EXHIBIT 1

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
Independent Review Panel

CASE #50 2013 001083

<u>FINAL DECLARATION</u>

In the matter of an Independent Review Process (IRP) pursuant to the Internet Corporation For Assigned Names and Number's (ICANN's) Bylaws, the *International Dispute Resolution Procedures* (ICDR Rules) and the *Supplementary Procedures for ICANN Independent Review Process* of the International Centre for Dispute Resolution (ICDR),

Between: **DotConnectAfrica Trust**;
("Claimant" or "DCA Trust")

Represented by Mr. Arif H. Ali, Ms. Meredith Craven, Ms. Erin Yates and Mr. Ricardo Ampudia of Weil, Gotshal & Manges, LLP located at 1300 Eye Street, NW, Suite 900, Washington, DC 2005, U.S.A.

And

Internet Corporation for Assigned Names and Numbers (ICANN);
("Respondent" or "ICANN")

Represented by Mr. Jeffrey A. LeVee and Ms. Rachel Zernik of Jones Day, LLP located at 555 South Flower Street, Fiftieth Floor, Los Angeles, CA 90071, U.S.A.

Claimant and Respondent will together be referred to as "Parties".

<u>IRP Panel</u>

Prof. Catherine Kessedjian
Hon. William J. Cahill (Ret.)
Babak Barin, *President*

I. BACKGROUND

1. DCA Trust is non-profit organization established under the laws of the Republic of Mauritius on 15 July 2010 with its registry operation – DCA Registry Services (Kenya) Limited – as its principal place of business in Nairobi, Kenya.

2. DCA Trust was formed with the charitable purpose of, among other things, advancing information technology education in Africa and providing a continental Internet domain name to provide access to internet services for the people of Africa and not for the public good.

3. In March 2012, DCA Trust applied to ICANN for the delegation of the .AFRICA top-level domain name in its 2012 General Top-Level Domains ("gTLD") Internet Expansion Program (the "New gTLD Program"), an internet resource available for delegation under that program.

4. ICANN is a non-profit corporation established on 30 September 1998 under the laws of the State of California, and headquartered in Marina del Rey, California, U.S.A. According to its Articles of Incorporation, ICANN was established for the benefit of the Internet community as a whole and is tasked with carrying out its activities in conformity with relevant principles of international law, international conventions and local law.

5. On 4 June 2013, the ICANN Board New gTLD Program Committee ("NGPC") posted a notice that it had decided not to accept DCA Trust's application.

6. On 19 June 2013, DCA Trust filed a request for reconsideration by the ICANN Board Governance Committee ("BGC"), which denied the request on 1 August 2013.

7. On 19 August 2013, DCA Trust informed ICANN of its intention to seek relief before an Independent Review Panel under ICANN's Bylaws. Between August and October 2013, DCA Trust and ICANN participated in a Cooperative Engagement Process ("CEP") to try and resolve the issues relating to DCA Trust's application. Despite several meetings, no resolution was reached.

8. On 24 October 2013, DCA Trust filed a Notice of Independent Review Process with the ICDR in accordance with Article IV, Section 3 of ICANN's Bylaws.

9. In an effort to safeguard its rights pending the ongoing constitution of the IRP Panel, on 22 January 2014, DCA Trust wrote to ICANN requesting that it immediately cease any further processing of all applications for the delegation of the .AFRICA gTLD, failing which DCA Trust would seek emergency relief under Article 37 of the ICDR Rules.

10. DCA Trust also indicated that it believed it had the right to seek such relief because there was no standing panel as anticipated in the Supplementary Procedures for ICANN Independent Review Process ("Supplementary Procedures"), which could otherwise hear requests for emergency relief.

11. In response, on 5 February 2014, ICANN wrote:

> Although ICANN typically is refraining from further processing activities in conjunction with pending gTLD applications where a competing applicant has a pending reconsideration request, ICANN does not intend to refrain from further processing of applications that relate in some way to pending independent review proceedings. In this particular instance, ICANN believes that the grounds for DCA's IRP are exceedingly weak, and that the decision to refrain from the further processing of other applications on the basis of the pending IRP would be unfair to others.

12. In its Request for Emergency Arbitrator and Interim Measures of Protection subsequently submitted on 28 March 2014, DCA Trust pleaded, *inter alia*, that, in an effort to preserve its rights, in January 2014, DCA requested that ICANN suspend its processing of applications for .AFRICA during the pendency of this proceeding. ICANN, however, summarily refused to do so.

13. DCA Trust also submitted that "on 23 March 2014, DCA became aware that ICANN intended to sign an agreement with DCA's competitor (a South African company called ZACR) on 26 March 2014 in Beijing […] Immediately upon receiving this information, DCA contacted ICANN and asked it to refrain from signing the agreement with ZACR in light of the fact that this proceeding was still pending. Instead, according to ICANN's website, ICANN *signed its agreement with ZACR the very next day, two days ahead of plan, on 24 March instead of 26 March*."

14. According to DCA Trust, that same day, "ICANN then responded to DCA's request by presenting the execution of the contract as a *fait accompli*, arguing that DCA should have sought to stop ICANN from proceeding with ZACR's application, as ICANN had already informed DCA of its intention [to] ignore its obligations to participate in this proceeding in good faith."

15. DCA Trust also submitted that on 25 March 2014, as per ICANN's email to the ICDR, "ICANN for the first time informed DCA that it would accept the application of Article 37 of the ICDR Rules to this proceeding contrary to the express provisions of the Supplementary Procedures of ICANN has put in place for the IRP Process."

16. In its Request, DCA Trust argued that it "is entitled to an accountability proceeding with legitimacy and integrity, with the capacity to provide a meaningful remedy. […] DCA has requested the opportunity to compete for rights to .AFRICA pursuant to the rules that ICANN put into place. Allowing ICANN to delegate .AFRICA to DCA's only competitor – which took actions that were instrumental in the process leading to ICANN's decision to reject DCA's application – would eviscerate the very purpose of this proceeding and deprive DCA of its rights under ICANN's own constitutive instruments and international law."

17. Finally, among other things, DCA Trust requested the following interim relief:

> a. An order compelling *ICANN to refrain from any further steps toward delegation of the .AFRICA gTLD*, including but not limited to execution or assessment of pre-delegation testing, negotiations or discussions relating to delegation with the entity ZACR or any of its officers or agents; […]

18. On 24 April and 12 May 2014, the Panel issued Procedural Order No. 1, a Decision on Interim Measures of Protection, and a list of questions for the Parties to answer.

