to keep its documents sealed under the "compelling reasons standard.

The City also argues that the magistrate judge, in analyzing "good cause, had been analyzing "compelling reasons all along without knowing it. Thus, the City maintains that the "very factors the Magistrate Judge used to determine 'good cause were, by her own definition, identical to the factors to establish 'compelling reasons' and that "where the Magistrate Judge found 'good cause ..., she must necessarily also have found 'compelling reasons' to protect the sealed documents. The difference, in this particular case, is one of lexicon. But, as we explain, the difference between the two standards is not merely semantic.

**[15]** A "good cause" showing will not, without more, satisfy a "compelling reasons" test. *See Foltz,* 331 F.3d at 1135 36; *Phillips,* 307 F.3d at 1212 (observing that even if a court finds "good cause" under Rule 26(c) to seal a document, it must still determine whether the common law right of access compels production). Different interests are at stake with the right of access than with Rule 26(c); with the former, the private interests of the litigants are not the only weights on the scale. Unlike private materials unearthed during discovery, judicial records are public documents almost by definition, and the public is entitled to access by default. *See Nixon,* 435 U.S. at 597, 98 S.Ct. 1306. This fact sharply tips the balance in favor of production when a document, formerly sealed for good cause under Rule 26(c), becomes part of a judicial record. Thus a "good cause" showing alone will not suffice to fulfill the "compelling reasons" standard that a party must meet to rebut the presumption of access to dispositive pleadings and attachments. [5]

5 Perhaps based on its misconception of the overlap between the "compelling reasons and "good cause standards, the City mistakenly argues that the magistrate judge's decisions were inconsistent because certain materials she found "compelling reasons to withhold were similar to other materials she ordered unsealed. The City observes that "for reasons unstated and unclear the magistrate judge protected significant portions of the depositions of two former CIU detectives, but ordered the unsealing of depositions of 32 other witnesses who offered similar details about the case.

But the City failed to note a crucial difference between the depositions that will stay sealed and those that will be unsealed the unsealed depositions were attached to dispositive motions. The depositions of the two former CIU officers were not attached to dispositive pleadings, and thus the lesser "good cause showing sufficed to keep these depositions sealed. *See Phillips,* 307 F.3d at 1213.

***1181** Having in mind these differences in the nature of the sealed filings and the applicable standards, we bifurcate our analysis, first considering records to which the "compelling reasons" standard applies the documents attached to dispositive motions that the City and United States seek to keep sealed. We then analyze records to which the "good cause" standard applies the documents attached to non-dispositive motions that the City alone seeks to keep sealed.

## II. DISPOSITIVE MOTIONS—DOCUMENTS COVERED BY THE "COMPELLING REASONS" STANDARD

### A. THE CITY

**[16]** Under our precedent, the City was required to present "articulable facts" identifying the interests favoring continued secrecy, *Foltz,* 331 F.3d at 1136 (internal citation omitted), *and* to show that these specific interests overcame the presumption of access by outweighing the "public interest in understanding the judicial process." *Hagestad,* 49 F.3d at 1434 (citation omitted). Instead, the City complains that it had no chance to present compelling reasons, and that the magistrate judge failed "to even permit ... a fair opportunity to be heard on the matter."

But, in fact, the City did have a chance to show "compelling reasons" and squandered it. In the October 2003 order, the magistrate judge explicitly asked for motions for reconsideration of her order adopting the special master's report. She pointed to the issuance of *Foltz,* observing that "the Court concludes that, in order to retain any protected status for documents attached to a summary judgment motion, the proponent must meet the 'compelling reasons' standard and not the lesser 'good cause' determination." Rather than identifying or even attempting to articulate "compelling reasons," the City's motion to reconsider simply objected that the City was not given enough time to articulate such "compelling reasons." [6]

6 Perhaps as the result of its apparent misapprehension of what was necessary to overcome the presumption of access, some of the City's arguments suggest that it conflated principles applicable to the right of access. One section of its brief is titled "The Magistrate Judge Erred by Unsealing Dispositive Pleadings and Attachments Which Included Traditionally Protected Information, Filed Under Seal Pursuant to a Protective Order For Which Good Cause Had Been Shown. This approach implies a relationship between the concept of "traditionally kept secret and the "good cause standard under Rule 26(c). Elsewhere, the City suggested that the "traditionally kept secret and "compelling reasons standards were interchangeable: "*Foltz* required the Magistrate Judge to examine the documents to determine whether traditional protections and compelling reasons to protect the sealed documents existed.

The City further argues that the magistrate judge failed to articulate reasons for *unsealing* the record even though it was the City's burden to articulate reasons for *sealing* the record, claiming that the January 22, 2004 order "deprived [the City] of a meaningful discussion and analysis by the Magistrate Judge, of the factors she considered in her 'compelling reasons' determination." ***1182** This proposed approach is upside down. The judge need not document compelling reasons to unseal; rather the proponent of sealing bears the burden with respect to sealing. A failure to meet that burden means that the default posture of public access prevails.

Even so, the magistrate judge did not summarily order the production of the City's documents. Rather, she conducted an "exhausting if not exhaustive" *in camera* review of the materials. [7] After this review, the magistrate judge noted that "the testimony and documents attached to the dispositive motions do not contain information that could be used for 'scandalous or libelous' purposes," and that these documents did not contain sensitive personal information. She also determined that deposition testimony on confidential informants and criminal investigations was "years old" and "largely resulted in criminal

indictments which were made public over three years ago." She found, however, that the personal information of Kamakana and various law enforcement officers (home addresses and social security numbers) met the "compelling reason" standard.

7 In *Foltz,* we rejected the argument that an *in camera* review was an inadequate procedure for determining whether sealed records contain confidential information:

> T]here are few, if any, alternatives to *in camera* inspection that do not defeat the purpose of the rules and privileges protecting confidential material. As a result, we rely in the first instance upon the district court conducting the *in camera* inspection to assess critically the arguments of the party opposing disclosure. Meaningful appellate review, made possible by the district court's articulation of compelling reasons for its decision supported by specific factual findings, provides a second line of defense.

331 F.3d at 1136 n. 6 (citations omitted).

It is difficult to know what more detail the magistrate judge could have provided in addressing the City's request to keep these documents sealed, especially since the City itself never provided specific "compelling reasons" to grapple with and consider. When *sealing* documents attached to a dispositive pleading, a district court must "base its decision on a compelling reason and articulate the factual basis for its ruling, without relying on hypothesis or conjecture." *Hagestad,* 49 F.3d at 1434. In the absence of specifically articulated reasons, "meaningful appellate review is impossible." *Id.* at 1435.[8] It makes little sense, however, to require the same specificity where the court is simply effectuating the presumption of public access by *unsealing* documents covered by a blanket protective order.

8 *See also Kasza v. Browner,* 133 F.3d 1159, 1175 (9th Cir.1998) (remanding and requiring the court provide a statement of reasons "should it determine in its discretion to leave the seal in place "); *Erection Co.,* 900 F.2d at 170 (remanding case in which the district court sealed a consent decree because "the record gives no hint of whether the court considered any or all ... factors and arguments ").

A review of the record points up the inadequacy of the City's declarations, which largely make conclusory statements about the content of the documents that they are confidential and that, in general, their production would, amongst other things, hinder CIU's future operations with other agencies, endanger informants' lives, and cast HPD officers in a false light. These conclusory offerings do not rise to the level of "compelling reasons" sufficiently specific to bar the public access to the documents. Under these circumstances, and given the detail of the judge's analysis and the case law, we conclude that the magistrate judge did not abuse her discretion in declining to seal the documents attached to summary judgment motions.[9]

9 It bears noting that because the parties de facto sealed the record through their stipulated protective order, it is easy to get mixed up both in articulating the burden and the result. For example, as a consequence of this posture, the orders relate to *unsealing* documents. Thus, the parties were often arguing why documents that were sealed should not be unsealed. The effective bottom line is that the district court was determining whether documents should be sealed.

***1183 B. THE UNITED STATES**

In appealing the magistrate judge's order, the United States requested a limited number of specific redactions of documents filed with dispositive motions. These redactions

have the virtue of being limited and clear, identifying specific names or references to be kept secret. The problem is the broad, categorical approach the United States took to justify these redactions. It asserted a blanket rule that, as a non-party to the litigation, it was entitled to rely on the protections of the stipulated protective order. Although the United States proposed specific redactions, it justified them by invoking general categories of privileges without elaboration. Finally, the United States claimed that it sought redactions for information that was "traditionally kept secret."

### 1. NON–PARTY RELIANCE ON PROTECTIVE ORDER

**[17]** The United States argues that, as a non-party to the litigation, it relied on the stipulated protective order when consenting to provide depositions of federal witnesses and documents, and that such reliance constituted a compelling reason sufficient to overcome the presumption of access. We have no such categorical rule regarding protective orders. To the contrary, we have held that a non-party's reliance on a blanket protective order is unreasonable and is not a "compelling reason" that rebuts the presumption of access. *Foltz,* 331 F.3d at 1138; *Beckman Indus., Inc. v. Int'l Ins. Co.,* 966 F.2d 470, 475 76 (9th Cir.1992) (noting that "[t]he extent to which a party can rely on a protective order should depend on the extent to which the order induced the party to allow discovery" and that reliance on a "stipulated ... blanket protective order" does not justify sealing court records).

**[18]** The position of the United States illustrates the hazard of stipulated protective orders. These orders often contain provisions that purport to put the entire litigation under lock and key without regard to the actual requirements of Rule 26(c). Like many pretrial protective orders, the judge signed off on the order without the benefit of making an individualized determination as to specific documents. The order here was geared primarily to discovery, but with a recognition that confidential documents may find their way into a court file or be used at trial. For example, in addition to recognizing that the court could modify the order at any time for "good cause," the order required that the parties obtain a court order to file materials under seal. Thus, the United States should have been on notice that confidential categorization of discovery documents under the protective order was not a guarantee of confidentiality, especially in the event of a court filing. Although the magistrate judge "expressly approved and entered the protective order," the order contained no good cause findings as to specific documents that would justify reliance by the United States. *See Beckman,* 966 F.2d at 476. Thus, the claimed reliance on the order is not a "compelling reason" that rebuts the presumption of access. *See Foltz,* 331 F.3d at 1138.

### 2. Specificity of Compelling Reasons

**[19]** Although the United States identifies the redactions it seeks by page number and line number, it does not provide similarly specific compelling reasons ***1184** to justify these redactions. Instead, the United States

purports to justify each redaction by listing one of four general categories of privilege (privacy, law enforcement, confidential source, and ongoing investigation). Simply mentioning a general category of privilege, without any further elaboration or any specific linkage with the documents, does not satisfy the burden.

We note that these redactions and justifications are the same ones the United States offered under the good cause standard of Rule 26(c). The government took no steps to explain how these asserted privileges also met the more demanding "compelling reasons" standard. As we explained in *Foltz,* a "good cause" showing *without more* will not satisfy a "compelling reasons" test. *See id.* at 1135 36. Because the United States simply resubmitted its good cause showing *without more,* the magistrate judge was well within her discretion to deny the redactions it sought under the compelling reasons standard.

**[20]** A review of the United States' proposed redactions supports the decision to unseal the records. For example, many names or references for which the United States sought redaction were either already publicly available or were available in other documents being produced to the Honolulu Advertiser. The magistrate judge noted an example of this phenomenon: The United States sought redactions for references to Marirose Tangi and Gabriel Aio even though both were mentioned by name in a press release issued by the United States Attorney's Office for the District of Hawaii.

There are more examples. In one set of redactions, the United States sought to delete deposition references to events and persons mentioned by name in Kamakana's complaint. Another set of redactions would delete the names of persons, referred to only by code name in Kamakana's complaint, whose depositions (and names) were ordered produced before the United States' proposed redactions.[10] Finally, another proposed redaction was based on the "ongoing investigation" privilege even though the name of the operation was referenced several times without redaction on the same page.

10 For instance, the United States sought to seal any mention of the real name of the person identified as "A.B. in Kamakana's complaint. Yet "A.B. was deposed during discovery, and the deposition transcript listed under A.B.'s real name was marked for unsealing by the special master in 2003, long before the magistrate judge denied the United States the redaction in January 2004.

In her order, the magistrate judge acknowledged the nature of Kamakana's claims and concluded that "the testimony and documents concerning this matter are of significant public concern." She also determined that the testimony and documents did not contain "sensitive personal information" or information that would be used for "scandalous or libelous" purposes. Finally, as to the documents she ordered to remain sealed, the magistrate judge concluded that disclosure of the officers' home address and social security numbers could expose the officers and their families to harm or identity theft.

### 3. "Traditionally Kept Secret" as Justification

**[21]** **[22]** The United States suggests that documents subject to the privacy, law enforcement, and official information privileges are "traditionally kept secret" and therefore subject to seal.[11] These privileges do not automatically fall within the "traditionally kept secret" exception. This phrase is a term of art specific to the right ***1185** of access; a class of documents is covered by that term if there is "*neither* a history of access *nor* an important public need justifying access." *Times Mirror,* 873 F.2d at 1219 (emphasis added). Few documents are categorized thus because the consequences are drastic "there is no right of access to documents which have traditionally been kept secret for important policy reasons," *id.,* meaning that a party need not show "compelling reasons" to keep such records sealed.

11 The City also puts forth this argument.

**[23]** Thus far, we have identified two types of documents as "traditionally kept secret": grand jury transcripts and warrant materials during the pre-indictment phase of an investigation. *Id.* Though these documents may roughly fall into the category of law enforcement, they are very specific types of documents that warrant the highest protection. We do not readily add classes of documents to this category simply because such documents are usually or often deemed confidential.[12] Indeed, even the documents we have identified as "traditionally kept secret" are not sacrosanct.[13] Simply invoking a blanket claim, such as privacy or law enforcement, will not, without more, suffice to exempt a document from the public's right of access.

12 *Cf. U.S. v. Schlette,* 842 F.2d 1574, 1583 (9th Cir.1988) ( "We agree that presentence reports are confidential documents. But 'confidentiality is not some talismanic utterance that can justify a refusal to disclose the contents of a presentence report when a sufficient showing supporting disclosure has been made. ).

13 *See, e.g., In re Special Grand Jury (for Anchorage, Alaska),* 674 F.2d 778, 782 (9th Cir.1982) ("It is sometimes possible for a nonparty to a grand jury proceeding to obtain access even to the transcripts of those proceedings. ).

**[24]** Neither will it suffice to show, as the United States argues, that a document merits sealing because it would be exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Such exempt documents are not automatically privileged in civil discovery. *See Friedman v. Bache Halsey Stuart Shields, Inc.,* 738 F.2d 1336, 1344 (D.C.Cir.1984) ("If information in government documents is exempt from disclosure to the general public under FOIA, it does not automatically follow the information is privileged ... and thus not discoverable in civil litigation."). "It is unsound to equate the FOIA exemptions and similar discovery privileges" because the two schemes serve different purposes. *Id.* FOIA is a statutory scheme directed to regulating the public access to documents held by the federal government; the public's "need" for a document is unrelated to whether it will be disclosed. *See Maricopa Audubon Soc'y v. United States Forest Serv.,* 108 F.3d 1082, 1087 (9th Cir.1997). By contrast, the public right of access to court documents is grounded on principles related to the public's right and need to access

court proceedings. *See Friedman,* 738 F.2d at 1344. Thus, we will not import wholesale FOIA exemptions as new categories of documents "traditionally kept secret" under *Times Mirror.*

## III. NON–DISPOSITIVE MOTIONS —DOCUMENTS COVERED BY THE "GOOD CAUSE" STANDARD

**[25]** Finally, we address the magistrate judge's decision to unseal the documents attached to non-dispositive motions. The City claims that in adopting the reports of the special master, the magistrate judge made a good cause determination to which she was bound by the law of the case. Under the City's theory, the judge was thus precluded from undertaking a later review and reclassification of the documents.

***1186** **[26]** **[27]** Under the law of the case doctrine, a court "is generally precluded from reconsidering an issue previously decided by the same court ... in the identical case." *United States v. Lummi Indian Tribe,* 235 F.3d 443, 452 (9th Cir.2000) (citing *Milgard Tempering, Inc. v. Selas Corp. of Am.,* 902 F.2d 703, 715 (9th Cir.1990)). Nonetheless, a trial judge has broad discretion to reconsider her own interlocutory, pre-trial evidentiary rulings, particularly when no jury trial is involved. *See Amarel v. Connell,* 102 F.3d 1494, 1515, 1516 (9th Cir.1996) (" '[T]he interlocutory orders and rulings made pre-trial by a district judge are subject to modification by the district judge at any time prior to final judgment ....' ") (quoting *In re United States,* 733 F.2d 10, 13 (2d Cir.1984)). In *Amarel,* we faced the "delicate problem of two district judges exercising their 'broad discretion' over evidentiary rulings in different phases of the same case and reaching contradictory results." *Id.* at 1515. We held that it was not an abuse of discretion for the second district judge to allow the admission of evidence prohibited by the first district judge, *id.* at 1516, because "[t]here is 'no imperative duty to follow the earlier [evidentiary] ruling only the desirability that suitors shall, so far as possible, have reliable guidance how to conduct their affairs.' " *Id.* at 1515 (quoting *In re United States,* 733 F.2d at 13).