19. In its 12 May 2014 Decision on Interim Measures of Protection, the Panel required ICANN to "immediately refrain from any further processing of any application for .AFRICA until [the Panel] heard the merits of DCA Trust's Notice of Independent Review Process and issued its conclusions regarding the same".

20. In the Panel's unanimous view, among other reasons, it would have been "unfair and unjust to deny DCA Trust's request for interim relief when the need for such a relief…[arose] out of ICANN's failure to follow its own Bylaws and procedures." The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

21. On 27 May and 4 June 2015, the Panel issued Procedural Order No. 2 and a Decision on ICANN's request for Partial Reconsideration of certain portions of its Decision on Interim Measures of Protection.

22. In its 4 June 2014 Decision on ICANN's request for Partial Reconsideration, the Panel unanimously concluded that ICANN's request must be denied. In that Decision, the Panel observed:

> 9. After careful consideration of the Parties' respective submissions, the Panel is of the unanimous view that ICANN's Request must be denied for two reasons.

> 10. First, there is nothing in ICANN's Bylaws, the International Dispute Resolution Procedures of the ICDR effective as at 1 June 2009 or the Supplementary Procedures for ICANN Independent Review Process that in any way address the Panel's ability to address ICANN's Request. The Panel has not been able to find any relevant guidance in this regard in any of the above instruments and ICANN has not pointed to any relevant provision or rule that would support its argument that the Panel has the authority to reconsider its Decision of 12 May 2014.

> 11.Moreover, ICANN has not pointed to any clerical, typographical or computation error or shortcoming in the Panel's Decision and it has not requested an interpretation of the Panel's Decision based on any ambiguity or vagueness. To the contrary, ICANN has asked the Panel to reconsider its prior findings with respect to certain references in its Decision that ICANN disagrees with, on the basis that those references are in ICANN's view, inaccurate.

> 12. Second, even if the Panel were to reconsider based on any provision or rule available, its findings with respect to those passages complained of by ICANN as being inaccurate in its Decision – namely paragraphs 29 to 33 – after deliberation, the Panel would still conclude that ICANN has failed to follow its own Bylaws as more specifically explained in the above paragraphs, in the context of addressing which of the Parties should be viewed as responsible for the delays associated with DCA Trust's Request for Interim Measures of Protection. It is not reasonable to construe the By-law proviso for consideration by a provider-appointed *ad hoc* panel when a standing panel is not in place as relieving ICANN indefinitely of forming the required standing panel. Instead, the provider appointed panel is properly viewed as an interim procedure to be used before ICANN has a chance to form a standing panel. Here, more than a year has elapsed, and ICANN has offered no explanation why the standing panel has not been formed, nor indeed any indication that formation of that panel is in process, or has begun, or indeed even is planned to begin at some point.

The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

23. On 14 August 2014, the Panel issued a Declaration on the IRP Procedure ("2014 Declaration") pursuant to which it (1) ordered a reasonable documentary exchange, (2) permitted the Parties to benefit from additional filings and supplementary briefing, (3) allowed a video hearing, and (4) permitted both Parties at the hearing to

challenge and test the veracity of any written statements made by witnesses.

The Panel also concluded that its Declaration on the IRP and its future Declaration on the Merits of the case were binding on the Parties. In particular, the Panel decided:

> 98. Various provisions of ICANN's Bylaws and the Supplementary Procedures support the conclusion that the Panel's decisions, opinions and declarations are binding. There is certainly nothing in the Supplementary Rules that renders the decisions, opinions and declarations of the Panel either advisory or non-binding.
>
> […]
>
> 100. Section 10 of the Supplementary Procedures resembles Article 27 of the ICDR Rules. Whereas Article 27 refers to "Awards", section 10 refers to "Declarations". Section 10 of the Supplementary Procedures, however, is silent on whether Declarations made by the IRP Panel are "final and binding" on the parties.
>
> 101. As explained earlier, as per Article IV, Section 3, paragraph 8 of the Bylaws, the Board of Directors of ICANN has given its approval to the ICDR to establish a set of operating rules and procedures for the conduct of the IRP set out in section 3. The operating rules and procedures established by the ICDR are the ICDR Rules as referred to in the preamble of the Supplementary Procedures. These Rules have been <u>supplemented</u> with the Supplementary Procedures.
>
> 102. This is clear from two different parts of the Supplementary Procedures. First, in the preamble, where the Supplementary Procedures state that: "These procedures supplement the International Centre for Dispute Resolution's International Arbitration Rules in accordance with the independent review procedures set forth in Article IV, Section 3 of the ICANN Bylaws".
>
> 103. And second, under section 2 entitled (Scope), that states that the "ICDR will apply these Supplementary Procedures, <u>in addition</u> to the INTERNATIONAL DISPUTE RESOLUTION PROCEDURES, in all cases submitted to the ICDR in connection with the Article IV, Section 3(4) of the ICANN Bylaws". It is therefore clear that ICANN intended the operating rules and procedures for the independent review to be an international set of arbitration rules supplemented by a particular set of additional rules.
>
> 104. There is also nothing inconsistent between section 10 of the Supplementary Procedures and Article 27 of the ICDR Rules.
>
> 105. One of the hallmarks of international arbitration is the binding and final nature of the decisions made by the adjudicators. Binding arbitration is the essence of what the ICDR Rules, the ICDR itself and its parent, the American Arbitration Association, offer. The selection of the ICDR Rules as the baseline set of procedures for IRP's, therefore, points to a binding adjudicative process.

106. Furthermore, the process adopted in the Supplementary Procedures is an adversarial one where counsel for the parties present competing evidence and arguments, and a panel decides who prevails, when and in what circumstances. The panellists who adjudicate the parties' claims are also selected from among experienced arbitrators, whose usual charter is to make binding decisions.

107. The above is further supported by the language and spirit of section 11 of ICANN's Bylaws. Pursuant to that section, the IRP Panel has the authority to summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious. Surely, such a decision, opinion or declaration on the part of the Panel would not be considered advisory.

[…]

110. ICANN points to the extensive public and expert input that preceded the formulation of the Supplementary Procedures. The Panel would have expected, were a mere advisory decision, opinion or declaration the objective of the IRP, that this intent be clearly articulated somewhere in the Bylaws or the Supplementary Procedures. In the Panel's view, this could have easily been done.