Here, no law of the case is at issue, nor do we have a "delicate problem" of conflict between the rulings of two district judges. Instead we have the magistrate judge's further review of the special master's discovery findings, which are always subject to court review.

The magistrate judge initially approved, without commentary, two reports by the special master, of May 2003 and September 2003, sealing certain documents of the City for good cause. In her October 2003 order adopting the special master's September 2003 report, the judge laid out a procedure for reconsideration and/or clarification of the report. In addition, the order sets out controlling precedent, including the then-recent *Foltz* decision from this court. Finally, the judge wrote that "[t]he parties should be well aware that, by his findings in the Report adopted by this Court, the Master has made the 'good cause' determination and, absent an abuse of discretion, this Court will not set aside that determination."

After the City moved for reconsideration of the special master's report, the magistrate judge meticulously reviewed every document for which confidentiality was sought and performed her own, independent "good cause" analysis. In her January 22, 2004 order requiring the City to unseal most of those documents, including the ones the special master had found good cause to keep sealed, she concluded that the City "[had] not made the requisite showing of good cause except as to those documents containing Plaintiff's medical records." She examined each of the reasons presented by the City the deliberative process privilege, the law enforcement privilege, the official information privilege, privacy interests, and embarrassment and found that none of these had been asserted with sufficient particularity, noting that "City Defendants' arguments fail to demonstrate any specific prejudice or harm."

The City seeks to cast this comprehensive review in a negative light by suggesting that the decision to overrule the special master was somehow unfair or unwarranted. To the contrary, we embrace the judge's decision to carefully review every document in light of the change in intervening law and in the face of the somewhat tepid and general justifications offered for sealing the documents. It also bears noting ***1187** that the parties were always on notice, by virtue of the protective order itself and an order entered by the district judge, that "[t]he court reserves the right to unseal materials ... if ... the court determines that they should be available to the public or otherwise do not merit sealed status." The judge took seriously the presumption of public access and did so in accord with precedent from the Supreme Court and this court. Given these facts, we "will not second guess the exercise of the considerable discretion" allowed her. *Amarel,* 102 F.3d at 1516. We hold that the magistrate judge did not abuse her discretion in ordering the City to produce documents attached to non-dispositive motions.

**AFFIRMED.**

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# R-88

RESPONDENT'S EXHIBIT

KeyC te Ye ow F ag Negat ve Treatment
D st ngu shed by Nat ona Treasury Emp oyees Un on v. Horner, D.D.C., February 27, 987

606 F.2d 1031
United States Court of Appeals,
District of Columbia Circuit.

NATURAL RESOURCES DEFENSE COUNCIL, INC., et al.
v.
SECURITIES AND EXCHANGE COMMISSION, et al., Appellants.

No. 77-1761.
|
Argued June 16, 1978.
|
Decided April 20, 1979.
|
Rehearing Denied July 20, 1979.

Suit was brought by public interest groups challenging Securities and Exchange Commission's failure to promulgate rules requiring comprehensive disclosures by corporations of their environmental and equal employment policies. Following remand, 389 F.Supp. 689, the Commission conducted further rule-making proceedings, and judicial review was sought of final decision not to require additional disclosures. The United States District Court for the District of Columbia, Charles R. Richey, J., 432 F.Supp. 1190, found Commission's action arbitrary and capricious, and appeal was taken. The Court of Appeals, McGowan, Circuit Judge, held that: (1) court would exercise relatively careful scrutiny to insure that Commission scrupulously followed National Environmental Policy Act procedures but its review of Commission's factual, and particularly its policy, determinations would be a narrow one; (2) Commission was not required under the National Environmental Policy Act to consider a limited proxy disclosure rule; (3) Commission did consult with the council on Environmental Quality to extent required by NEPA; (4) absence of firm data on cost and benefits of environmental disclosure did not preclude Commission from adopting or declining to adopt rules, and (5) Commission was justified in rejecting proposed rules requiring comprehensive disclosures of equal employment policies.

Reversed and remanded with instructions.

***1035** ****128** Appeal from the United States District Court for the District of columbia.

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Ralph J. Temple and James vanR. Springer, Washington, D. C., were on the brief, for amicus curiae, The American Civil Liberties Union Fund of the National Capital Area, urging affirmance.

Lawrence B. Kraus, Gen. Counsel, Chamber of Commerce of the United States, and Stanley T. Kaleczyc, Jr., Director, National Chamber Litigation Center, Washington, D. C., Donald E. Egan, Francis X. Grossi, Jr., Chicago, Ill., were on the brief, for amicus curiae, Chamber of Commerce of the United States, urging reversal.

Before TUTTLE[*], United States Senior Circuit Judge for the United States Court of Appeals for the Fifth Circuit, and McGOWAN and ROBB, Circuit Judges.

[*] Sitting by designation pursuant to 28 U.S.C. s 294(d).

**Opinion**

Opinion for the court filed by McGOWAN, Circuit Judge.

McGOWAN, Circuit Judge:

This appeal, from a District Court order directing the Securities and Exchange Commission (SEC or Commission) to conduct further proceedings incident to a petition for rulemaking, raises issues intersecting three important federal statutory schemes: the Securities Acts, the Administrative Procedure Act (APA), and the National Environmental Policy Act (NEPA). It involves in particular a request made of the Commission, ***1036 ****129** and denied by it after seven years of proceedings, to promulgate rules requiring comprehensive disclosures by corporations of their environmental and equal employment policies.

The District Court held that the Commission had acted arbitrarily and capriciously in denying the petition. Because we find the Commission's action sustainable under the scope of judicial review applicable to this case, we reverse.

I

Appellees[1] are organizations dedicated to inducing more responsive attitudes among American corporations towards the problems of environmental degradation and inequality of employment opportunity. To this end they participate in so-called "corporate responsibility campaigns," which typically involve proposals to corporate management and shareholders, demands for disclosure, media campaigns, lobbying, educational efforts and litigation.

[1] The original rulemaking petitioners and plaintiffs in the District Court were the Natural Resources Defense Council, Inc. (NRDC), the Project on Corporate Responsibility, Inc., and the Center on Corporate Responsibility, Inc. See NRDC v. SEC, 389 F.Supp. 689, 693 (D.D.C.1974) (NRDC I ). By

order of September 1, 1976, the following additional plaintiffs were joined: the National Organization for Women; the Unitarian Universalist Association; the American Baptist Home Mission Society; and the Province of St. Joseph of the Capuchin Order. NRDC v. SEC, 432 F.Supp. 1190, 1197 n. 17 (D.D.C.1977) (NRDC II ). All of the foregoing are appellees here.

Appellees believe that such campaigns have achieved positive results in some cases, but that their usefulness is currently limited by a shortage of information available to stockholders and an imbalance in the information that is distributed. Stockholders receive considerable lobbying by management through annual reports, selective disclosure, image advertising, and other mechanisms involving large corporate expenditures. In contrast, groups such as appellees find it expensive to compile and disseminate information even when managements are cooperative, and often difficult or impossible when managements are not. Institutional investors in particular, so it is claimed, are naturally reluctant to vote against management in the absence of full and balanced information, whatever their position would be if they were fully informed.

Appellees believe that this impediment to corporate responsibility campaigns could be considerably reduced if corporations were forced to disclose comprehensive information about their environmental and equal employment policies. They expect, further, that such disclosure would aid the public in making sound investments and would deter corporations from taking actions likely to result in significant public disapproval. With these goals in mind, appellees naturally turned to the SEC, which is, of course, the agency charged with administering the federal statutes mandating disclosure of corporate information.

On June 7, 1971, appellees petitioned the SEC to promulgate rules requiring corporate disclosure of environmental and equal employment information. These proposed rules were comprehensive in scope. In the words of the District Court,

The petition . . . proposed that companies which file with the SEC be required to describe with respect to each major activity or product, Inter alia : (1) the nature and extent (quantified to the extent feasible) of the resulting pollution or injury to natural areas and resources, and (2) the feasibility of, and plans for, correcting the same. The Petition also requested that the SEC require disclosure of whether the registered company has changed company products, projects, production methods, policies, investments or advertising to advance environmental values.

In the equal employment opportunity area, that Petition requested that each company which makes public claims about its employment of minorities or women be required to include in its SEC filings statistical data by which the facts on this subject of major significance could be tested by interested persons. ***1037 **130** This employment information would be no more than that information required to be filed by such companies with the Equal Employment Opportunity Commission under existing laws and regulations. The Petition further requested that the SEC modify the definition of "material litigation", for which disclosure is required in SEC forms, so as to include all

proceedings against a company under Title VII of the Civil Rights Acts of 1964, 42 U.S.C. s 2000e et seq., or under the equal employment regulations covering federal contractors. In that event, the company would be further required to disclose the statistical data detailed above.

NRDC I, supra, 389 F.Supp. at 694. As authority for this petition, appellees relied, Inter alia, on NEPA, 42 U.S.C. s 4321 Et seq., which was alleged to support strongly, if not to mandate, SEC environmental disclosure rules, See Sonde & Pitt, Utilizing the Federal Securities Laws to "Clean the Air! Clean the Sky! Wash the Wind! ", 16 Howard L.J. 831 (1971), and on the call by the U.S. Commission on Civil Rights for SEC civil rights disclosure requirements "as a means of stimulating greater concern in civil rights and related areas." Ex. C at 786.

The SEC declined to propose the rules they advocated, while proposing other rules requiring more limited forms of corporate disclosure. Securities Act Release No. 5235 (Feb. 16, 1972), 37 Fed.Reg. 4365 (1972). After a preliminary jurisdictional misstep,[2] appellees commenced this suit in District Court on March 2, 1973, as a challenge to the Commission's failure to propose the rules they sought.

2 The appellees initially sought review in this court of the SEC's refusal to propose the rules they sought. Their petition for review was dismissed on the ground that the Commission's action was not final agency action subject to judicial review. NRDC v. SEC, No. 72 1148 (D.C.Cir. Feb. 8, 1973). A later effort to petition this court for review was also dismissed for lack of jurisdiction. NRDC v. SEC, No. 73 1591 (D.C.Cir. June 17, 1975).

After receiving and analyzing written comments on the Commission's rulemaking proposals in Release No. 5235, the SEC adopted part of the proposed rules in Securities Act Release No. 5386 (April 20, 1973), 38 Fed.Reg. 12100 (1973). The adopted rules required disclosure only of the Material financial effects of corporate compliance with environmental laws.[3] Appellees thereupon supplemented their suit in District Court with challenges to the proceedings leading to Release No. 5386, and moved for summary judgment. The District Court agreed with appellees' position and held that the SEC's proceedings had been inadequate under the APA and NEPA. NRDC I, supra. It remanded with instructions that fuller proceedings be conducted and issued instructions as to the resolution of two key factual issues, 389 F.Supp. at 701-02 (footnote omitted):

3 Because the SEC did adopt these limited environmental disclosure rules, appellees attempt to characterize their complaint as a challenge to agency Action, on the theory that the SEC did not go Far enough, rather than as a claim based on the SEC's Failure to act in adopting the particular rules they proposed. We find this theory disingenuous. Appellees do not object to the terms of the rules actually adopted, which the District Court has allowed to remain in effect pending further rulemaking action by the SEC. It is clear that their real grievance is with the Commission's nonadoption of the expanded disclosure rules they requested.

When the SEC reconsiders its rules in accordance with this opinion, it should develop a record and resolve two overriding factual issues. The first is the extent of "ethical investor" interest in the type of information which Plaintiffs have requested. The second issue is what avenues of action are available which ethical investors may

pursue and which will tend to eliminate corporate practices that are inimical to the environment and equal employment opportunity.

On remand, the SEC issued Securities Act Release No. 5569 (Feb. 11, 1975, 40 Fed.Reg. 7013 (1975), giving notice of renewed proceedings to fulfill the District Court's instructions. The interest of the public in these proceedings was considerable. In nineteen days of public hearings, fifty-four ***1038** ****131** oral presentations were made and three hundred fifty-three written comments received, creating a record over ten thousand pages long. 40 Fed.Reg. 51657-58 (1975). In large measure, the views expressed were polarized as either in favor of, or in opposition to, appellees' proposal. The comments favoring the proposals generally declared that greater disclosure of information by corporations was essential both to sound voting on corporate policies and to informed consideration of corporate financial positions, in light of what the disclosed information would show with respect to environment and equal employment costs, and, generally speaking, the quality of the corporate management. [4] On the other hand, hundreds of corporations submitted comments opposing the disclosure proposals on the ground that the cost of gathering the required information would be inordinately high, that shareholders were not seriously interested in the information, and that the benefits would be small. [5]

4 The tenor of the pro proposal comments is expressed by the statement of Roger G. Kennedy, Vice President for Financial Affairs of the Ford Foundation, after discussing how his institution's $2 billion in assets were managed, Ex. C at 533 34:

> Our analysts are expected to know and compute the likely economic effects of present litigation and regulation. . . .
>
> As long term investors, whose positions are large enough to be difficult to trade quickly, we don't want to be surprised by what EPA or a state legislature, or the EEOC, or a class action suit, or even a court might do. We try to perceive early warning signals. We cannot afford to wait until a law suit or a regulatory action is already in the courts. We expect our investment analysts to keep their binoculars on the horizon so that their earnings estimates, discounted to arrive at estimates of present value, may prudently include the probable impact of those social forces which a well informed citizen might observe to be abroad in the land.
>
> . . .
>
> Obviously, one cannot vote proxies, or talk intelligently with corporate managers, unless one knows something about the facts underlying the issues presented. Those facts change over time. Staying with a problem besetting the assets one owns is old time investment religion. So we go back to our analysts, year after year, and back to our independent inquiries about corporate practice, in an effort to make our voting and our conversations sensible and current and well informed.
>
> We have had to do a lot of digging on our own for such information, though we are often joined in digging by like minded institutions which share our investment methods. We would rejoice if you were to make it easier for us to be informed. We could then know better what to expect of the long range financial prospects of our stockholdings; we could be better able to act as effective owners. We might even help nudge the managements, which are, after all, the agents of us owners into ways of behaving which will make our holdings more prosperous in the long run.

5 The tenor of these comments is expressed by the statement of a spokesman for the National Association of Manufacturers, Ex. C at 505 09 (footnotes omitted):

> Even if the Commission had authority to require disclosure of such matters, there are many reasons why it should not do so. Three reasons seem paramount to us: first, such disclosure could frustrate the Commission's statutory purposes; second, there is

> no need for such disclosure; and third, such disclosure imposes too onerous a burden on U.S. corporations.
> . . .
> Required disclosure of too much detailed information would frustrate the statutory objective of protecting investors by deemphasizing or obscuring crucial information. The logic of arguments for required disclosure of documents dealing with equal employment opportunity would lead to required disclosure of documents on every (1) tax dispute, (2) contract dispute, (3) patent dispute, (4) OSHA claim, (5) customer complaint, etc., involving an issuer. A quagmire of paper would result, from which investors would learn very little, thereby undermining the statutory function of the Commission.
> . . .
> Several . . . "service organizations publish reports on "socially responsible business policies and practices based on their own research. . . .
> If such service organizations and specialized reports for "ethical investors already exist, what need is there for the costly, onerous, detailed disclosure proposed?
> . . .
> In addition to being unlawful, inadvisable, and unnecessary, the proposed disclosure of socially significant matters would add to the mounting paperwork burden on American business a burden whose added costs are passed on to the consumer, thus fueling inflation.
> . . .
> The magnitude of the minimum total cost of these environmental impact studies can only be estimated. But a conservative estimate would be in excess of $1 billion. Between 1954 and 1967 the number of manufacturing establishments employing 1000 persons or more held steady at 2000 establishments. Taking our estimate of the cost of environmental impact studies for plants employing 500 persons and multiplying by 2000 establishments produces the $1 billion estimate.

***1039** ****132** In October, 1975, and May, 1976, the SEC announced that it would not adopt the proposed disclosure rules, and issued lengthy explanatory statements. Securities Act Releases Nos. 5627 (Oct. 16, 1975), 40 Fed.Reg. 51656 (1975), and 5704 (May 6, 1976), 41 Fed.Reg. 21632 (1976). It argued, first, that its discretion to adopt particular disclosure requirements was very broad, depending in every case on balancing, in its expert judgment, the incremental value of the proposed disclosure against the potentially confusing effect on investors and the increased costs to registrants. Despite this broad discretion, however, the Commission contended that its authority was limited to contexts related to the objectives of the federal securities laws. And these laws, in the Commission's view, were designed generally to require disclosure of financial information in the narrow sense only. The one partial exception to this principle, according to the Commission, was section 14(a) of the Securities Exchange Act, 15 U.S.C. s 78n(a), under which the "primacy of economic matters . . . is somewhat less" because the purpose of that provision is to require fair opportunity for corporate suffrage. 40 Fed.Reg. at 51659.

Turning to its obligations under NEPA, the Commission concluded that although the statute made environmental concerns part of its substantive mandate, it did not go so far as to authorize the SEC to promulgate disclosure rules unrelated to its responsibilities under its organic statutes. NEPA, therefore,

> authorizes and requires the Commission to consider the promotion of environmental protection "along with other considerations" in determining whether to require affirmative disclosures by registrants under the Securities Act and the Securities Exchange Act, and, although the NEPA

> does not require any specific disclosures, as such, we have been required to explain the alternatives which we considered in meeting our obligations under NEPA and the reasons why we have rejected substantial alternatives, in sufficient detail to permit judicial review.

40 Fed.Reg. at 51662 (footnote omitted).

In determining how best to fulfill these NEPA duties, the Commission considered five alternatives proposed during the proceedings:

> (1) comprehensive disclosures of the environmental effects of corporate activities, (2) disclosure of corporate noncompliance with applicable environmental standards, (3) disclosure of all pending environmental litigation, (4) disclosure of general corporate environmental policy, and (5) disclosure of all capital expenditures and expenses for environmental purposes.

40 Fed.Reg. at 51662. All of these the Commission ultimately rejected. From the summary of the record prepared by the SEC's staff, it appears that the SEC believed that alternatives (3), (4), and (5) had widespread support among commenters. However, the record reveals that there was never much organized or documented support for those alternatives. The appellees and the District Court did not treat them as significant. Alternative (2) was the early suggestion of Sonde & Pitt, Supra. It received serious consideration but, after further comments, was rejected in Securities Act Release No. 5704 (May 6, 1976), 41 Fed.Reg. 21632 (1976).

Alternative (1) was the proposal of appellees herein. The Commission rejected it for the following reasons, 40 Fed.Reg. at 51662:

We reject the first of these, proposed by the Natural Resources Defense Council, for a number of reasons. First, the interest among investors that may exist appears to be primarily in whether corporations are acting in an environmentally unacceptable manner, rather than in whether, and to what extent, corporations ***1040 **133** have gone beyond what is expected of them in this area. Second, unless existing environmental standards may be used as a reference point, both the costs to registrants and the administrative burdens involved in the proposed disclosure would be excessive. There appears to be no established, uniform method by which the environmental effects of corporate practices may be comprehensively described. Nor does there appear to be scientific agreement as to the harmfulness to the environment of many activities. It appears, therefore, that the proposed disclosures would be extremely voluminous, subjective and costly to all concerned. They also would not lend themselves to comparisons

of different companies, which is of great importance to investors since investment decisions essentially involve a choice between competing investment alternatives.

Moreover, there appears to be virtually no direct investor interest in voluminous information of this type. Proponents, apparently conceding this, suggest that the disclosures be contained in documents which are filed with the Commission but which are not furnished directly to investors. They claim that analysts will study the materials and report their conclusions to investors in some meaningful, understandable form. This would merely substitute the opinions of such analysts, however, for the standards established by and pursuant to federal environmental legislation. And although diversity of viewpoint may be generally desirable, we have concluded that the additional costs and burdens necessary to achieve such diversity in this area greatly outweigh resulting benefits to investors and to the environment. . . . [44]

44 The Commission could presumably attempt to develop its own environmental guidelines and standards in order to eliminate these difficulties. As difficult as it is to accept this type of reasoning, it follows from the excessively broad and overly literal approach urged upon us and the District Court by the Natural Resources Defense Council. Of course, the costs involved in any such undertaking would be prohibitive. Moreover, in light of the Congressional delegation of responsibility in this area to the Environmental Protection Agency and the Council on Environmental Quality, any such effort on our part would be duplicative and of questionable propriety.

The SEC addressed the two inquiries posed by the District Court's remand order with particular reference to the environmental disclosure problem. It found indirect indications of investor interest and concluded that the main concern of investors with such information was "in determining how to vote their proxies or otherwise to act to influence management policies, rather than to make investment decisions." Id. at 51664. It concluded that the disclosure would probably have some effect on corporate behavior to the benefit of the environment, Id. at 51665:

It seems clear that investors do not at present have ready access to objective information concerning the environmental practices of corporations. And although the relevant compliance reports are reasonably accessible to inhabitants of the localities most directly affected by such practices, there is presently no single governmental source to which an investor can look for the environmental reports filed by a company.

Given the fact that there is a degree of interest among some investors in information regarding corporate environmental practices, we conclude that the availability of such information may result in some investor or shareholder action. Participants in the proceeding pointed out that the submission of and voting on socially-oriented shareholder proposals has often caused a corporation to alter its behavior even though the proposals are defeated by a wide margin. Many participants also believe that disclosure requirements would serve to focus management attention on environmental issues and result in clearer recognition of the

future costs and legal problems associated with environmental degradation.

The Commission determined, finally, not to adopt appellees' equal employment proposals, although it noted that "(w)e will, of course, continue to reevaluate the need for such requirements from time to time." Id. ***1041 **134** at 51667. The Commission argued that existing disclosure provisions which included rules explicitly requiring disclosure of certain economically material equal employment information were sufficient to satisfy the primarily economic concerns of participants in the rulemaking proceeding. Id. at 51665-66. Further, it observed that:

> In the instant proceeding, over 100 different "social matters" were submitted in which "ethical" investors were said to be interested. As against this bewildering array of special causes, it has been suggested that investors are at least entitled to information regarding matters which embody fundamental national social principles as reflected in federal legislation or court decisions. We believe that persuasive arguments can be made, however, (that a) substantial amount of federal legislation to some extent embodies fundamental national social principles and, accordingly, many topics of social concern would remain. Thus, there is no distinguishing feature which would justify the singling out of equal employment from among the myriad of other social matters in which investors may be interested in the absence of a specific mandate comparable to that of NEPA. Disclosure of comparable non-material information regarding each of these would in the aggregate make disclosure documents wholly unmanageable and would significantly increase the costs to all involved without, in our view, corresponding benefits to investors generally.

Id. at 5166 (footnote omitted).

In addition to these broader objections to requiring disclosures of non-material equal employment information, the Commission raised a number of arguments against the specifics of appellees' proposals. It concluded that requiring disclosure of all equal employment opportunity proceedings, regardless of scope, would fail to screen out obviously frivolous or inflated claims. With regard to the appellees' proposal that registrants be required to file EEO-1 Reports containing statistical data about their work force composition, the Commission concluded that such disclosure was undesirable because "meaningful interpretation is dependent

upon sophisticated analysis and other information such as the makeup of the available labor pools and existing hiring and promotion practices." Id.

Following the SEC's rejection of appellees' proposals, the parties cross-moved in the District Court for summary judgment. The District Court granted appellees' motion, NRDC II, supra, finding the SEC's action arbitrary and capricious on three principal grounds. First, and most important, the Court found it arbitrary that

the Commission failed to consider the possibility of requiring disclosure of environmental information to shareholders (persons presently owning shares of a registrant corporation) solely in connection with proxy solicitations and information statements (provided to shareholders in connection with annual or other meetings) in order to promote "fair opportunity for the operation of corporate suffrage" without requiring identical disclosure in registration statements, prospectuses, and the like.

432 F.Supp. at 1205, Quoting Securities Act Release No. 5627, Quoting SEC v. Transamerica Corp., 163 F.2d 511, 518 (3d Cir. 1947), Cert. denied, 332 U.S. 847, 68 S.Ct. 351, 92 L.Ed. 418 (1948).

Second, the District Court found that the SEC's various assessments of costs to corporations and administrative burdens "all merely stand as bald assertions by the Commission," which the SEC had not substantiated, nor shown any serious effort in minimizing, before concluding they were excessive. Id. at 1206. Third, by refusing to work with the Council on Environmental Quality (CEQ) in developing SEC disclosure guidelines, but instead finding that comprehensive disclosure was the concern of CEQ and the Environmental Protection Agency in their own domain, the Commission violated the requirements of NEPA that it work together with CEQ on its own activity, thus "shunt(ing) aside (NEPA duties) in the bureaucratic shuffle." Id. at 1207, Quoting ***1042 **135** Flint Ridge Development Co. v. Scenic Rivers Ass'n, 426 U.S. 776, 787, 96 S.Ct. 2430, 49 L.Ed.2d 205 (1976).

The District Court also concluded that the Commission's determinations with respect to equal employment disclosure were arbitrary and capricious. The Commission, in the Court's view, had "made no attempt to analyze Either the economic significance of equal employment opportunity matters Or the costs and/or feasibility of devising appropriate disclosure guidelines." NRDC II, supra, 432 F.Supp. at 1210 (emphasis in original). Second, the Court found that, as in the environmental disclosure area, the Commission had failed properly to analyze the benefits and costs of equal opportunity disclosure in the limited context of proxy solicitations and information statements. Finally, the Court criticized the Commission's conclusion that disclosure of EEO-1 data would require sophisticated analysis in order for meaningful conclusions to be drawn about a registrant's susceptibility to equal employment opportunity litigation, finding itself "unable, on the basis of the record before it, to assess whether this 'need for sophisticated analysis' is a relevant

consideration and how it compares for example, with the need for sophisticated analysis of various financial disclosures." Id. at 1212.

Following the ruling of the District Court, the SEC appealed to this court. The District Court stayed the execution of its remand order pending the outcome on appeal.

## II

### A.

**[1]** All but one appellee have alleged that either they or their members own corporate shares that they would like to vote in a financially prudent and ethically sound manner.[6] This allegation was sufficient to establish their standing to bring suit. Their interest was judicially cognizable,[7] personal to them,[8] and was arguably impaired by the lack of equal employment or environmental information.[9] It was not mere speculation that the relief sought judicial determination that the SEC acted unlawfully or arbitrarily in denying the rulemaking petition would lead to the promulgation of rules ***1043 **136** identical or similar to those requested,[10] or that corporations subject to such rules would comply with them when promulgated.[11] Moreover, we have no doubt that these appellees, as corporate shareholders concerned about environmental quality, are within the broad zones of interest of both NEPA and the securities acts.[12]

6 Appellees NRDC, Project on Corporate Responsibility, Unitarian Universalist Association, American Baptist Home Mission Society, and Province of St. Joseph of the Capuchin Order each alleged that they hold corporate stock. Appellees NRDC and National Organization for Women alleged that they have members who are corporate shareholders.
Appellee Center on Corporate Responsibility has not alleged share ownership. Its claim to standing is based on an institutional interest in informing and educating the public about matters of social concern. The issue thus raised, that of "informational standing, involves complex and difficult considerations. See generally Sierra Club v. Andrus, 189 U.S.App.D.C. 117, 122, 581 F.2d 895, 900 n. 16 (1978), Cert. granted, 439 U.S. 1065, 99 S.Ct. 829, 59 L.Ed.2d 30 (1979); Scientists' Inst. for Pub. Information v. AEC, 156 U.S.App.D.C. 395, 403, 481 F.2d 1079, 1087 n. 29 (1973). Because the position of the Center is identical to that of the other appellees, we find it unnecessary to determine whether it would have had standing had it been the sole plaintiff in the District Court. See Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 264 n.9, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977).

7 See United States v. SCRAP, 412 U.S. 669, 686, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973); Sierra Club v. Morton, 405 U.S. 727, 734, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972). See generally Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 218, 94 S.Ct. 2925, 41 L.Ed.2d 706 (1974); Association of Data Processing Serv. Organizations, Inc. v. Camp, 397 U.S. 150, 152, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970).

8 See Sierra Club v. Morton, 405 U.S. 727, 735, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972). Although National Organization for Women has not alleged share ownership, the fact it has shareholder members is sufficient to establish its personal interest. Warth v. Seldin, 422 U.S. 490, 511, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975); Sierra Club v. Morton, supra, 405 U.S. at 734 41, 92 S.Ct. 1361.

9 Cf. Harrington v. Bush, 180 U.S.App.D.C. 45, 68, 553 F.2d 190, 213 (1977). Many participants at the administrative proceeding indicated that environmental or equal employment information would be important to them in making investment decisions, including voting decisions. Much of this information is not readily available elsewhere.

10 See, e.g., Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. 26, 42, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976).

11 See United States v. SCRAP, 412 U.S. 669, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973); Sierra Club v. Adams, 188 U.S.App.D.C. 147, 149, 578 F.2d 389, 391 (1978). The existence of an independent third party in the causal chain has been a factor in some decisions denying standing on the ground that the injury alleged was too speculative. See Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. 26, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976); Warth v. Seldin, 422 U.S. 490 (1975); Linda R.S. v. Richard D., 410 U.S. 614, 93 S.Ct. 1146, 35 L.Ed.2d 536 (1973). In the present case, however, corporate compliance is to be expected given the SEC's proven capacity to compel disclosure and its formidable array of enforcement sanctions.

12 See Association of Data Processing Serv. Organizations, Inc. v. Camp, 397 U.S. 150, 153, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970).

B.

**[2]** The Commission next urges that the District Court erred because the SEC's decision not to adopt rules was nonreviewable. Under section 10 of the APA, 5 U.S.C. s 701(a), agency actions are judicially reviewable "except to the extent that (1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law." This section creates a strong presumption of reviewability that can be rebutted only by a clear showing that judicial review would be inappropriate. Dunlop v. Bachowski, 421 U.S. 560, 567, 95 S.Ct. 1851, 44 L.Ed.2d 377 (1975); Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 410, 91 S.Ct. 814, 28 L.Ed.2d 136 (1971); Abbott Laboratories v. Gardner, 387 U.S. 136, 140, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967).

**[3]** We think that judicial review was not precluded by the first section 701(a) exception. Neither the securities acts nor the APA, either expressly or by implication, [13] evidence anything approaching a clear and convincing legislative intent to negate review. At most, the SEC has pointed to some material in the legislative history of the APA that, even given the construction most favorable to the Commission's position, is inapposite to the present case. [14]

13 See Morris v. Gressette, 432 U.S. 491, 501, 97 S.Ct. 2411, 53 L.Ed.2d 506 (1977).

14 The Senate Committee Report noted that "(t)he refusal of an agency to grant the petition or to hold rulemaking proceedings . . . would not per se be subject to judicial Reversal. Administrative Procedure Act Legislative History, S.Doc.No. 248, 79th Cong., 2d Sess. 201 (1946) (hereinafter referred to as Legislative History) (emphasis supplied). Far from supporting the position of the SEC, this language implies that judicial review Would sometimes be available in the circumstances mentioned. The Attorney General, in a statement annexed to the Senate Committee Report, did cite the failure to grant a rulemaking petition as an example of unreviewable action. Id. at 229 30. The Attorney General's gloss on the APA is entitled to some deference because of the role played by the Department of Justice in drafting the legislation. See Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 546, 98 S.Ct. 1197, 55 L.Ed.2d 460 (1978). It is not entitled to particular deference, however, to the extent that it is inconsistent with the Senate Committee Report. More importantly, the Attorney General's observation is inapposite to the present case, in which challenge is brought, not to the agency's failure to grant a rulemaking petition, but to the agency's determination made after the granting of the petition and the holding of extensive rulemaking proceedings.

**[4]** **[5]** The second exception, that for actions committed to agency discretion by law, applies to those rare instances where

" 'statutes are drawn in such broad terms that in a given case there is no law to apply.' " Citizens to Preserve Overton Park, supra, 401 U.S. at 410, 91 S.Ct. at 821. In practice, the determination of whether there is "law" to apply necessarily turns on pragmatic considerations as to whether an agency determination is the proper subject of judicial review. See ***1044** ****137** Langevin v. Chenango Court, Inc., 447 F.2d 296 (2d Cir. 1971); Medical Committee for Human Rights v. SEC, 139 U.S.App.D.C. 226, 234, 432 F.2d 659, 667 (1970), Vacated and remanded with instructions to dismiss as moot, 404 U.S. 403, 92 S.Ct. 577, 30 L.Ed.2d 560 (1972); Saferstein, Nonreviewability: A Functional Analysis of "Committed to Agency Discretion,"82 Harv.L.Rev. 367 (1968). In making this determination, we first identify as precisely as possible the aspects of the agency's action against which challenge is brought. We then evaluate the relevance of three particularly important factors: the need for judicial supervision to safeguard the interests of the plaintiffs; the impact of review on the effectiveness of the agency in carrying out its congressionally assigned role; and the appropriateness of the issues raised for judicial review. See Hahn v. Gottlieb, 430 F.2d 1243 (1st Cir. 1970). Finally, we inquire whether the considerations in favor of nonreviewability thus identified are sufficiently compelling to rebut the strong presumption of judicial review.