111. The force of the foregoing textual and construction considerations as pointing to the binding effect of the Panel's decisions and declarations are reinforced by two factors: 1) the exclusive nature of the IRP whereby the non-binding argument would be clearly in contradiction with such a factor; and, 2) the special, unique, and publicly important function of ICANN. As explained before, ICANN is not an ordinary private non-profit entity deciding for its own sake who it wishes to conduct business with, and who it does not. ICANN rather, is the steward of a highly valuable and important international resource.

[…]

115. Moreover, assuming for the sake of argument that it is acceptable for ICANN to adopt a remedial scheme with no teeth, the Panel is of the opinion that, at a minimum, the IRP should forthrightly explain and acknowledge that the process is merely advisory. This would at least let parties know before embarking on a potentially expensive process that a victory before the IRP panel may be ignored by ICANN. And, a straightforward acknowledgment that the IRP process is intended to be merely advisory might lead to a legislative or executive initiative to create a truly independent compulsory process. The Panel seriously doubts that the Senators questioning former ICANN President Stuart Lynn in 2002 would have been satisfied had they understood that a) ICANN had imposed on all applicants a waiver of all judicial remedies, *and* b) the IRP process touted by ICANN as the "ultimate guarantor" of ICANN accountability was only an advisory process, the benefit of which accrued only to ICANN. [Underlining is from the original decision.]

The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

24. On 5 September and 25 September 2014, the Panel issued Procedural Orders No. 3 and No. 4. In Procedural Order No. 3, the Panel notably required the Parties to complete their respective filing of briefs in accordance with the IRP Procedure Guidelines by 3 November 2014 for DCA Trust and 3 December 2014 for ICANN.

25. In Procedural Order No. 4 dated 25 September 2014, the Panel reached a decision regarding document production issues.

26. On 3 November 2014 and 3 December 2014, the Parties filed their Memorial and Response Memorial on the Merits in accordance with the timetable set out in Procedural Order No. 3.

27. On 26 February 2015, following the passing away of the Hon. Richard C. Neal (Ret.) and confirmation by the ICDR of his replacement arbitrator, the Hon. William J. Cahill (Ret.), ICANN requested that this Panel consider revisiting the part of this IRP relating to the issue of hearing witnesses addressed in the Panel's 2014 Declaration.

28. In particular, ICANN submitted that given the replacement of Justice Neal, Article 15.2 of the ICDR Rules together with the Supplementary Procedures permitted this IRP to in its sole discretion, determine "whether all or part" of this IRP should be repeated.

29. According to ICANN, while it was not necessary to repeat all of this IRP, since the Panel here had exceeded its authority under the Supplementary Procedures when it held in its 2014 Declaration that it could order live testimony of witnesses, the Panel should then at a minimum consider revisiting that issue.

30. According to ICANN, panelists derived "their powers and authority from the relevant applicable rules, the parties' requests, and the contractual provisions agreed to by the Parties (in this instance, ICANN's Bylaws, which establish the process of independent review). The authority of panelists is limited by such rules, submissions and agreements."

31. ICANN emphasized that "compliance with the Supplementary Procedures [was] critical to ensure predictability for ICANN, applicants for and objectors to gTLD applications, and the entire ICANN community…", and while "ICANN [was] committed to fairness and accessibility…ICANN [was] also committed to predictability and the like treatment of all applicants. For this Panel to change the rules

for this single applicant [did] not encourage any of these commitments."

32. ICANN also pleaded that, DCA specifically agreed to be bound by the Supplementary Procedures when it initially submitted its application, the Supplementary Procedures apply to both ICANN and DCA alike, ICANN is now in the same position when it comes to testing witness declarations and finally, in alternative dispute resolution proceedings where cross examination of witnesses is allowed, parties often waive cross-examination.

33. Finally, ICANN advanced that:

> [T]he Independent Review process is an alternative dispute resolution procedure adapted to the specific issues to be addressed pursuant to ICANN's Bylaws. The process cannot be transformed into a full-fledged trial without amending ICANN's Bylaws and the Supplementary Procedures, which specifically provide for a hearing that includes counsel argument only. Accordingly, ICANN strongly urges the Panel to follow the rules for this proceeding and to declare that the hearing in May will be limited to argument of counsel.

34. On 24 March 2015, the Panel issued its Declaration on ICANN's Request for Revisiting of the 14 August Declaration on the IRP Procedure following the Replacement of Panel Member. In that Declaration, the newly constituted Panel unanimously concluded that it was not necessary for it to reconsider or revisit its 2014 Declaration.

35. In passing and not at all as a result of any intended or inadvertent reconsideration or revisiting of its 2014 Declaration, the Panel referred to Articles III and IV of ICANN's Bylaws and concluded:

> Under the general heading, Transparency, and title "Purpose", Section 1 of Article III states: "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." Under the general heading, Accountability and Review, and title "Purpose", Section 1 of Article IV reads: "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." In light of the above, and again in passing only, it is the Panel's unanimous view, that the filing of fact witness statements (as ICANN has done in this IRP) and limiting telephonic or in-person hearings to argument only is inconsistent with the objectives setout in Articles III and IV setout above.

The Panel again reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

36. On 24 March and 1 April 2015, the Panel rendered Procedural Orders No. 5 and 6, in which, among other things, the Panel recorded the Parties' "agreement that there will no cross-examination of any of the witnesses" at the hearing of the merits.

37. On 20 April 2015, the Panel rendered its Third Declaration on the IRP Procedure. In that Declaration, the Panel decided that the hearing of this IRP should be an in-person one in Washington, D.C. and required all three witnesses who had filed witness statements to be present at the hearing.

38. The Panel in particular noted that:

> 13. […] Article IV, Section 3, and Paragraph 4 of ICANN's Bylaws (reproduced above) – the Independent Review Process – was designed and set up to offer the Internet community, an accountability process that would ensure that ICANN acted in a manner consistent with ICANN's Articles of Incorporation and Bylaws.
>
> 14. Both ICANN's Bylaws and the Supplementary Rules require an IRP Panel to *examine* and *decide* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws. As ICANN's Bylaws explicitly put it, an IRP Panel is "*charged with* comparing contested actions of the Board […], and with *declaring* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws.
>
> 15. The IRP is the only independent third party process that allows review of board actions to ensure their consistency with the Articles of Incorporation or Bylaws. As already explained in this Panel's 14 August 2014 Declaration on the IRP Procedure ("August 2014 Declaration"), the avenues of accountability for applicants that have disputes with ICANN do *not* include resort to the courts. Applications for gTLD delegations are governed by ICANN's Guidebook, which provides that applicants waive all right to resort to the courts:
>
>> "Applicant hereby releases ICANN […] from any and all claims that arise out of, are based upon, or are in any way related to, any action or failure to act by ICANN […] in connection with ICANN's review of this application, investigation, or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN ON THE BASIS OF ANY OTHER LEGAL CLAIM."
>
> Thus, assuming that the foregoing waiver of any and all judicial remedies is valid and enforceable, then the only and ultimate "accountability" remedy for an applicant is the IRP.
>
> 16. Accountability requires an organization to explain or give reasons for its activities, accept responsibility for them and to disclose the results in a transparent manner.

[…]

21. In order to keep the costs and burdens of independent review as low as possible, ICANN's Bylaws, in Article IV, Section 3 and Paragraph 12, suggests that the IRP Panel conduct its proceedings by email and otherwise via the Internet to the maximum extent feasible, and where necessary the IRP Panel may hold meetings by telephone. Use of the words "should" and "may" versus "shall" are demonstrative of this point. In the same paragraph, however, ICANN's Bylaws state that, "in the unlikely event that a telephonic or in-person hearing is convened, the hearing *shall* be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance."

22. The Panel finds that this last sentence in Paragraph 12 of ICANN's Bylaws, unduly and improperly restricts the Panel's ability to conduct the "independent review" it has been explicitly mandated to carryout in Paragraph 4 of Section 3 in the manner it considers appropriate.

23. How can a Panel compare contested actions of the Board and declare whether or not they are consistent with the provisions of the Articles of Incorporation and Bylaws, without the ability to fact find and make enquiries concerning those actions in the manner it considers appropriate?

24. How can the Panel for example, determine, if the Board acted without conflict of interest, exercised due diligence and care in having a reasonable amount of facts in front of it, or exercised independent judgment in taking decisions, if the Panel cannot ask the questions it needs to, in the manner it needs to or considers fair, just and appropriate in the circumstances?

25. How can the Panel ensure that the parties to this IRP are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case with respect to the mandate the Panel has been given, if as ICANN submits, "ICANN's Bylaws do not permit any examination of witnesses by the parties or the Panel during the hearing"?

26. The Panel is unanimously of the view that it cannot. The Panel is also of the view that any attempt by ICANN in this case to prevent it from carrying out its independent review of ICANN Board's actions in the manner that the Panel considers appropriate under the circumstances deprives the accountability and review process set out in the Bylaws of any meaning.

27. ICANN has filed two 'Declarations' in this IRP, one signed by Ms. Heather Dryden, a Senior Policy Advisor at the International Telecommunications Policy and Coordination Directorate at Industry Canada, and Chair of ICANN Government Advisory Committee from 2010 to 2013, and the other by Mr. Cherine Chalaby, a member of the Board of Directors of ICANN since 2010. Mr. Chalaby is also, since its inception, one of three members of the Subcommittee on Ethics and Conflicts of ICANN's Board of Governance Committee.

28. In their respective statements, both individuals have confirmed that they "have personal knowledge of the matters set forth in [their] declaration and [are] competent to testify to these matters *if called as a witness*."

[…]

29. In his Declaration, Mr. Chalaby states that "all members of the NGPC were asked to and did specifically affirm that they did not have a conflict of interest related to DCA's application for .AFRICA when they voted on the GAC advice. In addition, the NGPC asked the BGC to look into the issue further, and the BGC referred the matter to the Subcommittee. After investigating the matter, the Subcommittee concluded that Chris Disspain and Mike Silber did not have conflicts of interest with respect to DCA's application for .AFRICA."

30. The Panel considers it important and useful for ICANN's witnesses, and in particular, Mr. Chalaby as well as for Ms. Sophia Bekele Eshete to be present at the hearing of this IRP.

31. While the Panel takes note of ICANN's position depicted on page 2 of its 8 April 2015 letter, the Panel nonetheless invites ICANN to reconsider its position.

32. The Panel also takes note of ICANN's offer in that same letter to address written questions to its witnesses before the hearing, and if the Panel needs more information after the hearing to clarify the evidence presented during the hearing. The Panel, however, is unanimously of the view that this approach is fundamentally inconsistent with the requirements in ICANN's Bylaws for it to act openly, transparently, fairly and with integrity.

33. As already indicated in this Panel's August 2014 Declaration, analysis of the propriety of ICANN's decisions in this case will depend at least in part on evidence about the intentions and conduct of ICANN's top personnel. Even though the Parties have explicitly agreed that neither will have an opportunity to cross-examine the witnesses of the other in this IRP, the Panel is of the view that ICANN should not be allowed to rely on written statements of its top officers attesting to the propriety of their actions and decisions without an opportunity for the Panel and thereafter DCA Trust's counsel to ask any follow-up questions arising out of the Panel's questions of ICANN's witnesses. The same opportunity of course will be given to ICANN to ask questions of Ms. Bekele Eshete, after the Panel has directed its questions to her.

34. The Parties having agreed that there will be no cross-examination of witnesses in this IRP, the procedure for asking witnesses questions at the hearing shall be as follows:

    a)   The Panel shall first have an opportunity to ask any witness any questions it deems necessary or appropriate;

    b)   Each Party thereafter, shall have an opportunity to ask any follow-up questions the Panel permits them to ask of any witness.

The Panel again reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

39. On 27 April and 4 May 2015, the Panel issued its Procedural Order No. 7 and 8, and on that last date, it held a prehearing conference call with the Parties as required by the ICDR Rules. In Procedural

Order No. 8, the Panel set_out the order of witness and party presentations agreed upon by the Parties.

40. On 18 May 2015, and in response to ZA Central Registry's (ZACR) request to have two of its representatives along with a representative from the African Union Commission (AUC) attend at the IRP hearing scheduled for 22 and 23 May 2015 in Washington, D.C., the Panel issued its Procedural Order No. 9, denying the requests made by ZACR and AUC to be at the merits hearing of this matter in Washington, D.C.

41. In a letter dated 11 May 2015, ZACR and AUC's legal representative had submitted that both entities had an interest in this matter and it would be mutually beneficial for the IRP to permit them to attend at the hearing in Washington, D.C.

42. ZACR's legal representative had also argued that "allowing for interests of a materially affected party such as ZACR, the successful applicant for the dotAfrica gTLD, as well as broader public interests, to be present enhances the legitimacy of the proceedings and therefore the accountability and transparency of ICANN and its dispute resolution procedures."

43. For the Panel, Article 20 of the ICDR Rules, which applied in this matter, stated that the hearing of this IRP was "private unless the parties agree otherwise". The Parties in this IRP did not consent to the presence of ZACR and AUC. While ICANN indicated that it had no objection to the presence of ZACR and AUC, DCA Trust was not of the same view. Therefore, ZACR and AUC were not permitted to attend.