Appellees' challenge, upon analysis, can be seen to rest upon two somewhat different grounds. The first is that the SEC allegedly failed to comply with certain Procedures mandated by NEPA. In this category are the contentions that the SEC neglected to consult properly the CEQ and that it failed to consider the alternatives of environmental disclosure rules limited to proxy material. Although these arguments are "essentially procedural," See Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 558, 98 S.Ct. 1197, 55 L.Ed.2d 460 (1978), the latter one necessarily involves a substantive element. If the court is to determine whether an agency has fulfilled its procedural NEPA duties by "considering" alternatives, it must exercise at least a minimal scrutiny over the rationality of the agency's reasons for rejecting likely alternatives. To this extent at least, appellees' NEPA contentions can be thought of as raising mixed questions of substance and procedure.

The second ground is purely substantive argument that the Commission's ultimate decision not to adopt the particular rules suggested by appellees was arbitrary and capricious. In this category falls appellees' entire challenge to the SEC's decision not to adopt equal employment rules, as well as their contention that the agency's analysis of the costs and benefits of environmental disclosure was not supported in the administrative record.

**[6]** We distinguish between these grounds because, in our view, the reviewability analysis is quite different in the two cases. The first ground appellees' procedural NEPA challenge presents little difficulty. Congress, in NEPA, has commanded federal agencies, "to the fullest extent possible," NEPA section 102, 42 U.S.C. s 4332, to consider alternatives and consult with CEQ. Congress having imposed these duties on the

SEC, appellees can argue with considerable force that their rights as participants in the rulemaking proceeding have been infringed by the SEC's alleged failures.

The SEC's effectiveness in carrying out its mandate will not, in our view, be greatly impaired by judicial review of its procedural compliance with NEPA. For one thing, NEPA made environmental considerations part of the SEC's mandate, NAACP v. FPC, 172 U.S.App.D.C. 32, 42, 520 F.2d 432, 442 (1975), Aff'd, 425 U.S. 662, 96 S.Ct. 1806, 48 L.Ed.2d 284 (1976), and judicial review should serve to ensure that this aspect of the SEC's statutory duties is fully implemented. Because such review is essentially procedural, it will not impose undesirable substantive results on the agency. Finally, judicial review in this context will not be a recurring burden on the agency. The SEC represented that these rulemaking proceedings were designed to satisfy fully its NEPA duties. Securities Act Release No. 5569 (Feb. 11, 1975), 40 Fed.Reg. 7013 (1975). In thus compressing the fulfillment of its NEPA duties, the SEC reduced the burden of judicial review to challenges brought to the single rulemaking proceeding, ***1045 **138** and thereby minimized the potential interference with its activities. [15]

15 There can be no question but that the SEC was justified in proceeding through a general rulemaking approach. Cf. Permian Basin Area Rate Cases, 390 U.S. 747, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968).

Moreover, the issues in this context will generally be appropriately framed for judicial consideration. The function we are here asked to perform that of evaluating an agency's procedural compliance with a statutory norm is within our traditional area of expertise. See Weyerhaeuser Co. v. Costle, 191 U.S.App.D.C. 309 at 328, 590 F.2d 1011 at 1030 (1978). Although, as we have noted, this review will involve some examination of the rationality of the SEC's decision, we are confident of our ability to perform such substantive scrutiny limited to ensuring that the SEC has fully and in good faith complied with NEPA's procedural command. Further, because we do not at this point review the rationality of the agency's ultimate substantive decision, the difficulties inherent in judicial review of an agency's decision Not to adopt proposed rules, See pp. - - - of 196 U.S.App.D.C., pp. 1046-1047 of 606 F.2d Infra, are not compelling in this context. Because our review is limited to ensuring that statutorily prescribed procedures have been followed, we are confident that the administrative record will usually be sufficient to ensure meaningful review. Thus, especially in light of the presumption of reviewability, we conclude that the question of the SEC's compliance with NEPA procedures was appropriate for judicial review.

**[7]** Appellees' challenge to the rationality of the SEC's decision not to adopt their proposed environmental and equal employment rules, however, presents a somewhat different calculus of interests among plaintiffs, agency, and court. This is so largely because the agency, in our view, was under no obligation to adopt rules identical to or even similar to those sought by appellees. As we note in part II-C Infra, the Commission has been vested by

Congress with broad discretionary powers to promulgate (or not to promulgate) rules requiring disclosure of information beyond that specifically required by statute. Rather than casting disclosure rules in stone, Congress opted to rely on the discretion and expertise of the SEC for a determination of what types of additional disclosure would be desirable. Although Congress, in NEPA, made environmental considerations part of the SEC's substantive mission, we do not believe that NEPA goes so far as to Require the SEC to promulgate specific rules. See Vermont Yankee, supra, 435 U.S. at 558, 98 S.Ct. 1197; Calvert Cliffs' Coordinating Committee v. AEC, 146 U.S.App.D.C. 33, 36, 449 F.2d 1109, 1112 (1971).

**[8]** The interest of plaintiffs in this context will thus rarely present unusual or compelling circumstances calling for judicial review. In the present case, for example, the SEC has not invaded any of appellees' substantive statutory or constitutional rights, nor singled them out for special and seemingly unfair treatment, nor even, indeed, taken any action to alter the Status quo ante. [16]

16 This is obviously not to say that the mere fact an agency has not changed the Status quo is sufficient, in itself, to preclude review. See s 10(e)(1) of the APA, 5 U.S.C. s 706(1); Rochester Tel. Corp. v. United States, 307 U.S. 125, 59 S.Ct. 754, 83 L.Ed. 1147 (1939).

Judicial review will, to a limited extent, interfere with an agency's effective performance of its statutory mission. Requiring an agency to defend in court its decision not to adopt proposed rules will divert scarce institutional resources into an area that the agency in its expert judgment has already determined is not even worth the effort already expended. The danger of throwing good money after bad, moreover, also exists in a more subtle form because the very prospect of litigation may cause the agency to give a proposal more elaborate consideration than it might actually merit.

These considerations, however, are more compelling in the context of judicial review of an agency's denial of the initial rulemaking ***1046** ****139** petition than where, as here, the agency has granted the petition and held extensive rulemaking proceedings. [17] Obviously frivolous or unworkable proposals can be weeded out at the outset simply by denying the petition. When an agency agrees to conduct rulemaking proceedings, it evidences its view that the proposals are sufficiently meritorious to warrant further investigation, as well as its willingness to defend in court such rules as may eventually be adopted. Thus, judicial review in this context would be relatively infrequent, would not be unjustifiable in terms of the merits of the proposals, and would not, in our view, seriously interfere with the agency's budget and personnel planning.

17 We intimate no view as to whether, or to what extent, an agency's denial of a rulemaking petition would be subject to review.

Further, we note that "there is a substantial public interest in having important questions of corporate democracy raised before the Commission and the courts by interested, responsible private parties." Medical Committee, supra, 139 U.S.App.D.C. at

234, 432 F.2d at 667. In the present case, appellees have brought to the Commission's attention a perspective, different from that of most of its registrant corporations, that it might not otherwise have fully appreciated. They have performed the public service of causing the Commission to re-examine its disclosure policies in light of the fundamental national priorities expressed in NEPA and in federal equal employment legislation. Cf. NAACP v. FPC, supra. Judicial review of agency decisions not to adopt rules would help ensure that the agency gives due consideration to citizen participation, and in this sense might actually enhance the agency's effectiveness in furthering the public interest. [18]

18 Public participation in agency decision making is increasingly recognized as a desirable objective. See generally Stewart, The Reformation of American Administrative Law, 88 Harv.L.Rev. 1669 (1975). Congress to some extent recognized the value of citizen input when it provided a right to petition for rulemaking in the APA. Section 4(e) of the APA, 5 U.S.C. s 553(e).

Perhaps the strongest argument against reviewability is the concern that the issues posed will often not be well-suited for judicial resolution. An agency's discretionary decision Not to regulate a given activity is inevitably based, in large measure, on factors not inherently susceptible to judicial resolution E. g., internal management considerations as to budget and personnel; evaluations of its own competence; weighing of competing policies within a broad statutory framework. Cf. FPC v. Transcontinental Gas Pipe Line Corp., 423 U.S. 326, 333, 96 S.Ct. 579, 46 L.Ed.2d 533 (1976) (Per curiam ). Further, even if an agency considers a particular problem worthy of regulation, it may determine for reasons lying within its special expertise that the time for action has not yet arrived. Cf. SEC v. Chenery Corp., 332 U.S. 194, 202-03, 67 S.Ct. 1575, 91 L.Ed. 1995 (1947). The area may be one of such rapid technological development that regulations would be outdated by the time they could become effective, or the scientific state of the art may be such that sufficient data are not yet available on which to premise adequate regulations. Cf. Industrial Union Department v. Hodgson, 162 U.S.App.D.C. 331, 338-39, 499 F.2d 467, 474-75 (1974). The circumstances in the regulated industry may be evolving in a way that could vitiate the need for regulation, Cf. Action for Children's Television v. FCC, 183 U.S.App.D.C. 437, 459, 564 F.2d 458, 480 (1977), or the agency may still be developing the expertise necessary for effective regulation, Cf. SEC v. Chenery Corp., supra, 332 U.S. at 202, 67 S.Ct. 1575.

Moreover, added to the problems already inherent in reviewing the record support for informal rulemaking decisions is the additional concern that, in the context of an agency's non-adoption of a rule, the record and reasons statement will be of little use to a reviewing court unless they are narrowly focused on the particular rule advocated by plaintiff or petitioner. There are an infinite number of rules that an agency could adopt in its discretion; unless the ***1047 **140** agency has carefully focused its considerations, judicial review will have an undesirably abstract and hypothetical quality. However, in a context like the present one, in which the agency has in fact held extensive rulemaking proceedings

narrowly focused on the particular rules at issue, and has explained in detail its reasons for not adopting those rules, we believe that the questions posed will be amenable to at least a minimal level of judicial scrutiny.

Our conclusion is buttressed by two recent cases in which this court reviewed agency decisions not to promulgate rules. National Black Media Coalition v. FCC, 191 U.S.App.D.C. 55, 589 F.2d 578 (1978), was a challenge to an FCC decision not to adopt certain quantitative program standards for television broadcasters involved in comparative renewal proceedings. The standards had been proposed in detail by the FCC and had been the subject of extensive rulemaking proceedings, lasting six years and involving oral argument and extensive written comments. Although noting that "(t)he decision not to promulgate quantitative standards was a policy judgment traditionally left to agency discretion," Id. at 58, 589 F.2d at 581, the court reviewed the FCC's decision on the merits without explicitly considering the reviewability question.

Action for Children's Television, supra, was a challenge to an FCC decision not to adopt certain rules proposed by a public interest organization to improve children's television. As in National Black Media Coalition, the FCC held extensive rulemaking proceedings focused on the particular rules suggested. Again without explicitly considering the issue of reviewability, the court proceeded to uphold the FCC on the merits.

**[9]** These cases, in our view, do not support a general rule that discretionary agency decisions not to adopt rules are reviewable Per se. In this situation, as we have noted, the relevant factors incline against reviewability: the interests of the plaintiffs are usually not compelling, there is a possibility of some minor interference with effective agency performance, and the issues will often be poorly suited for judicial resolution. Rather, Action for Children's Television and National Black Media Coalition stand for the more limited principle that, in light of the strong presumption of reviewability, discretionary decisions not to adopt rules are reviewable where, as here, the agency has in fact held a rulemaking proceeding and compiled a record narrowly focused on the particular rules suggested but not adopted. [19]

19 Our conclusion in the present case finds support in this court's treatment of the reviewability of SEC "no action determinations. In Medical Comm. for Human Rights v. SEC, supra, 139 U.S.App.D.C. at 232 240, 432 F.2d at 665 73, this court held reviewable a decision by the full Commission not to object to a corporation's omission from its proxy statements of certain material proposed by a shareholder. In large measure, the court's decision was based on its conclusion that the agency decision in question had sufficient "formality to support judicial review. In Kixmiller v. SEC, 160 U.S.App.D.C. 375, 492 F.2d 641 (1974), however, the court held unreviewable a decision distinguishable from that in Medical Committee only by the fact that it was made by the SEC staff alone and was not endorsed by the full Commission.

We have some doubt as to the continued vitality of Medical Committee in light of the Supreme Court's grant of certiorari, 401 U.S. 973, 91 S.Ct. 1191, 28 L.Ed.2d 322 (1971); its remand of the case with instructions to dismiss as moot, 404 U.S. 403 (1972); and this court's subsequent narrowing decision in Kixmiller. Nevertheless, we feel that Kixmiller's way of distinguishing Medical Committee was based on a sound principle. This is that, in general, the more complete an agency's consideration of an issue, the

more likely it is that the ultimate decision not to take action will be a proper subject of judicial review.

C.

It has been said that courts and administrative agencies function, not as "wholly independent and unrelated instrumentalities of justice," United States v. Morgan, 307 U.S. 183, 191, 59 S.Ct. 795, 799, 83 L.Ed. 1211 (1939), but as "partners" in furtherance of the public interest. Kennecott Copper Corp. v. EPA, 149 U.S.App.D.C. 231, 233-34, 462 F.2d 846, 848-49 (1972); Greater Boston Television Corp. v. FCC, 143 U.S.App.D.C. 383, 393, 444 F.2d 841, 851 (1970), ***1048 **141** Cert. denied, 403 U.S. 923, 91 S.Ct. 2229, 29 L.Ed.2d 701 (1971). In this collaborative enterprise, the courts are often asked to depart from traditional modes of judicial decisionmaking and to assume an essentially legislative role. The partnership, if indeed that concept be at all apt, is thus an "uneasy" one at best, Industrial Union Department v. Hodgson, 162 U.S.App.D.C. 331, 333, 499 F.2d 467, 469 (1974); Associated Industries v. Department of Labor, 487 F.2d 342, 354 (2d Cir. 1973), as courts struggle to perform their congressionally-mandated task of judicial review without encroaching on territory which as judges they are ill-suited to enter.

**[10]** The balance to be struck is that between the goal of efficient and effective agency action, on the one hand, and the value of judicial review in ensuring the rationality and fairness of agency decisionmaking, on the other. Congress recognized the need for such a balance when it enacted the various judicial review provisions in section 10(e) of the APA, 5 U.S.C. s 706. Thus, in the area of traditional judicial preeminence, that of determining pure questions of law, Congress commanded an exacting judicial scrutiny. Id. ss 10(e)(2)(B), (C), (D), 5 U.S.C. ss 706(2)(B), (C), (D). But Congress also understood that administrative agencies were more competent than the courts in many specialized areas of fact determination, and particularly in making quasi-legislative judgments about matters of social and economic policy. It recognized this in the APA by requiring the courts to exercise considerable deference in their review of such issues. Id. ss 10(e)(2)(A), (E), 5 U.S.C. ss 706(2)(A), (E).

As we have previously noted, See Part II-B Supra, the present case involves both a challenge to the SEC's procedural compliance with NEPA and a claim that the substantive result of the SEC's procedures, in both the equal employment and environmental areas, was arbitrary and capricious. The proper scope of judicial review is, we think, quite different in these two aspects of the case.

**[11]** The procedural NEPA challenge is essentially a claim that the SEC's decisionmaking was "without observance of procedure required by law," section 10(e)(2)(D) of the APA, 5 U.S.C. s 706(2)(D). Our review of an agency's procedural compliance with statutory norms is an exacting one. Moreover, the courts, in cases involving NEPA's environmental impact statement requirement, have exercised particularly stringent review of procedural compliance with NEPA, W. Rodgers, Environmental

Law 716-717 (1977), at least when the agency involved does not include environmental protection within its primary mission, See Leventhal, Environmental Decisionmaking and the Role of the Courts, 122 U.Pa.L.Rev. 509 (1974).

To be sure, we deal here, not with NEPA's often-litigated environmental impact statement provision, but with other relatively uncharted provisions of NEPA section 102.[20] These provisions, because they are not limited to "major" federal actions that "significantly affect( ) the quality of the human environment," are of far broader applicability than the impact statement requirement. For this reason the stringency of review applied in the impact statement situation may not be entirely feasible here. But see ***1049 **142** Calvert Cliffs' Coordinating Committee, supra. Nevertheless, we recognize that environmental concerns to some extent run counter to the SEC's primary mandate of financial protection of investors, and that there is here a substantial role for the court to play in ensuring that NEPA's procedural commands are carried out in full measure by the SEC.