44. The in-person hearing of the merits of this IRP took place on 22 and 23 May 2015 at the offices of Jones Day LLP in Washington, D.C. All three individuals who had filed witness statements in this IRP, namely Ms. Sophia Bekele Eshete, representative for DCA Trust, Ms. Heather Dryden and Mr. Cherine Chalaby, representatives for ICANN, attended in person and answered questions put to them by the Panel and subsequently by the legal representatives of both Parties. In attendance at the hearing was also Ms. Amy Stathos, Deputy General Counsel of ICANN.

45. The proceedings of the hearing were reported by Ms. Cindy L. Sebo of TransPerfect Legal Solutions, who is a Registered Merit Real-Time Court Reporter.

46. On the last day of the hearing, DCA Trust was asked by the Panel to clearly and explicitly articulate its prayers for relief. In a document entitled Claimant's Final Request for Relief which was signed by the Executive Director of DCA Trust, Ms. Sophia Bekele and marked at the hearing as Hearing Exhibit 4, DCA Trust asked the Panel to:

> Declare that the Board violated ICANN's Articles of Incorporation, Bylaws and the Applicant Guidebook (AGB) by:
>
> - Discriminating against DCA and wrongfully assisting the AUC and ZACR to obtain rights to the .AFRICA gTLD;
> - Failing to apply ICANN's procedures in a neutral and objective manner, with procedural fairness when it accepted the GAC Objection Advice against DCA; and
> - Failing to apply its procedures in a neutral and objective manner, with procedural fairness when it approved the BGC's recommendation not to reconsider the NGPC's acceptance of the GAC Objection Advice against DCA;
>
> And to declare that:
>
> - DCA is the prevailing party in this IRP and, consequently, shall be entitled to its costs in this proceeding; and
> - DCA is entitled to such other relief as the Panel may find appropriate under the circumstances described herein.
>
> Recommend, as a result of each of these violations, that:
>
> - ICANN cease all preparations to delegate the .AFRICA gTLD to ZACR;
> - ICANN permit DCA's application to proceed through the remainder of the new gTLD application process and be granted a period of no less than 18 months to obtain Government support as set out in the AGB and interpreted by the Geographic Names Panel, or accept that the requirement is satisfied as a result of the endorsement of DCA Trust's application by UNECA; and
> - ICANN compensate DCA for the costs it has incurred as a result of ICANN's violations of its Articles of Incorporation, Bylaws and AGB.

47. In its response to DCA Trust's Final Request for Relief, ICANN submitted that, "the Panel should find that no action (or inaction) of the ICANN Board was inconsistent with the Articles of Incorporation or Bylaws, and accordingly none of DCA's requested relief is appropriate."

48. ICANN also submitted that:

> DCA urges that the Panel issue a declaration in its favor…and also asks that the Panel declare that DCA is the prevailing party and entitled to its costs. Although ICANN believes that the evidence does not support the

declarations that DCA seeks, ICANN does not object to the form of DCA's requests.

At the bottom of DCA's Final Request for Relief, DCA asks that the Panel recommend that ICANN cease all preparations to delegate the .AFRICA gTLD to ZACR, and that ICANN permit DCA's application to proceed and give DCA no less than 18 additional months from the date of the Panel's declaration to attempt to obtain the requisite support of the countries in Africa. ICANN objects to that appropriateness of these requested recommendations because they are well outside the Panel's authority as set forth in the Bylaws.

[…]

Because the Panel's authority is limited to declaring whether the Board's conduct was inconsistent with the Articles or the Bylaws, the Panel should limit its declaration to that question and refrain from recommending how the Board should then proceed in light of the Panel's declaration. Pursuant to Paragraph 12 of that same section of the Bylaws, the Board will consider the Panel's declaration at its next meeting, and if the Panel has declared that the Board's conduct was inconsistent with the Articles or the Bylaws, the Board will have to determine how to act upon the opinion of the Panel.

By way of example only, if the Panel somehow found that the unanimous NGPC vote on 4 June 2013 was not properly taken, the Board might determine that the vote from that meeting should be set aside and that the NGPC should consider the issue anew. Likewise, if the Panel were to determine that the NGPC did not adequately consider the GAC advice at [the] 4 June 2013 meeting, the Board might require that the NGPC reconsider the GAC advice.

In all events, the Bylaws mandate that the Board has the responsibility of fashioning the appropriate remedy once the Panel has declared whether or not it thinks the Board's conduct was inconsistent with ICANN's Articles of Incorporation and Bylaws. The Bylaws do not provide the Panel with the authority to make any recommendations or declarations in this respect.

49. In response to ICANN's submissions above, on 15 June 2015, DCA Trust advanced that the Panel had already ruled that its declaration on the merits will be binding on the Parties and that nothing in ICANN's Bylaws, the Supplementary Procedures or the ICDR Rules applicable in these proceedings prohibits the Panel from making a recommendation to the ICANN Board of Directors regarding an appropriate remedy. DCA Trust also submitted that:

According to ICANN's Bylaws, the Independent Review Process is designed to provide a remedy for "any" person materially affected by a decision or action by the Board. Further, "in order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation. Indeed, the ICANN New gTLD Program Committee, operating under the delegated authority of the ICANN Board, itself suggested that DCA could seek relief through ICANN's accountability

mechanisms or, in other words, the Reconsideration process and the Independent Review Process. If the IRP mechanism – the mechanism of last resort for gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, and it serves as the only alternative to litigation, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm.

50. On 25 June 2015, the Panel issued its Procedural Order No. 10, directing the Parties to by 1 July 2015 simultaneously file their detailed submissions on costs and their allocation in these proceedings.

51. The additional factual background and reasons in the above decisions, procedural orders and declarations rendered by the Panel are hereby adopted and incorporated by reference in this Final Declaration.

52. On 1 and 2 July 2015, the Parties filed their respective positions and submissions on costs.

II. BRIEF SUMMARY OF THE PARTIES' POSITIONS ON THE MERITS & REQUEST FOR RELIEF

53. According to DCA Trust and as elaborated on in it's Memorial on Merits dated 3 November 2014, the central dispute between it and ICANN in this IRP may be summarized as follows:

> 32. By preventing DCA'S application from proceeding through the new gTLD review process and by coordinating with the AUC and others to ensure that the AUC obtained the rights to .AFRICA, ICANN breached its obligations of independence, transparency and due process contained in its Articles of Incorporation and Bylaws, including its obligation to conduct itself consistent with its duty of good faith under relevant principles of international law.

54. According to DCA Trust, among other things, "instead of functioning as a disinterested regulator of a fair and transparent gTLD application process, ICANN used its authority and oversight over that process to assist ZACR and to eliminate its only competitor, DCA, from the process."

55. DCA Trust also advanced that, "as a result, ICANN deprived DCA of the right to compete for .AFRICA in accordance with the rules ICANN established for the new gTLD program, in breach of the Applicant Guidebook ("AGB") and ICANN's Articles of Incorporation and Bylaws."

56. In its 3 December 2014 Response to DCA's Memorial on the Merits, among other things, ICANN submitted that, "ICANN's conduct with respect to DCA's application for .AFRICA was fully consistent with ICANN's Bylaws, its Articles of Incorporation and the Applicant Guidebook. ICANN also pleaded that it acted through open and transparent processes, evaluated DCA's application for .AFRICA in accordance with the procedures set forth in the Guidebook, and followed the procedures set forth in its Bylaws in evaluating DCA's Request for Reconsideration."

57. ICANN advanced that, "DCA is using this IRP as a mean to challenge the right of African countries to support a specific (and competing) application for .AFRICA, and to rewrite the Guidebook."

58. ICANN also added that, "ICANN provided assistance to those who requested, cooperated with governmental authorities, and respected the consensus advice issued by the GAC, which speaks on behalf of the governments of the world."

59. In its Final Request for Relief filed on 23 May 2015, DCA Trust asked this Panel to:

> 1.Declare that the Board violated ICANN's Articles of Incorporation, Bylaws and the Applicant Guidebook (AGB);
> 2.Declare that DCA Trust is the prevailing party in this IRP and, consequently entitled to its costs in this proceeding; and
> 3.Recommend as a result of the Board violations a course of action for the Board to follow going forward.

60. In its response letter of 1 June 2015, ICANN confirmed that it did not object to the form of DCA Trust's requests above, even though it believes that the evidence does not support the declarations that DCA Trust seeks. ICANN did, however, object to the appropriateness of the request for recommendations on the ground that they are outside of the Panel's authority as set forth in the Bylaws.

III.   THE ISSUES RAISED AND THE PANEL'S DECISION

61. After carefully considering the Parties' written and oral submissions, perusing the three witness statements filed and hearing *viva voce* the testimonies of the witnesses at the in-person hearing of this IRP in Washington, D.C., the Panel answers the following four questions put to it as follows:

1.   Did the Board act or fail to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

Answer: Yes.

2.   Can the IRP Panel recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook (AGB)?

Answer: Yes.

3.   Who is the prevailing party in this IRP?

Answer: DCA Trust

4.   Who is responsible for bearing the costs of this IRP and the cost of the IRP Provider?

Answer: ICANN, in full.

Summary of Panel's Decision

For reasons explained in more detail below, and pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.

Finally, DCA Trust is the prevailing party in this IRP and ICANN is responsible for bearing, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider.

As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, DCA Trust and ICANN shall each bear their own expenses. The Parties shall also each bear their own legal representation fees.

IV. ANALYSIS OF THE ISSUES AND REASONS FOR THE PANEL'S DECISION

1) Did the Board act or fail to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

62. Before answering this question, the Panel considers it necessary to quickly examine and address the issue of "standard of review" as referred to by ICANN in its 3 December 2014 Response to DCA's Memorial on the Merits or the "law applicable to these proceedings" as pleaded by DCA Trust in its 3 November 2014 Memorial on the Merits.

63. According to DCA Trust:

> 30. The version of ICANN's Articles of Incorporation and its Bylaws in effect at the time DCA filed its Request for IRP applies to these proceedings. [Articles of Incorporation of Internet Corporation for Assigned Names and Numbers (21 November 1998) and Bylaws of the Internet Corporation for Assigned Names and Numbers (11 April 2013)]. ICANN's agreement with the U.S. Department of Commerce, National Telecommunications & Information Administration ("NTIA"), the "Affirmation of Commitments," is also instructive, as it explains ICANN's obligations in light of its role as regulator of the Domain Name System ("DNS"). <u>The standard of review is a *de novo* "independent review" of whether the actions of the Board violated the Bylaws, with focus on whether the Board acted without conflict of interest, with due diligence and care, and exercised independent judgment in the best interests of ICANN and its many stakeholders</u>. (Underlining added).

> 31. All of the obligations enumerated in these documents are to be carried out *first* in conformity with "relevant principles of international law" and *second* in conformity with local law. As explained by Dr. Jack Goldsmith in his Expert Report submitted in *ICM v. ICANN*, the reference to "principles of international law" in ICANN's Articles of Incorporation should be understood to include both customary international law and general principles of law.

64. In response, ICANN submits that:

> 11. The IRP is a unique process available under ICANN's Bylaws for persons or entities that claim to have been materially and adversely affected by a decision or action of the ICANN Board, but only to the extent that Board action was inconsistent with ICANN's Bylaws or Articles. This IRP Panel is tasked with providing its opinion as to whether the challenged Board actions violated ICANN's Bylaws or Articles. ICANN's Bylaws specifically identify the deferential standard of review that the IRP Panel must apply when evaluating the actions of the ICANN Board, focusing on:

> a. Did the Board act without conflict of interest in taking its decision?;
>
> b. Did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
>
> c. Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?
>
> 12. DCA disregards the plain language of ICANN's Bylaws and relies instead on the IRP Panel's declaration in a prior Independent Review proceeding, *ICM v. ICANN*. However, *ICM* was decided in 2010 under a previous version of ICANN's Bylaws. In its declaration, the *ICM* Panel explicitly noted that ICANN's then-current Bylaws "d[id] not specify or imply that the [IRP] process provided for s[hould] (or s[hould] not) accord deference to the decisions of the ICANN Board." As DCA acknowledges, the version of ICANN's Bylaws that apply to this proceeding are the version as amended in April 2013. <u>The current Bylaws provide for the deferential standard of review set forth above</u>. [Underlining is added]

65. For the following reasons, the Panel is of the view that the standard of review is a *de novo*, objective and independent one examining whether the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation and Bylaws.

66. ICANN is not an ordinary California nonprofit organization. Rather it has a large international purpose and responsibility to coordinate and ensure the stable and secure operation of the Internet's unique identifier systems.