20 Section 102(1), 42 U.S.C. s 4332(1), directs that
to the fullest extent possible . . . the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in (NEPA) . . . .
Section 102(2)(B), 42 U.S.C. s 4332(2)(B), requires all federal agencies to
identify and develop methods and procedures, in consultation with (CEQ), which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations. . . .
Section 102(2)(E), 42 U.S.C. s 4332(2)(E), requires all federal agencies to
study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. . . .

**[12]** **[13]** In contrast to this exacting review of the SEC's compliance with NEPA procedures, our review of the substantive rationality of the SEC's decision not to adopt appellees' proposed environmental and equal employment rules is necessarily far more circumscribed in scope. The Commission's decision in the present case is the product of the informal rulemaking procedures of section 4 of the APA, 5 U.S.C. s 553, and is to be reviewed under section 10(e)(2)(A) of the Act, 5 U.S.C. s 706(2)(A). Vermont Yankee, supra, 435 U.S. at 535-36 n. 14, 98 S.Ct. 1197 n. 4; FCC v. National Citizens Committee, 436 U.S. 775, 802-03, 98 S.Ct. 2096, 56 L.Ed.2d 697 (1978); Weyerhaeuser Co. v. Costle, 191 U.S.App.D.C. 309, at 322, 590 F.2d 1011, at 1024 (1978). That provision requires us to set aside "agency action, findings, and conclusions,"[21] found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." As we have recognized, " arbitrary," "capricious," and "abuse of discretion" are "far from being entirely discrete as a matter of the ordinary meaning of language, and, indeed, are in some respects cumulative rather than differential in their applicability." Weyerhaeuser Co. v. Costle, supra, at 322, 590 F.2d at 1024. Rather than denoting a fixed template to be imposed mechanically on every case within their ambit, these words summon forth what may best be described as an attitude of

mind in the reviewing court one that is "searching and careful," Citizens to Preserve Overton Park, supra, 401 U.S. at 416, 91 S.Ct. 814, yet, in the last analysis, diffident and deferential. [22]

21 Although the agency decision here under review does not fall comfortably within the category of agency "action , we have no doubt that Release No. 5627 constitutes "findings and "conclusions of the SEC within the meaning of this section.

22 As Justice Frankfurter noted, in construing the scope of "substantial evidence review, "the precise way in which courts interfere with agency findings cannot be imprisoned within any form of words . . . . There are no talismanic words that can avoid the process of judgment. The difficulty is that we cannot escape, in relation to this problem, the use of undefined defining terms. Universal Camera Corp. v. NLRB, 340 U.S. 474, 489, 71 S.Ct. 456, 465, 95 L.Ed. 456 (1951).

**[14]** **[15]** In applying the "arbitrary and capricious" standard, it is well to keep in mind the considerations that led Congress to commit to the courts a "multifaceted review function." Weyerhaeuser Co. v. Costle, supra, 191 U.S.App.D.C. at 322, 590 F.2d at 1024. As we noted in Weyerhaeuser, id. at 323, 590 F.2d at 1025, "(d)ue concern both for the intent of Congress in drafting the particular statute at issue, and, more generally, for the 'boundaries between the legislative and judicial function,' Industrial Union Dep't v. Hodgson, 162 U.S.App.D.C. 331, 339, 499 F.2d 467, 475 (1974), often demands that we exercise certain aspects of our review function with more circumspection than is appropriate to others." Some facets of an administrative decision, because they raise issues within the courts' area of competence, are well suited to judicial oversight. Without abandoning completely our attitude of deference, and thereby depriving the words "arbitrary" and "capricious" of any meaning, See Vermont Yankee, supra, 435 U.S. at 554, 98 S.Ct. 1197, we can review these issues with confidence that our participation will contribute to the rationality and fairness of agency decisionmaking without detracting unduly from its effectiveness. [23] Other aspects of ***1050 **143** administrative action, however, are poorly suited for judicial scrutiny, and, without sacrificing our statutory duty of review, we must as to these issues exercise a high degree of deference to the agency's determination. In short, the concept of "arbitrary and capricious" review defies generalized application and demands, instead, close attention to the nature of the particular problem faced by the agency. [24] The stringency of our review, in a given case, depends upon analysis of a number of factors, including the intent of Congress, as expressed in the relevant statutes, particularly the agency's enabling statute; the needs, expertise, and impartiality of the agency as regards the issue presented; and the ability of the court effectively to evaluate the questions posed. Only through such a flexible approach can we review the multifarious types of agency actions as responsible participants in an enterprise of practical governance. [25]

23 More exacting scrutiny will be particularly useful when for some reason the presumption of agency regularity, See Citizens to Preserve Overton Park, supra, 401 U.S. at 415, 91 S.Ct. 814, is rebutted, as where the agency has demonstrated undue bias towards particular private interests, See, e. g., Central Florida Enterprises, Inc. v. FCC, 194 U.S.App.D.C. 118, 598 F.2d 37 (1978); where the agency has had a history of "ad hoc and inconsistent judgments on a particular question, Local 777 v. NLRB, 195

U.S.App.D.C. 280 at 287 289, 603 F.2d 862 at 869 871 (1978); where the agency has arrived at an identical result after remand from a reviewing court for further explanation of reasons, E. g., Food Marketing Inst. v. ICC, 190 U.S.App.D.C. 388, 392 93, 587 F.2d 1285, 1289 90 (1978); Accord, Citizens to Preserve Overton Park, supra, 401 U.S. at 420, 91 S.Ct. 814; or when an agency has departed from its consistent and longstanding precedents or policies, See Office of Communication of United Church of Christ v. CAB, 191 U.S.App.D.C. 360 at 366 367, 590 F.2d 1062 at 1068 1069 (1978); International Union v. NLRB, 148 U.S.App.D.C. 305, 317 18, 459 F.2d 1329, 1341 42 (1972).

24 We might add, parenthetically, that his observation would appear to hold true for other standards than "arbitrary and capricious review. Thus, although we generally review pure questions of law De novo, we will accord deference to an agency's interpretation of its own governing statute. E. g., Board of Governors v. First Lincolnwood Corp., 439 U.S. 234, 99 S.Ct. 505, 58 L.Ed.2d 484, 513 (1978); Udall v. Tallman, 380 U.S. 1, 16, 85 S.Ct. 782, 13 L.Ed.2d 616 (1965). Our review under the "substantial evidence test will tend to be more deferential when the facts at issue are at the frontiers of scientific knowledge. Hercules, Inc. v. EPA, 194 U.S.App.D.C. 172 at 187, 598 F.2d 91 at 106 (1978); EDF v. Costle, 188 U.S.App.D.C. 95, 97, 578 F.2d 337, 339 (1978); Industrial Union Dep't v. Hodgson, 162 U.S.App.D.C. 331, 338 39, 499 F.2d 467, 474 75 (1974), Cited with approval, FCC v. National Citizens Comm. for Broadcasting, 436 U.S. 795, 814, 98 S.Ct. 2096, 56 L.Ed.2d 697 (1978). To give another example, we have noted that the extent of judicial scrutiny of an agency's "basis and purpose statement will vary with the context. Weyerhaeuser Co. v. Costle, supra, 191 U.S.App.D.C. at 322 23 n. 11, 590 F.2d at 1024 n. 11.

25 Academic commentators have frequently observed that flexibility in scope has always been a hallmark of conscientious judicial review of agency action. See, e. g., K. Davis, Administrative Law of the Seventies s 29.01 (1976) ("(f) ormulas about scope of review do not always control judicial action; the formulas can be bent in any direction, in accordance with what the reviewing court deems to be the needs of justice or the public welfare ); G. Robinson & E. Gellhorn, The Administrative Process 235 237 (1974); J. Mashaw & R. Merrill, Introduction to the American Public Law System 275 (1975) ("the statutorily articulated standard of review does not always dictate the stringency of review actually exercised ); Administrative Procedures in Government Agencies: Final Report of the Attorney General's Committee, S.Doc.No. 8, 77th Cong., 1st Sess. 91 (1941) (stringency of review influenced by a "variety of inarticulate factors ); Gardner, Federal Courts and Agencies: An Audit of the Partnership Books, 75 Colum.L.Rev. 800, 822 (1975) (empirical study); McGowan, Book Review, 74 Colum.L.Rev. 1015, 1022 n. 14 (1974).

We note, first, that Congress, in the 1933 and 1934 Acts, has seen fit to delegate broad rulemaking authority to the SEC. These acts were passed during an unprecedented economic crisis in which regulation of the securities markets was seen as an urgent national concern. The SEC, charged with swiftly and effectively implementing this national policy, was necessarily given very broad discretion to promulgate rules governing corporate disclosure. The degree of discretion accorded the Commission is evident from the language in the various statutory grants of rulemaking authority. [26]

26 For example, ss 7 and 10(c) of the 1933 Act, 15 U.S.C. ss 77g and 77j(c), prescribe certain types of information to be disclosed in registration statements and prospectuses, respectively, and authorize the SEC to require disclosure of such other information "as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors. Similarly, s 12(b) of the 1934 Act, 15 U.S.C. s 78L (b), provides that the SEC "may by rules (and) regulations require, in applications for the registration of a class of securities, such information respecting the issuer's organization, financial structure, nature of business, and financial statements as it deems "necessary or appropriate in the public interest or for the protection of investors. The 1934 Act's periodic reporting and proxy solicitation provisions leave the SEC with even greater discretion to require disclosure by rulemaking. Section 13(a) of that Act, 15 U.S.C. s 78m(a), requires each issuer of a security registered under s 12 to keep current the information in its application or registration statement and to file periodic reports in accordance with rules "the Commission may prescribe as necessary or

appropriate for the proper protection of investors and to insure fair dealing in the security. Section 14(a) of the Act, 15 U.S.C. s 78n(a), prohibits the solicitation of proxies "in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

The SEC's general rulemaking authority is contained in s 19(a) of the 1933 Act, 15 U.S.C. s 77s(a), and s 23(a) of the 1934 Act, 15 U.S.C. s 78w(a), which respectively authorize the SEC to promulgate such rules "as may be necessary to carry out the provisions of this subchapter, and "as may be necessary or appropriate to implement the provisions of this chapter for which (it is) responsible or for the execution of the functions vested in (it) by this chapter . . . .

***1051 **144** The legislative history of the 1934 Act, the statute that created the SEC, reflects the breadth of the Commission's intended discretion. The House Report stated that

> the delegation (of authority to the Federal Trade Commission (which was to administer the act as the bill was then drafted) is) made only with the indication of such maximum standards for discretion as, in the considered judgment of the Committee, the technical character of the problems to be dealt with would permit. The bill legislates specifically just as far as the Committee feels it can. The original bill submitted to the Committee dealt very specifically and definitely with a number of admitted abuses. In many cases, however, the argument was made that while the solutions offered might be correct, their effects were so far-reaching as to make it inadvisable to put these solutions in the form of statutory enactments that could not be changed in case of need without Congressional action. . . . It is for that reason that the bill in dealing with a number of difficult problems singles out these problems as matters appropriate to be subject to restrictive rules and regulations, but leaves to the administrative agencies the determination of the most appropriate form of rule or regulation to be enforced. In a field where practices constantly vary and where practices legitimate for some purposes might be turned to illegitimate and fraudulent means, broad discretionary powers in the administrative agency have been found (to be) practically essential. . . .

H.R.Rep.No. 1383, 73d Cong., 2d Sess. 6-7 (1934). The same theme is echoed in the Senate Committee report:

> so delicate a mechanism as the modern stock exchange cannot be regulated efficiently under a rigid statutory program. Unless considerable latitude is

> allowed for the exercise of administrative discretion, it is impossible to avoid, on the one hand, unworkable "strait-jacket" regulation and, on the other, loopholes which may be penetrated by slight variations in the method of doing business.

S.Rep.No. 792, 73d Cong., 2d Sess. 5 (1934). Similarly, in discussing the Commission's power to require disclosure in corporate reports, the Senate Committee noted that

> (t)he Commission is given complete discretion . . . to require in corporate reports only such information as it deems necessary or appropriate in the public interest or to protect investors.

Id. at 10. [27]

27 Congress reaffirmed its faith in the SEC's competence to exercise its delegated authority responsibly and effectively when, in 1975, it entrusted the Commission with the task of facilitating the establishment of national market and clearing systems. Securities Acts Amendments of 1975, Pub.L. 94 29, 89 Stat. 141; See generally Bradford Nat'l Clearing Corp. v. SEC, 191 U.S.App.D.C. 383, 590 F.2d 1085 (1978).

These inferences supporting deferential review drawn from the Securities Acts are supplemented by other considerations, implicit ***1052 **145** in the APA, as to the court's ability to review effectively the SEC's decision. As is typical in informal rulemaking cases under section 4 of the APA, 5 U.S.C. s 553, many of the issues raised here are within the province of agency expertise and do not readily lend themselves to judicial oversight. The SEC, for example, attempted to quantify as nearly as possible the extent of "ethical investor" interest in the information sought by appellees. Because of the nature of this inquiry, precise quantification is difficult if not impossible; and the court must necessarily defer to the SEC's judgment based on experience in evaluating the evidence of record on this question. Other factual issues required the Commission to make forecasts E. g., the probable burden on corporations of complying with the proposed rules; the extent to which the added mass of information would confuse or mislead the average investor; and the likelihood that disclosure of the type requested would cause corporations to adopt sounder environmental policies. Predictive judgments like these "necessarily involve ( ) deductions based on the expert knowledge of the agency," FCC v. National Citizens Comm., supra, 436 U.S. at 814, 98 S.Ct. at 2122, Quoting FPC v. Transcontinental Gas Pipe Line Corp., 365 U.S. 1, 29, 81 S.Ct. 435, 5 L.Ed.2d 377 (1961), and, moreover, tend to be infused with policy considerations that are not appropriate subjects of close judicial scrutiny. Bradford National Clearing Corp., supra, 191 U.S.App.D.C. at 402 & n. 30, 590 F.2d at 1104 & n. 30.

**[16]** Finally, we must also inevitably be more circumspect in our review when, as here, it is based on a record of an informal rulemaking proceeding. The record

presented to us on appeal or petition for review is a sump in which the parties have deposited a sundry mass of materials that have neither passed through the filter of rules of evidence nor undergone the refining fire of adversarial presentation. Industrial Union Dep't, supra, 162 U.S.App.D.C. at 338, 499 F.2d at 474. The lack of discipline in such a record, coupled with its sheer mass even when reduced into a joint appendix often makes the record of informal rulemaking a less than fertile ground for judicial review.[28] Weyerhaeuser Co. v. Costle, supra, 192 U.S.App.D.C. at 90, 590 F.2d at 1206.

28 The entire file of the most recent rulemaking proceeding, for example, includes documents in excess of 10,000 pages, and is divided into letters of comment, transcripts of testimony received at the hearing, and exhibits prepared in the course of testimony. The joint appendix prepared by the parties reduced this to 877 pages considerably shorter than many joint appendices in rulemaking cases.

We find support for these considerations in the fact that this case involves an agency decision Not to adopt a rule. As discussed in Part II-B supra, this peculiar context led us to inquire seriously whether the SEC's decision was reviewable at all. Yet the question of reviewability cannot be divorced from that of scope of review.[29] In cases where courts have evidenced serious doubts about the reviewability of agency action, they have tended to couple their decision to review with a particularly narrow scope of review. See Dunlop v. Bachowski, 421 U.S. 560, 568, 95 S.Ct. 1851, 44 L.Ed.2d 377 (1975); Medical Committee, supra, 139 U.S.App.D.C. at 241-42, 432 F.2d at 674-75.

29 As we noted in Medical Committee, supra, 139 U.S.App.D.C. at 240, 432 F.2d at 673, "assertions of discretion inevitably raise questions of degree which must be appraised in the context of the relevant provisions of law and the nature of the particular action sought to be reviewed: '(T)he question is not Whether agency action is by law committed to agency discretion but To what extent agency action is so committed. Quoting 4 K. Davis, Administrative Law Treatise 33 (1958) (emphasis in original).

Thus, the considerations that counsel against judicial review of a decision not to adopt rules by informal rulemaking also call for us, when we do review, to exercise special deference. We are not unmindful of the fact that the SEC, in good faith compliance with the District Court's decision in NRDC I, has already held further proceedings even more extensive than those involved in its initial decision not to adopt the ***1053 **146** rules sought by appellees. Before we once more remit the case to the Commission, and thereby further divert its resources from areas that in its expert judgment are of more pressing concern, we should make doubly sure that the SEC's decision is, in fact, not sustainable on the administrative record. Similarly, we note that the environmental rules requested by appellees were only one of several alternatives considered by the Commission in this rulemaking proceeding. Although these rules were, indeed, the primary subject of the proceeding, the existence of other alternatives did tend to defocus the record and render it even less amenable to judicial review than are such records typically.

**[17] [18]** In light of these considerations, the scope of our review is best defined as follows: We will exercise relatively careful scrutiny to ensure that the SEC has scrupulously followed NEPA procedures, in particular, the requirement of consultation

with CEQ and the command to consider alternatives. As part of this oversight we will demand that the Commission consider reasonably obvious alternative disclosure rules, and explain its reasons for rejecting alternatives in sufficient detail to permit judicial review.[30] At the same time, however, our review of the Commission's factual, and particularly its policy, determinations will perforce be a narrow one, limited to ensuring that the Commission has adequately explained the facts and policy concerns it relied on and to satisfying ourselves that those facts have some basis in the record.[31] Finally, we must see "whether those facts and legislative considerations by themselves could lead a reasonable person to make the judgment that the Agency has made." Weyerhaeuser Co. v. Costle, supra, 191 U.S.App.D.C. at 325, 590 F.2d at 1027.

30 The SEC itself recognized a similar standard as an accurate description of its duties under NEPA. 40 Fed.Reg. 51662.

31 The SEC argues, Citing Dunlop v. Bachowski, 421 U.S. 560, 95 S.Ct. 1851, 44 L.Ed.2d 377 (1975), that the scope of review should be limited to the reasons statement and should not include examination of the record. Dunlop, however, arose in the very different context of a suit challenging the Secretary of Labor's decision not to bring suit to set aside a union election under s 401 of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. s 481 (LMRDA). The Court's conclusion in Dunlop that judicial review could not look behind the reasons statement was based on unusual considerations present in that context: the special discretion afforded the Secretary of Labor under the LMRDA, and the congressional intent evident in the LMRDA to prevent undue judicial intervention into union affairs. 421 U.S. at 568 73, 95 S.Ct. 1851.
In contrast to the Dunlop case, the usual rule is that a reviewing court does examine the record in determining whether an agency's action is arbitrary or capricious. Section 10(e)(2) of the APA, 5 U.S.C. s 706(2) (court must "review the whole record or those parts of it cited by a party ); FPC v. Transcontinental Gas Pipe Line Corp., 423 U.S. 326, 331, 96 S.Ct. 579, 46 L.Ed.2d 533 (1976) (Per curiam ); Camp v. Pitts, 411 U.S. 138, 142, 93 S.Ct. 1241, 36 L.Ed.2d 106 (1973) (Per curiam ); Citizens to Preserve Overton Park, supra, 401 U.S. at 420, 91 S.Ct. 814.

## III

## A.

**[19]** Appellees' strongest challenge to the SEC's decision, and the District Court's primary basis for remanding the decision to the SEC for further proceedings, was that the agency "failed to consider the possibility of requiring disclosure of environmental information to shareholders . . . solely in connection with proxy solicitations and information statements (provided to shareholders in connection with annual or other meetings) in order to promote 'fair opportunity for the operation of corporate suffrage' . . . ." NRDC II, supra, 432 F.Supp. at 1205. As to this essentially procedural issue, as we have noted, we will exercise a relatively stringent review to ensure that the SEC fully complied with the statutory directive to consider alternatives. Nevertheless, although the question is not insubstantial, we conclude, for several reasons, that the SEC was not required under NEPA to consider a limited proxy disclosure rule.

In NRDC, Inc. v. Morton, 148 U.S.App.D.C. 5, 458 F.2d 827 (1972), this court formulated ***1054** ****147** the test of

agency obligation to consider an alternative under NEPA. We there said that any such requirement is subject to a "rule of reason", Id. at 12, 458 F.2d at 834, under which a "crystal ball" inquiry is not required, Id. at 15, 458 F.2d at 837. "The statute must be construed in the light of reason if it is not to demand what is, fairly speaking, not meaningfully possible, given the obvious, that the resources of energy and research and time available to meet the Nation's needs are not infinite." Id. Nevertheless, under the rule of reason, the agency is not released from its obligation to consider alternatives "to the fullest extent possible," section 102 of NEPA, 42 U.S.C. s 4332. As the concept of reasonableness implies, the rule is one of moderation, neither rubber nor iron.

The Morton case itself is an illustration: We there required, in the environmental impact statement prepared in connection with a sale of oil and gas lease tracts, that the preparing agency consider the alternative of eliminating oil import quotas although this action was beyond its authority; but we did not require consideration of other, speculative "alternatives" such as desulfurization of coal, oil shale development, and the like. Although Morton involved NEPA's impact statement provision, we think the rule of reason is sufficiently flexible as to be applicable to the present case. Thus, we must determine whether the alternative of requiring environmental disclosure limited to proxy materials and related information statements was "readily identifiable by the agency," NRDC v. Morton, supra, 148 U.S.App.D.C. at 15, 458 F.2d at 837.

We conclude that, for a number of reasons, the Commission was not obligated to consider the proxy alternative in this proceeding. First, we note that this alternative was not strongly pressed on the Commission during the round of comments. This fact does not in itself release the SEC from its obligation to consider readily identifiable alternatives. Because NEPA serves a broad public purpose, and imposes on federal agencies an independent duty to take action irrespective of private initiation or input, a strict waiver rule would be inappropriate. However, the failure of the participants to focus specifically on the proxy disclosure alternative does have considerable bearing on whether this option was readily identifiable by the SEC.

**[20]** Second, an agency is not required, under NEPA, to consider alternatives when such consideration would serve no purpose. Thus, an agency need not consider in its impact statement alternatives with consequences indistinguishable from the action proposed. Citizens for Safe Power v. NRC, 173 U.S.App.D.C. 317, 327-28, 524 F.2d 1291, 1301-02 & n.18 (1975); Iowa Citizens for Environmental Quality, Inc. v. Volpe, 487 F.2d 849, 852-53 (8th Cir. 1973). The instant case presents the analogous situation of an agency's failure to consider an alternative that is subject to the same or similar defects as another alternative it has explicitly considered and rejected.

Several of the Commission's reasons for rejecting across-the-board disclosure are equally apposite to the proxy disclosure alternative. The Commission concluded,

for example, that investors even "ethical" investors were typically uninterested in the type of comprehensive disclosure advocated by appellees. 40 Fed.Reg. at 51662. It also voiced concern that the sheer bulk of disclosure documents would make them confusing to the average investor and would tend to obscure important information. Id. at 51660 & n.27. These are the type of predictive or legislative factual judgments as to which our review is necessarily circumscribed. We cannot, on this record, say that the Commission's conclusions on these questions were so unsound as to indicate a failure to fulfill the procedural NEPA duty of considering reasonably identifiable alternatives. Because these conclusions militate against proxy disclosure no less than against across-the-board disclosure, we are reluctant to require the Commission to engage in what would appear to be the futile exercise of considering the proxy alternative.

***1055 **148** The Commission's other reasons for rejecting across-the-board disclosure strongly support this conclusion, although we recognize that they do not apply with precisely the same force to the proxy area. Proxy disclosure, for example, would involve less printing and processing costs, and would therefore impose a somewhat reduced burden on agencies and registrants. See 40 Fed.Reg. 51662. However, the principal burdens of comprehensive disclosure preparing the disclosure materials, by the corporation, and evaluating their adequacy, by the agency would not be significantly reduced in the case of proxy disclosure. Proxies, in addition, are not primarily designed to facilitate the type of inter-corporate comparisons that the SEC concluded were infeasible under appellees' comprehensive disclosure scheme. See id. Again, however, the Commission's reasoning militates against proxy disclosure to the extent that such materials are used in the investment community for inter-corporate comparisons.

Our third reason for not requiring the Commission to consider proxy disclosure is the fact that, several months after the District Court took the summary judgment motions in this case under advisement, the SEC announced a new set of proceedings. The record does not show that these proceedings were brought to the attention of the District Court, but on appeal the SEC made a representation concerning them.[32] By its announcement of these new proceedings, the SEC has successfully invoked a principle, founded in administrative law generally and in the Supreme Court's NEPA decisions particularly, that it is not the judicial province to upset agency structuring of proceedings.

32 Brief of the SEC at 65 n. 75 (emphasis supplied):
Moreover, the Commission is involved in an ongoing examination of the shareholder democracy process an examination which is, of course, much broader than the matters involved herein. In Securities Exchange Act Release No. 13482 (Apr. 28, 1977), 42 Fed.Reg. 23901 (May 11, 1977), the Commission announced that it would hold public hearings concerning shareholder communications, shareholder participation in corporate electoral process and corporate governance.
Three of the issues being addressed are (Securities Exchange Act Release No. 34 13901 (Aug. 29, 1977) (footnote omitted)):
"(1) what types of socially significant matters, if any, are material (within the meaning of Rule 14a 9) to shareholders in making informed voting

> decisions? In this regard, is there a difference between information necessary to an informed voting decision and information necessary to an informed investment decision?
> (2) whether or not information relating to socially significant matters Including matters relating to the environment and employment practices, is material within the meaning of Rule 14a 9, would it be appropriate for the Commission to exercise its rulemaking authority under section 14(a) to require disclosure of such information in proxy statements and/or annual reports to shareholders?
> (7) what would be the costs and benefits of (the above)? Can these costs and benefits be quantified? If not, why?"
> The Commission announced that, at the conclusion of these hearings, it would determine "whether it is necessary or appropriate in the public interest or for the protection of investors to propose amendments to Regulation 14A, to propose amendments to other applicable rules or to recommend legislation to Congress. Thus, Judicial review of the Commission's decision concerning proxy disclosure, if such review may be appropriate, Lies properly in the context of the Commission's proceedings concerning that issue.

**[21]** Traditionally, it is the agency, not the court, which determines whether to proceed by rulemaking, by individual adjudication, or by a combination of the two. See, e. g. NAACP v. FPC, 425 U.S. 662, 668, 96 S.Ct. 1806, 48 L.Ed.2d 284 (1976); SEC v. Chenery Corp., 332 U.S. 194, 202-03, 67 S.Ct. 1575, 91 L.Ed. 1995 (1947). Moreover, on remand, the court leaves "to the agency the methods, procedures, and time dimension of the needed inquiry . . . ." FPC v. Transcontinental Gas Pipe Line Corp., supra, 423 U.S. at 333, 96 S.Ct. at 583. And as a general rule, the agency, not the court, enlarges the minimum procedures prescribed by statute. Vermont Yankee, supra.

**[22]** This division between the administrative and judicial provinces preserves a ***1056** ****149** sphere of discretion for the agency, which alone is cognizant of the many demands on it, its limited resources, and the most effective structuring and timing of proceedings to resolve those competing demands. An agency is allowed to be master of its own house, lest effective agency decisionmaking not occur in Any proceeding; and judicial review awaits the agency's conclusion of its proceedings. See Myers v. Bethelehem Shipbuilding Corp., 303 U.S. 41, 58 S.Ct. 459, 82 L.Ed. 638 (1938).

Administrative discretion to structure agency proceedings influenced, if not dominated, the four major Supreme Court NEPA cases, for each has shown, in a different context, that judicial review of agency compliance with NEPA must be tempered by recognition that full compliance with NEPA must be measured against the agency's structuring of its proceedings. In Aberdeen & Rockfish R. Co. v. SCRAP, 422 U.S. 289, 95 S.Ct. 2336, 45 L.Ed.2d 191 (1975), the Court upheld approval of a rate increase by the Interstate Commerce Commission on the ground that the ICC structured its proceedings so that the general rate increase proceeding was not the forum for full environmental consideration; the particular issue of most environmental concern, the rates on recyclable materials, belonged, rather, to another ICC proceeding. The ICC and the railroads, the Court said, "emphasize the fact that they (are) giving continuing and more extensive attention to environmental consequences flowing from the rate structure in another proceeding . . . which (is) more appropriate to the task.

We substantially agree with this position." 422 U.S. at 322, 95 S.Ct. at 2357; See also id. at 325-26, 95 S.Ct. 2336. In Kleppe v. Sierra Club, 427 U.S. 390, 96 S.Ct. 2718, 49 L.Ed.2d 576 (1976), the Court upheld the Interior Department against a charge that it had failed to prepare an impact statement for regional development in the Northern Great Plains. The Court did so on the ground that the agency, not the courts, would structure the pattern of compliance with NEPA, and that the Department adequately complied with NEPA by preparing national and local impact statements rather than regional ones. 427 U.S. at 410-12, 96 S.Ct. 2718, citing SCRAP, 422 U.S. at 325-26, 95 S.Ct. 2336. In Flint Ridge Development Co. v. Scenic Rivers Association, 426 U.S. 776, 96 S.Ct. 2430, 49 L.Ed.2d 205 (1976), the Court upheld the Department of Housing and Urban Development, despite its failure to prepare an impact statement, noting that the opportunity remained for the agency to carry out the essentials of its NEPA duties in a further proceeding responding to a rulemaking petition, 426 U.S. at 792, 96 S.Ct. 2430. Finally, in Vermont Yankee, supra, the Court upheld a Nuclear Regulatory Commission licensing decision against charges by a utility that NRC had chosen the wrong proceeding to consider nuclear waste issues, 435 U.S. at 538-39, 98 S.Ct. 1197, citing with approval this court's discussion of why licensing proceedings were indeed appropriate for such consideration.

Deference to the SEC's decision to consider environmental disclosure in another proceeding is, in our view, appropriate. Our discussion of the scope of review of agency rulemaking shows that the quasi-legislative nature of rulemaking requires even greater agency freedom to manage and structure decisionmaking than is required in licensing or adjudication. Moreover, the record of this case shows that from 1971 to 1977, the SEC repeatedly stated intentions to continue its investigations and proceedings further E. g., when it sought dismissal of premature petitions for review in this court, when it abided by the District Court's first remand order, and when it sought extensions of time from the District Court to carry on its rulemaking. Each time, the SEC conducted further rulemaking proceedings which were more than Bona fide. In our view, those renewed SEC proceedings were searching, intensive, productive of valuable new information and insight, and in accordance with all canons of procedural fairness. As the District Court observed, to this proceeding was devoted "a substantial, and perhaps even an unprecedented, amount of the Commission's time," NRDC I, supra, 432 F.Supp. at 1212.

***1057** ****150** The Commission's task has been a peculiarly difficult one, requiring it to find a path between the views of the parties to the rulemaking polarized in support of the broadest disclosure or in opposition to any disclosure, to interpret novel statutory commands, and to make decisions against the background of rapidly changing conditions in the realm of shareholder proposals. This court is mindful of the difficulty of agency decisionmaking in such contexts, and when an agency indicates a need for a further opportunity to study or act, in circumstances like this, we will generally accord its position considerable

deference. EDF v. Costle, 188 U.S.App.D.C. 95, 578 F.2d 337 (1978).

B.

**[23]** The District Court also faulted the SEC for failing to work "in consultation with the Council on Environmental Quality," section 102(2)(B) of NEPA, 42 U.S.C. 4332(2)(B), but instead, leaving to CEQ and the Environmental Protection Agency the task of considering or requiring disclosure. NRDC II, supra, 432 F.Supp. at 1207-08. This, again, is an objection to the SEC's procedural compliance with NEPA, as to which we exercise a relatively exacting review function. However, we cannot find the SEC in error on this issue, since we find it did indeed consult with CEQ to the extent required by NEPA.

CEQ was established to provide "objective and impartial advi(c)e as well as a long-range overview and problem identification function," S.Rep. No. 296, 91st Cong., 1st Sess. 16 (1969), and as the federal agency "ultimately responsible for administration of the NEPA and most familiar with its requirements for Environmental Impact Statements," Warm Springs Dam Task Force v. Gribble, 417 U.S. 1301, 1310, 94 S.Ct. 2542, 2547, 41 L.Ed.2d 654 (1974) (Douglas, J., in chambers), CEQ's views on agency compliance Vel non with NEPA receive attention in the courts. CEQ appeared twice in the SEC's proceedings and vigorously supported corporate environmental disclosure requirements.[33] It made the expert assessment that the SEC could overcome the difficulty "in trying to design environmental disclosure requirements which are both economical and responsive to the Nation's policies expressed in NEPA . . . But not without some commitment by the SEC to expand its expertise in order to develop, enforce, and interpret disclosure standards which force succinct articulation of corporate environmental performance." Ex. B at 238 (emphasis supplied).[34] It indicated its willingness to "provide whatever consultation and review might be useful to the Commission." Ex. B at 239; See also id. at 157.