67. Indeed, Article 4 of ICANN's Articles of Incorporation require ICANN to "operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets." ICANN's Bylaws also impose duties on it to act in an open, transparent and fair manner with integrity.

68. ICANN's Bylaws (as amended on 11 April 2013) which both Parties explicitly agree that applies to this IRP, reads in relevant parts as follows:

ARTICLE IV: ACCOUNTABILITY AND REVIEW

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.

[...]

4. Requests for such independent review shall be referred to an Independent Review Process Panel [...], which shall be charged with comparing contested actions of the Board to Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

    a. did the Board act without conflict of interest in taking its decision?
    b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
    c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

69. Section 8 of the Supplementary Procedures similarly subject the IRP to the standard of review set out in subparagraphs a., b., and c., above, and add:

    If a requestor demonstrates that the ICANN Board did not make a reasonable inquiry to determine it had sufficient facts available, ICANN Board members had a conflict of interest in participating in the decision, or the decision was not an exercise in independent judgment, believed by the ICANN Board to be in the best interests of the company, after taking account of the internet community and the global public interest, the requestor will have established proper grounds for review.

70. In the Panel's view, Article IV, Section 3, and Paragraph 4 of ICANN's Bylaws (reproduced above) – the Independent Review Process – was designed and set up to offer the Internet community, a *de novo, objective and independent* accountability process that would ensure that ICANN acted in a manner consistent with ICANN's Articles of Incorporation and Bylaws.

71. Both ICANN's Bylaws and the Supplementary Rules require an IRP Panel to *examine* and *decide* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws. As ICANN's Bylaws explicitly put it, an IRP Panel is "*charged with* comparing contested actions of the Board [...], and with *declaring* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws.

72. The IRP is the only independent third party process that allows review of board actions to ensure their consistency with the Articles of Incorporation or Bylaws. As already explained in this Panel's 14 August 2014 Declaration on the IRP Procedure ("August 2014 Declaration"), the avenues of accountability for applicants that have disputes with ICANN do *not* include resort to the courts. Applications for gTLD delegations are governed by ICANN's Guidebook, which provides that applicants waive all right to resort to the courts:

> Applicant hereby releases ICANN […] from any and all claims that arise out of, are based upon, or are in any way related to, any action or failure to act by ICANN […] in connection with ICANN's review of this application, investigation, or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN ON THE BASIS OF ANY OTHER LEGAL CLAIM.

73. Thus, assuming that the foregoing waiver of any and all judicial remedies is valid and enforceable, then the only and ultimate "accountability" remedy for an applicant is the IRP.

74. As previously decided by this Panel, such accountability requires an organization to explain or give reasons for its activities, accept responsibility for them and to disclose the results in a transparent manner.

75. Such accountability also requires, to use the words of the IRP Panel in the *Booking.com B.V. v. ICANN* (ICDR Case Number: 50-20-1400-0247), this IRP Panel to "objectively" determine whether or not the Board's actions are in fact consistent with the Articles of Incorporation, Bylaws and Guidebook, which this Panel, like the one in *Booking.com* "understands as requiring that the Board's conduct be appraised independently, and without any presumption of correctness."

76. The Panel therefore concludes that the "standard of review" in this IRP is a *de novo, objective and independent* one, which does not require any presumption of correctness.

77. With the above in mind, the Panel now turns it mind to whether or not the Board in this IRP acted or failed to act in a manner inconsistent

with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook.

DCA Trust's Position

78. In its 3 November 2014 Memorial on the Merits, DCA Trust criticizes ICANN for variety of shortcomings and breaches relating to the Articles of Incorporation, Bylaws and Applicant Guidebook. DCA Trust submits:

> 32. By preventing DCA's application from proceeding through the new gTLD review process and by coordinating with the AUC and others to ensure that the AUC obtained the rights to .AFRICA, ICANN breached its obligations of independence, transparency and due process contained in its Articles of Incorporation and Bylaws, including its obligation to conduct itself consistent with its duty of good faith under relevant principles of international law.

79. DCA Trust also pleads that ICANN breached its Articles of Incorporation and Bylaws by discriminating against DCA Trust and failing to permit competition for the .AFRICA gTLD, ICANN abused it Regulatory authority in its differential treatment of the ZACR and DCA Trust applications, and in contravention of the rules for the New gTLD Program, ICANN colluded with AUC to ensure that the AUC would obtain control over .AFRICA.

80. According to DCA Trust:

> 34. ICANN discriminated against DCA and abused its regulatory authority over new gTLDs by treating it differently from other new gTLD applicants without justification or any rational basis— particularly relative to DCA's competitor ZACR—and by applying ICANN's policies in an unpredictable and inconsistent manner so as to favor DCA's competitor for .AFRICA. ICANN staff repeatedly disparaged DCA and portrayed it as an illegitimate bidder for .AFRICA, and the Board failed to stop the discriminatory treatment despite protests from DCA.

> 35. Moreover, ICANN staff worked with InterConnect to ensure that ZACR, but not DCA, would be able to pass the GNP evaluation, even going so far as to draft a letter supporting ZACR for the AUC to submit back to ICANN. While ICANN staff purported to hold DCA to the strict geographic support requirement set forth in the AGB, once DCA was removed from contention for .AFRICA, ICANN staff immediately bypassed these very same rules in order to allow ZACR's application to pass the GNP evaluation. After DCA's application was pulled from processing on 7 June 2013, ICANN staff directed InterConnect to equate the AUC's support for ZACR's application as support from 100% of African governments. This was a complete change of policy for ICANN, which had insisted (until DCA's application was no longer being considered) that the AUC endorsement was not material to the geographic requirement.

36. However, none of the AUC statements ZACR submitted were adequate endorsements under the AGB, either. ICANN staff then took the remarkable step of drafting the AUC endorsement letter in order to enable ZACR to pass review. The Director of gTLD Operations, Trang Nguyen, personally composed an endorsement letter corresponding to all the AGB requirements for Commissioner Ibrahim's signature. Once Commissioner Ibrahim responded with a signed, stamped copy of the letter incorporating minor additions, ICANN staff rushed to pass ZACR's application just over one week later.

37. In its Response to the GAC Advice rendered against its application, DCA raised concerns that the two .AFRICA applications had been treated differently, though at the time it had no idea of just how far ICANN was going or would go to push ZACR's application through the process. Apparently the NGPC failed to make any inquiry into those allegations. .AFRICA was discussed at one meeting only, and there is no rationale listed for the NGPC's decision in the "Approved Resolutions" for the 4 June 2013 meeting. An adequate inquiry into ICANN staff's treatment of DCA's and ZACR's application—even simply asking the Director of gTLD Operations whether there was any merit to DCA's concerns—would have revealed a pattern of discriminatory behavior against DCA and special treatment by both ICANN staff and the ICANN Board in favor of ZACR's application.