33 Statement of May 14, 1975, Ex. B at 145 58; Statement of January 12, 1976, Ex. B at 234 39.

34 CEQ's a vice was based on its familiarity with the difficulty other agencies have faced in complying with NEPA. The critical factor is often the willingness of the agency to spend the money to hire at least a few staff members trained in environmental matters. Absent a willingness to do so, an agency attempting to comply with NEPA will generally be exposed as unqualified and ineffectual, whatever its track record in compliance with agency specific mandates. See generally Tiefer, NEPA and Energy Supply: A Case Study of the Effects of Sierra Club v. Morton on Coal Production in the Northern Great Plains 6 (DNA Envir. Rep. Monograph No. 22, 1976).

The value of SEC consultation with CEQ is evident. To take a hypothetical example, Congress has recently passed new legislation concerning toxic substances,[35] and EPA has commenced several far-reaching regulatory programs with respect to air and water discharges of such substances. CEQ would be in a position to know if these legislative and administrative initiatives foreshadow a period in which corporations may not be in compliance with the law, or in which compliance with toxics regulation

will have a significant economic impact on corporations, or in which action on toxics may be a controversial policy issue on which corporate managements can expect shareholder ***1058 **151** proposals. It would therefore be able to advise whether disclosure in such limited contexts is especially timely, and could supply drafts of proposed disc osure requirements.

35 See Toxic Substances Control Act, 15 U.S.C. ss 2601 Et seq.; ss 42, 50, and 53 of the Clean Water Act of 1977, 91 Stat. 1582 83, 1588, 1589 60.

However, even viewing the SEC's action in this proceeding in a critical light, we are unable to find its relationship with CEQ to be violative of NEPA. After CEQ made its proposal, the SEC gave it careful consideration, and articulated its basis for rejecting it in separate and specific detail. The SEC's view was that the comprehensive type of disclosure sought by CEQ was not restricted "to information which appears to be of interest to investors, but must (include also) disclosure which would be of interest to other persons and entities. For this reason, the Council's suggestion is not designed to, and would be unlikely to, produce information of the type which investors appear to be interested in." 41 Fed.Reg. at 21634. We cannot fault the SEC for insufficient consultation with CEQ on a proposal that lacked adequate grounding in the securities laws. Moreover, we assume that in the new proceedings concerned with proxy solicitation, CEQ will have the opportunities to offer its advice that it enjoyed in the instant proceedings, and by adjusting its proposals better to fit the intent of the securities laws and the needs of investors, it could provide that degree of assistance which the District Court considered a necessity for rational SEC rulemaking decisions. As for the isolated comment in the SEC's decision that gives the impression that it has shunted the task of requiring environmental disclosure to other agencies, 40 Fed.Reg. at 51662 n.44, we believe that the announcement of further SEC proceedings indicates an intention not to engage in such shunting at all. We are not disposed to overturn the SEC's decision merely because of isolated indications of reserve about appellees' proposed rules.

C.

**[24]** The District Court objected, thirdly and finally,[36] to the SEC's conclusion that "both the costs to registrants and the administrative burdens involved in the proposed disclosure would be excessive. . . . It appears, therefore, that the proposed disclosures would be extremely voluminous, subjective and costly to all concerned." 40 Fed.Reg. at 51662. The District Court criticized this conclusion as not "supported by any underlying findings of fact" and suffering from a "total dearth of support." NRDC II, supra, 432 F.Supp. at 1206. This objection reflects a conclusion that the SEC's decision not to adopt rules was not sustainable on the administrative record. As we have seen, See Part II-C Supra, a highly deferential scope of review is appropriate to such substantive issues. Given such review, we do not overrule the SEC for its quantification of the costs and benefits of environmental disclosure.

36 The court also alluded to various lesser flaws in the SEC's decision, 432 F.Supp. at 1208 09. We do not believe these are dispositive and do not find them to be a basis for concluding that the SEC's decision was arbitrary and capricious.

The simple fact is that the SEC could not be required to support a decision by factual proof. Even with respect to the SEC's financial disclosure requirements, which have been in effect for decades, there is still remarkably little hard data on costs and benefits, due to the inherent uncertainties in quantifying the net cost of gathering and disseminating information and in determining the benefit resulting therefrom. As one commentator recently stated in frustration, "(t)here is little direct evidence on the effect of required disclosure on the efficiency with which securities markets operate. I do not know of any measurements of the costs of securities analysis and choice that permits a comparison of the pre- and post-SEC periods." Benston, An Appraisal of the Costs and Benefits of Government-Required Disclosure: SEC and FTC Requirements, 41 Law & Contemp. Probs. No. 3, 30, 53 (1977).

The lack of data on which to estimate the costs and benefits of Novel forms of disclosure is, naturally, even more striking. It is only recently that any general work in the ***1059 **152** area has appeared at all and even it admits the current limitations on knowledge. [37] The only model for systematic agency-mandated corporate environmental assessment is apparently the requirement of the Federal Power Commission concerning reporting of environmental protection facilities and expenses by utilities. See 18 C.F.R. s 141.1(d) (1978); 40 Fed.Reg. 57450 (Dec. 10, 1975). There is no clear relation between the FPC disclosure requirements and those in the proposals considered by the SEC, and it appears appellees did not attempt to develop information on the FPC disclosure requirements. Virtually no credible effort to quantify costs or benefits by any commenter in the record has been brought to our attention by counsel, nor have we found any in our own independent review of the record. [38]

37 American Institute of Certified Public Accountants, The Measurement of Corporate Social Performance (1977). The AICPA study may well be regarded, in time, as a harbinger of improved methods of social performance measurement and disclosure. Its conclusion, though, "is simultaneously optimistic and pessimistic. It is pessimistic about expectations that a social information system with even the relative purity of financial accounting systems will be developed in the foreseeable future, if ever. It is optimistic that much can be accomplished and that it will be useful. Id. at 11.

38 We have quoted the National Association of Manufacturers' $1 billion estimate. That estimate was ridiculed by appellees as exaggerating the disclosure requirements and cost by confusing NEPA requirements for federal agencies (with respect to impact statement preparation) with the far different disclosure requirements of the proposed rules. On their side, however, plaintiffs presented no firmer evidence than the assessment by the Council on Economic Priorities, with its experience in gathering information, that the "existence of companies with good disclosure records demonstrates that the costs of such disclosure is far from prohibitive. Ex. C at 564. The SEC's "failure to quantify costs and benefits may be seen more as skepticism of the claims of both opponents and proponents of disclosure, rather than as reflecting an absence of consideration of the matter.

**[25]** The absence of firm data did not preclude the SEC from adopting or declining to adopt rules. Rather, it shows that the SEC was required to make a quasi-

legislative policy judgment, much like the judgments made by Congress when it legislates in previously uncharted territory. In Industrial Union Department, supra, 162 U.S.App.D.C. at 338-39, 499 F.2d at 474-75, we upheld agency rulemaking in the absence of hard factual proof, based on a recognition that in some areas, such as matters "on the frontiers of scientific knowledge," Id. 162 U.S.App.D.C. at 338, 499 F.2d at 474, agency rulemaking decisions must occur before such proof is available. Our approach in Hodgson has been expressly followed in numerous decisions of the courts of appeals.[39] Recently, the Supreme Court upheld a refusal by the FCC to adopt rules (concerning retroactive application of media ownership diversification requirements) on the Hodgson rationale:

39 See, e. g., Hercules, Inc. v. EPA, 194 U.S.App.D.C. 172 at 187, 598 F.2d 91 at 106 (1978); EDF v. Costle, 188 U.S.App.D.C. 95, 97, 578 F.2d 337, 339 (1978); American Iron & Steel Inst. v. OSHA, 577 F.2d 825, 833 34 (3rd Cir. 1978); Superior Oil Co. v. FERC, 563 F.2d 191, 201 (5th Cir. 1977); Ethyl Corp. v. EPA, 176 U.S.App.D.C. 373, 392 401, 541 F.2d 1, 20 29 (En banc ), Cert. denied, 426 U.S. 941, 96 S.Ct. 2663, 49 L.Ed.2d 394 (1976); Society of the Plastics Indus., Inc. v. OSHA, 509 F.2d 1301, 1308 (2d Cir.), Cert. denied, 421 U.S. 992, 95 S.Ct. 1998, 44 L.Ed.2d 482 (1975).

In such circumstances complete factual support in the record for the Commission's judgment or prediction is not possible or required; "a forecast of the direction in which future public interest lies necessarily involves deductions based on the expert knowledge of the agency," FPC (Federal Power Commission) v. Transcontinental Gas Pipe Line Corp., 365 U.S. 1, 29, 81 S.Ct. 435, 450, 5 L.Ed.2d 377 (1961); See Industrial Union Dept., AFL-CIO v. Hodgson, 162 U.S.App.D.C. 331, 338-339, 499 F.2d 467, 474-475 (1974).
National Citizens Committee, supra, 436 U.S. at 814, 98 S.Ct. at 2122.

Appellees point out that courts scrutinizing environmental impact statements have criticized agencies' failures adequately to ground their decisions in cost-benefit data, ***1060** ****153** See, e. g., EDF v. Froehlke, 473 F.2d 346, 352 (8th Cir. 1972). However, these decisions concerned situations in which past projects provided a base for quantified cost-benefit estimates. The present context is far more novel and speculative, and we are in no position to impose similar requirements in this case.

IV.

**[26]** Appellees also petitioned the SEC to promulgate new rules requiring disclosure of data concerning minority and female employment.[40] This information is of the kind most large corporations compile and report to the federal government on the Consolidated Employer Information Report EEO-1, a short form, commonly no more than two or three pages long, breaking down corporate employment statistics by race, sex, and job category.[41] The SEC's rules, of course, already required disclosure of "material" information, See, e. g., TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449, 96 S.Ct. 2126, 48 L.Ed.2d 757 (1976); Id. at 445-46, 96 S.Ct. 2126 n. 8. See generally Hewitt, Developing Concepts of Materiality and Disclosure, 32 Bus.Law 887 (1977).

40 Appellees also sought disclosure of employment discrimination suits. The considerations involved in such disclosure do not differ significantly from those involved in disclosure of EEO 1 data, and our discussion of EEO 1 data is intended to cover both requests.

41 EEO 1 forms must be submitted by sizable companies, and companies doing business with the federal government, to the Joint Reporting Committee for distribution to the Office of Federal Contract Compliance and the Equal Employment Opportunity Commission (EEOC). See Executive Order No. 11246, 30 Fed.Reg. 12319 (1965), As amended, Executive Order No. 11375, 32 Fed.Reg. 14303 (1967). A copy of a blank EEO 1 form is entered in the record, Ex. C at 809 10.

Appellees and supporting commenters, notably EEOC, introduced considerable information about the value to stockholders of EEO-1 data. EEOC's two submissions detailed the impact on corporations of noncompliance with the civil rights laws, and EEOC concluded by "emphasiz(ing) that employment discrimination has, in fact, a substantial potential impact on the financial well being of those utilizing the securities markets," Ex. C at 737, and that disclosure of EEO-1 data "gives a prudent observer substantial useful information," Id. at 758. As the record reflects and as we have previously recognized, NAACP v. FPC, supra, 172 U.S.App.D.C. 32, 44, 520 F.2d at 444, the financial impact of employment discrimination can encompass many particular costs, such as backpay awards on discrimination claims and the loss of valuable government contracts terminated because of employment discrimination. The EEOC supplemented its own expert analysis of the financial impacts of discrimination, tangible and intangible, by citing the views of accountants, mutual funds, and financial reporting services which believe in checking corporate civil rights data. [42]

42 Ex. C at 765 66 (accountants), 783 (citing Investment Company Institute's report on Corporate Responsibility and Mutual Funds), and 762 63 (quoting Standard and Poor's investment report on company's "reserve for possible losses under a civil rights case. ).

Appellees also supported their petition with evidence that EEO-1 data reflects on the worthiness of corporate management, and has been the subject of special interest by shareholders exercising proxies. Shareholders have frequently demanded EEO-1 data by submitting proposals for disclosure, and managements, with and without such demands, have increasingly revealed such data. [43] The National Organization for ***1061 **154** Women submitted a statement about the strong interest of its stockholding members and others in "information regarding possible sex-biased employment practices of companies in which they are investing or may invest," Ex. C at 519, and the EEOC observed that "(t)he failure to take necessary action to correct employment discrimination problems may be an indication to a least some investors that management may be deficient in other areas as well, with potential results not just measured by the cost of discrimination alone." Ex. C at 764.

43 The considerable showing in the record includes extensive examinations of the EEO 1 disclosure by one corporation, General Electric Co., See Ex. C at 446 (comment by General Electric Co.), Id. at 597 602 (reproducing Purcell, How GE Measures Managers in Fair Employment, 52 Harv.Bus.Rev. 99 (Nov. Dec., 1974)); and a full collection of excerpts from annual reports, Id. at 797 808 (compiled by

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the ACLU Fund of the National Capital Area). As a recent article summarized the trend, Schwartz & Weiss, 65 Geo.L.J. 635, 644 45 (1976) (footnotes omitted):

Prior to 1974, virtually no major corporations had released to the public statistical "EEO 1 data requested in shareholder resolutions. Beginning in 1974, however, many prominent corporations began to release this information, in large part as a result of the pressure generated by shareholder resolutions. In 1974, nine of the seventeen equal employment disclosure resolutions were withdrawn after the corporations agreed to disclose information that the sponsors of the resolutions considered adequate. Of the eight companies at whose annual meetings resolutions were brought to votes, all but one published some or all of the information requested, and in only two cases did the resolutions receive more than three percent of the votes cast. Somewhat fewer equal employment disclosure resolutions were submitted to corporations in 1975 and, on the whole, corporations responded to those resolutions more positively. Moreover, a number of corporations followed the lead of those that had disclosed EEO 1 data in 1974, even without the prod of shareholder proposals. By January 1976, an activist church group reported that some fifty major United States corporations, including General Motors, Ford, AT & T, General Electric, Exxon, Sears, IBM, and Xerox, had made public EEO 1 type data.

Opponents of new rules governing disclosure of EEO-1 data raised a number of contrary considerations. They argued most strongly that the existing rule of requiring "material" disclosure, "with which there has been over 40 years of experience," [44] provided adequate information for shareholders. It was further argued that the SEC should not require disclosure of EEO-1 data because of the confidentiality provision limiting disclosures of material filed with the EEOC. [45] It was also argued that there was a "lack of meaningfulness" [46] in EEO-1 data, because it requires further information and expert analysis fully to determine the extent of discrimination from such data.

44 Ex. B at 140 (comment of Committee on Securities Regulation, Association of the Bar of the City of New York).

45 40 Fed.Reg. at 51666 n. 73.

46 Ex. C at 633 (comment of Exxon Corp.).

In denying appellees' petition, the SEC expressly declined to rely on the confidentiality contention. While its rationale was somewhat obscured by dicta, [47] the SEC's first and principal ground was that the existing disclosure rule of "materiality" was adequate. The SEC asserted that

47 The SEC referred to the many other proposals made to it concerning disclosure of controversial corporate conduct. 40 Fed.Reg. at 51666 n. 72. The District Court considered this extended list to be the SEC's basis for its decision and found the SEC arbitrary and capricious. NRDC II, supra, 432 F.Supp. at 1210 11. We regard the SEC's references as essentially irrelevant to the decision now on review. The SEC has given many indications that its actual position on requiring disclosure of controversial corporate conduct is different from that suggested by these comments, See e. g., Note, Disclosure of Payments to Foreign Government Officials Under the Securities Acts, 89 Harv.L.Rev. 1848 (1976). Accordingly, we look elsewhere in the Commission's statement for the true bases of its decision.

(a)t the outset, it should be noted that the Commission's present disclosure requirements call for disclosure of certain equal employment matters. Rules adopted pursuant to the Securities Act and the Securities Exchange Act provide generally that in addition to the information expressly required to be included in registration statements and in reports, further material information, if any, must be included. . . . (W)e believe that our present materiality standards regarding legal proceedings provide adequate information

to meet the needs of investors generally in this regard. . . . In specific cases, the failure to make appropriate disclosures could be actionable by the Commission, depending upon the appropriate exercise of the Commission's prosecutorial discretion. 40 Fed.Reg. at 51665, 51666.

As we understand the Commission's position, it did not dispute the contentions of the EEOC concerning the significance of EEO-1 data, which would have entailed ***1062 **155** contradicting that agency in its area of expertise. Rather, and more subtly, the Commission's position is that if EEO-1 data is as significant as the rulemaking petitioners and the EEOC contend, then its disclosure is already required under existing rules. The precise working out of the particular EEO-1 data disclosure requirements could be left to case-by-case adjudication under those existing rules.

Moreover, the Commission indicated that its own enforcement efforts would be applied in this regard when appropriate. Id. at 51666. Counsel for the Commission maintained this position throughout the judicial proceedings. The District Court asked about disclosure of "an action under one of these civil rights statutes for damages against one of the registrants subject to your Commission's regulations," when that "action has merit." The SEC's General Counsel, appearing before the Court, responded that "(i)n the hypothetical Your Honor postulates if we assume that it would be (of interest to an investor), the answer is that it would be required to be disclosed under our existing rules . . . under our materiality standard." Ex. A at 146-47. On appeal, the SEC's General Counsel again stated that the SEC "would continue to elicit disclosure of such information in specific cases pursuant to its general requirement that all material information be disclosed. . . ." Brief for SEC at 67.

At the present time, the SEC has stated that it will approach the problem of appropriate disclosure of EEO-1 data outside the proxy context through adjudication rather than new rulemaking. In this regard, the Commission has also expressly noted that individuals may also institute litigation to seek disclosure of such data. 40 Fed.Reg. at 51666. The showing made in the record of this proceeding by appellees, far from undercutting the reasonableness of this approach, demonstrates its potential utility. Already, numerous companies have disclosed EEO-1 data, either voluntarily or on shareholder demand. The Commission's expressions in this case about its position may well spur further disclosure. We have confidence in the Commission's representations as to its intention to proceed by adjudication in appropriate cases. Moreover, the Commission stated that it will "continue to reevaluate the need for such (new disclosure) requirements from time to time." 40 Fed.Reg. at 51667. The SEC may rationally choose to proceed by adjudication for a reasonable period of time, which will provide it with the experience enabling it to determine at a later date whether something other than a materiality rule is necessary or desirable for equal employment disclosure. Thus, especially given the narrow scope of our review of the

SEC's decision not to adopt additional equal employment disclosure rules, we conclude that the Commission was wholly justified in rejecting the proposed rules and choosing, for the present, to rely on the existing materiality disclosure standard.

For the reasons stated above, we reverse the order of the District Court and remand with instructions to dismiss the complaint.

So ordered.

**All Citations**

606 F.2d 1031, 19 Fair Empl.Prac.Cas. (BNA) 724, 13 ERC 1321, 19 Empl. Prac. Dec. P 9219, 196 U.S.App.D.C. 124, Fed. Sec. L. Rep. P 96,832, 9 Envtl. L. Rep. 20,367

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# R-89

RESPONDENT'S EXHIBIT

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990 F.Supp. 1054
United States District Court, C.D. Illinois.

UNITED STATES of America, Plaintiff,
v.
James R. BERGER, Defendant.

No. 96–30036.
|
Jan. 16, 1998.

During criminal trial for mail fraud, defendant obtained videotape deposition of state governor. The District Court, 1997 WL 798116, denied permission for media to attend deposition and ordered deposition to remain sealed until it was played to jury. On motions by defendant and governor to keep deposition sealed, the District Court, Richard Mills, J., held that: (1) allowing access to videotape of governor's deposition did not violate rule banning cameras in federal courtroom; (2) public had First Amendment right of access to videotape deposition of state governor after it was played to jury in criminal trial; and (3) ruling would not be stayed to give movants more time to prepare proper motion on issue.

Motions denied.

**Attorneys and Law Firms**

***1055** Patrick J. Chesley, Springfield, IL, for Plaintiff.

Ronald J. Stone, Springfield, IL, for Defendant.

***OPINION***

RICHARD MILLS, District Judge.

The Governor's videotaped deposition.

The sequel.

And like any competent sequel, a little factual background information is necessary.

I.

Defendant has been charged with sixteen counts of mail fraud and with one count of misapplication of government property. During the midst of the trial, a juror became ill. Rather than making use of the last available alternate juror, the Court and the parties agreed to recess the trial until the juror was able to return to Court. [1]

1 And a good thing, for subsequently the last remaining alternate juror had to be utilized for the balance of this extended trial!

A problem with this plan arose in that Defendant had anticipated calling Illinois Governor Jim Edgar as a witness the next day. The Governor had a long planned three week official trade mission to India and, therefore, would only be available to testify the following day his final day before departure. In order to alleviate this conflict,

the parties stipulated to allow the Governor to be deposed *via* videotape pursuant to Federal Rule of Criminal Procedure 15(a) and by that means, would preserve the Governor's deposition for use at trial at Defendant's discretion. However, until Defendant decided to play the videotape to the jury, the videotape was to remain in the possession of the reporting service which had videotaped the Governor's deposition and was to be treated as a sealed matter. [2] Furthermore, members of the public were prohibited from attending the Governor's deposition.

2 However, the Court permitted both Defendant and the Government to receive a copy of the videotape.

Although this procedure was agreeable to both the parties and the Court, it created quite a hullabaloo with the media. Obviously, the press believed that a sitting Governor's testimony in a federal criminal trial carried some degree of newsworthiness and, ***1056** therefore, petitioned the Court to allow them to attend the taping of the Governor's deposition in person rather than being forced to wait until the videotape was played to the jury. The Court denied the press' petition and ruled that the videotaping of the Governor's deposition and the videotape itself would be a sealed matter until the tape was actually presented as evidence at trial before the jury. *United States v. Berger,* 990 F.Supp. 1051 (C.D.Ill.1997).

After the taping of the Governor's deposition, the Court met with the parties in chambers. At that meeting, the Court broached the issue of the public's access to the transcript and videotape should Defendant decide to offer it as evidence in his case-in-chief. The parties and the Court agreed that once played to the jury, both the transcript and the videotape itself would be open to the public for inspection and copying.

Upon that backdrop, we begin the sequel.

## II.

After the trial resumed, Defendant did, in fact, decide to offer the Governor's deposition as evidence in his case-in-chief, and thus, it was played to the jury. During the morning break, counsel for Defendant approached the Court and inquired as to the Court's intentions with respect to keeping the videotape under seal. Defendant's counsel related that the Governor's staff had requested that the videotape be placed back under seal once it was viewed by the jury. At a meeting in chambers, Defendant asserted that it was also his position that the videotape be placed back under seal once it had been presented to the jury.

Upon returning to open Court (but out of the jury's presence) counsel for the Governor asked to be heard and moved the Court for a protective order which placed the videotape back under seal once it was played to the jury. Alternatively, counsel for the Governor requested the Court to stay our ruling on the issue in order to allow time to research the issue and file an appropriate motion. [3]

3 The Court digresses here for a moment to note that although two full weeks passed between the taping of the Governor's deposition and the playing of the videotape to the jury, no one made any objection to the release of the videotape known to the Court until the day on which the videotape was played to the jury. In fact, the first time that the Court was made aware of this issue was after the jury had viewed the portion of the videotape containing Defendant's direct examination of the Governor. This delay in making an objection known to the Court is exacerbated by the fact that in addition to counsel for Defendant being present at the Governor's deposition, Chief Counsel for the Governor and the Governor's personal counsel both attended the deposition. Yet, no one said a word about placing the videotape back under seal until a hour before the public was to be given access to the transcript and the videotape. The untimeliness of the objection forced the Court to weigh an issue of significant Constitutional magnitude in the short space of an hour.

## III.

After weighing the competing interests and considering the Seventh Circuit's view of the issue, the Court finds that the public should have access to the videotape.

In reaching this conclusion, the Court is cognizant that our decision is contrary to that reached by various Courts of Appeal.[4] The Fifth, Sixth, and Eighth Circuits have all held that the public does not have a right of access to tapes played in court. *See Belo Broadcasting Corp. v. Clark,* 654 F.2d 423, 427 (5th Cir. Unit. A 1981)(holding no First Amendment right to copy tapes where transcripts provided and tapes played in open court); *see also United States v. Beckham,* 789 F.2d 401, 409 (6th Cir.1986) (holding no constitutional right to copy tapes played in open court); *see also United States v. McDougal,* 103 F.3d 651, 656 (8th Cir.1996)(holding no common law or First Amendment right of public access to videotape of President's testimony).

4 The Court has been unable to find an opinion by the Seventh Circuit which is directly on point to the issue *sub judice.*

On the other hand, the Second Circuit has found that in the absence of "extraordinary circumstances," the public has a common law right to inspect and copy videotaped depositions used at trial. *In re Application of CBS, Inc.,* 828 F.2d 958, 959 60 (2nd Cir.1987); *In re Application of Nat'l Broadcasting Co., Inc.,* 635 F.2d 945, 949 (2nd Cir.1980). Likewise, the Ninth Circuit has held that there is a "strong presumption in favor ***1057** of copying access." *Valley Broadcasting Co. v. United States Dist. Court,* 798 F.2d 1289, 1294 (9th Cir.1986).

**[1]** In the Seventh Circuit, there is also a strong presumption in favor of public access. *Grove Fresh Distributors, Inc. v. Everfresh Juice Co.,* 24 F.3d 893, 897 (7th Cir.1994); *United States v. Guzzino,* 766 F.2d 302, 304 (7th Cir.1985); *In re Continental Illinois Securities Litigation,* 732 F.2d 1302, 1313 (7th Cir.1984); *United States v. Edwards,* 672 F.2d 1289, 1294 (7th Cir.1982). "This presumption is rebuttable upon demonstration that suppression 'is essential to preserve higher values and is narrowly tailored to serve that interest.' " *Grove Fresh Distributors,* 24 F.3d at 897, quoting *Press Enterprise Co. v. Superior Court of California, Riverside County,* 464 U.S. 501, 510, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984). However, "[a]ny doubts must be resolved in favor of disclosure." *Grove*

*Fresh Distributors,* 24 F.3d at 897; *In re Continental,* 732 F.2d at 1313.

IV.

In this Court's opinion, two questions must be answered in resolving the issue at hand. *First,* is the videotape more akin to a camera in the courtroom which, if the Court allowed public access to inspect and copy the videotape, would run afoul of Federal Rule of Criminal Procedure 53,[5] or is it more similar to a piece of evidence (*e.g.,* an audio tape) which is generally open for public inspection once it has been admitted at trial. *Second,* would Defendant suffer any prejudice if the videotape is disclosed or is there any "higher value" than the public's right of access which would mitigate against making the videotape open for public inspection and copying.

5 Rule 53 provides: "The taking of photographs in the court room during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the court room shall not be permitted by the court.

The Court believes that the videotape is more akin to a judicial record than a violation of the ban of cameras in a federal courtroom. No one took any photographs in the courtroom; nor did anyone broadcast live *via* radio or television any judicial proceeding occurring within the courtroom. Moreover, there was no camera or satellite feed emanating from the courtroom either as the Governor's deposition occurred or as the videotape was played to the jury.

**[2]** On the contrary, Defendant decided to preserve the Governor's deposition by videotaping it. The Governor's deposition differed from the "standard" deposition (*i.e.,* questions and answers transcribed by a court reporter) only in its form. Video and audio tapes are often used in both civil and criminal cases to recreate accident scenes, preserve an expert's testimony, or record undercover drug buys. Once these tapes are admitted into evidence and played at trial, they are open to the public. The Court perceives no difference in those situations and the videotape at issue here. Thus, the Court finds that allowing public access to the videotape of the Governor's deposition does not run afoul of Federal Rule of Criminal Procedure 53.

**[3]** As to the second issue, after much deliberation, the Court was unable to conceive of a situation in which Defendant's constitutional rights would be violated or lessened if the public were given access to inspect and copy the videotape. Likewise, the Court could not envision some "higher value" which would rebut the strong presumption of the public's right of access. There is no question that a written transcript of the Governor's deposition would be made available to the public upon the admission of his testimony before the jury. There is also little doubt that various news organizations will purchase a copy of the transcript and will quote from it in their news reports.

In chambers, the Court asked Defendant to articulate what prejudice he would suffer if the public is allowed access to the videotape. Specifically, the Court asked

Defendant: assuming a juror inadvertently sees on television a replay of the Governor's deposition, how would he suffer any greater prejudice under that scenario than he would if a juror inadvertently sees a picture of the Governor on television with an excerpt of his deposition from the transcript placed underneath the Governor's picture?[6] Defendant ***1058** could not articulate, to the Court's satisfaction, a reason why he would suffer prejudice if the public is given access to the videotape.

6 The Court stresses that we have daily admonished the jury to avoid any media coverage of the trial and to refrain from discussing the case with anyone until it is time to deliberate their verdict.

V.

**[4]** As for the Governor's request, his interest is somewhat more clear. The Governor is concerned about possible negative publicity, a possible distortion or misreporting of his statements, etc. This is only natural, and the Court is fully cognizant of such realistic concerns. However, the Seventh Circuit has stated that such factors are irrelevant to a trial judge's decision:

> Whether the news media would have accurately reported or whether the public would have understood the contents of the tapes should have been of no concern to the trial judge. The trial judge had no duty to assure that the news media would do its job properly or that the public would not be misinformed. To the contrary, assuming such a duty would greatly exceed the function of the judiciary. The trial judge's sole concern was with the constitutional rights of the defendants, and upon determining that they would suffer no prejudice from release of the tapes his proper inquiry was at an end.

*Guzzino,* 766 F.2d at 304.

Furthermore, although the Court has been unable to unearth a case from the Seventh Circuit which is on all fours with the issue at hand, when the Seventh Circuit has tangentially or peripherally considered the issue, that court has relied upon case law from the Second Circuit. While stopping short of adopting the Second Circuit's "extraordinary circumstances" test, the Seventh Circuit has cited, with approval, language from *United States v. Myers,* 635 F.2d 945 (2nd Cir.1980). In *In re Continental Illinois Securities Litigation,* the Seventh Circuit opined:

> The Second Circuit's further observation in Myers is therefore germane to the case at hand.
>
> > Once the evidence has become known to the members of the public, including representatives of the press, through their attendance at a public session

> of court, it would take the most extraordinary circumstance to justify restrictions on the opportunity of those not physically in attendance at the courtroom to see and hear the evidence, *when it is in a form that readily permits sight and sound reproduction.*

*In Matter of Continental Illinois Securities Litigation,* 732 F.2d at 1313 (emphasis added). Based upon the Seventh Circuit's language and their approval of the Second Circuit's liberal view of public access, the Court believes that if presented with the issue, the Seventh Circuit would err on the side of disclosure. Accordingly, the Court believes that public access to the videotape must be allowed.

It is also important to note that it was Defendant who stipulated to the Governor being deposed in lieu of testifying in person. It was Defendant who decided to take the Governor's Rule 15(a) deposition by videotape. Finally, it was Defendant who decided to present the videotape as evidence in his case-in-chief and to play the videotape to the jury. [7]

7 Likewise, although the Governor now objects to the release of the videotape, he agreed to the deposition by video rather than simply having a court reporter transcribe the deposition. It should further be noted that the Court was accommodating the Governor's schedule by allowing him to be deposed pursuant to Rule 15(a) rather than being forced to cancel his trip to India in order to remain in the country to testify in person.

VI.

**[5]** Finally, Defendant and the Governor ask the Court to stay our ruling on the release of the videotape until they have had an opportunity to do some legal research and prepare a proper motion on the issue. While, there may be some room for debate as to the state of the law regarding the right of the public's access to a videotape of a Rule 15(a) deposition, once the Court has determined that there is a right of access, the Court's mandate from the Seventh Circuit is clear. The Seventh Circuit dictates that access be immediate:

> ***1059** In light of the values which the presumption of access endeavors to promote, a necessary corollary to the presumption is that once found to be appropriate, access should be immediate and contemporaneous. *Nebraska Press Ass'n v. Stuart,* 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976); *Continental Illinois Securities Litigation,* 732 F.2d at 1310. The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression. "[E]ach passing day may constitute a separate and cognizable infringement of the First Amendment." *Nebraska Press Ass'n v. Stuart,* 423 U.S. 1327, 1329, 96 S.Ct. 251, 254, 46 L.Ed.2d 237 (U.S. Neb.1975).

*Grove Fresh Distributors,* 24 F.3d at 897.

According to the Seventh Circuit, the First Amendment presumes a right of public access to the Court and the Court's documents. *Id.* This strong presumption

may only be rebutted upon a showing that "suppression is essential to preserve higher values." *Id.,* quoting *Press Enterprise,* 464 U.S. at 510. Here, the Court finds that the strong presumption has not been rebutted. Furthermore, the Seventh Circuit has admonished that "[a]ny doubts must be resolved in favor of disclosure." *Grove Fresh Distributors,* 24 F.3d at 897. Therefore, if the Court errs, we err on the side of disclosure.

*Ergo,* Defendant's oral motion to keep the videotape of the Governor's deposition sealed and the Governor's oral motion for a protective order are DENIED.

**All Citations**

990 F.Supp. 1054, 26 Media L. Rep. 1405

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