38. In all of these acts and omissions, ICANN breached the AGB and its own Articles of Incorporation and Bylaws, which require it to act in good faith, avoid discriminating against any one party, and ensure open, accurate and unbiased application of its policies. Furthermore, ICANN breached principles of international law by failing to exercise its authority over the application process in good faith and committing an abuse of right by ghost-writing an endorsement letter for ZACR and the AUC, and then decreeing that the letter was all that would be needed for ZACR to pass. Finally, the Board's failure to inquire into the actions of its staff, even when on notice of the myriad of discriminatory actions, violates its obligation to comply with its Bylaws with appropriate care and diligence.

81. DCA Trust submits that the NGPC breached ICANN's Articles of Incorporation and Bylaws by failing to apply ICANN's Procedures in a neutral and objective manner with procedural fairness, when it accepted the GAC Objection Advice against DCA Trust, the NGPC should have investigated questions about the GAC Objection Advice being obtained through consensus, and the NGPC should have consulted with an independent expert about the GAC advice given that the AUC used the GAC to circumvent the AGB's community objection procedures.

82. According to DCA Trust:

44. The decision of the NGPC, acting pursuant to the delegated authority of the ICANN Board, to accept the purported "consensus" GAC Objection Advice, violated ICANN's Articles of Incorporation and Article III § 1 of its Bylaws, requiring transparency, consistency and fairness. ICANN ignored

the serious issues raised by DCA and others with respect to the rendering and consideration of the GAC Objection Advice, breaching its obligation to operate "to the maximum extent possible in an open and transparent manner and consistent with procedures designed to ensure fairness." It also breaches ICANN's obligation under Article 4 of its Articles of Incorporation to abide by principles of international law, including good faith application of rules and regulations and the prohibition on the abuse of rights.

45. The NGPC gave undue deference to the GAC and failed to investigate the serious procedural irregularities and conflicts of interest raised by DCA and others relating to the GAC's Objection Advice on .AFRICA. ICANN had a duty under principles of international law to exercise good faith and due diligence in evaluating the GAC advice rather than accepting it wholesale and without question, despite having notice of the irregular manner in which the advice was rendered. Importantly, ICANN was well aware that the AUC was using the GAC to effectively reserve .AFRICA for itself, pursuant to ICANN's own advice that it should use the GAC for that purpose and contrary to the New gTLD Program objective of enhancing competition for TLDs. The AUC's very presence on the GAC as a member rather than an observer demonstrates the extraordinary lengths ICANN took to ensure that the AUC was able to reserve .AFRICA for its own use notwithstanding the new gTLD application process then underway.

46. The ICANN Board and staff members had actual knowledge of information calling into question the notion that there was a consensus among the GAC members to issue the advice against DCA's application, prohibiting the application of the rule in the AGB concerning consensus advice (which creates a "strong presumption" for the Board that a particular application "should not proceed" in the gTLD evaluation process).The irregularities leading to the advice against DCA's application included proposals offered by Alice Munyua, who no longer represented Kenya as a GAC advisor at the time, and the fact that the genuine Kenya GAC advisor expressly refused to endorse the advice.
Redacted - GAC Designated Confidential Information

Finally, the ICANN Board knew very well that the AUC might attempt to use the GAC in an anticompetitive manner, since it was ICANN itself that informed the AUC it could use the GAC to achieve that very goal.

47. At a bare minimum, this information put ICANN Board and staff members on notice that further investigation into the rationale and support for the GAC's decision was necessary. During the very meeting wherein the NGPC accepted the Objection Advice, the NGPC acknowledged that due diligence required a conversation with the GAC, even where the advice *was* consensus advice. The evidence shows that ICANN simply decided to push through the AUC's appointed applicant in order to allow the AUC to control .AFRICA, as it had previously requested.

48. Even if the GAC's Objection Advice could be characterized as "consensus" advice, the NGPC's failure to consult with an independent expert about the GAC's Objection Advice was a breach of ICANN's duty to act to the "maximum extent feasible in an open and transparent manner

and consistent with procedures designed to ensure fairness." The AGB specifically provides that when the Board is considering any form of GAC advice, it "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."

49. Given the unique circumstances surrounding the applications for .AFRICA—namely that one applicant was the designee of the AUC, which wanted to control .AFRICA without competition— ICANN should not have simply accepted GAC Objection Advice, proposed and pushed through by the AUC. If it was in doubt as to how to handle GAC advice sponsored by DCA's only competitor for .AFRICA, it could have and should have consulted a third-party expert in order to obtain appropriate guidance. Its failure to do so was, at a minimum, a breach of ICANN's duty of good faith and the prohibition on abuse of rights under international law. In addition, in light of the multiple warning signs identified by DCA in its Response to the GAC Objection Advice and its multiple complaints to the Board, failure to consult an independent expert was certainly a breach of the Board's duty to ensure its fair and transparent application of its policies and its duty to promote and protect competition.

83. DCA Trust also submits that the NGPC breached ICANN's Articles of Incorporation and Bylaws by failing to apply its procedures in a neutral and objective manner, with procedural fairness, when it approved the BGC's recommendation not to reconsider the NGPC's acceptance of the GAC Objection Advice against DCA.

84. According to DCA Trust:

50. Not only did the NGPC breach ICANN's Articles of Incorporation and its Bylaws by accepting the GAC's Objection Advice, but the NGPC also breached ICANN's Articles of Incorporation and its Bylaws by approving the BGC's recommendation not to reconsider the NGPC's earlier decision to accept the GAC Objection Advice. Not surprisingly, the NGPC concluded that its earlier decision should not be reconsidered.

51. First, the NGPC's decision not to review its own acceptance of the GAC Objection Advice lacks procedural fairness, because the NGPC literally reviewed its own decision to accept the Objection Advice. It is a well-established general principle of international law that a party cannot be the judge of its own cause. No independent viewpoint entered into the process. In addition, although Mr. Silber recused himself from the vote on .AFRICA, he remained present for the entire discussion of .AFRICA, and Mr. Disspain apparently concluded that he did not feel conflicted, so both participated in the discussion and Mr. Disspain voted on DCA's RFR.

52. Second, the participation of the BGC did not provide an independent intervention into the NGPC's decision-making process, because the BGC is primarily a subset of members of the NGPC. At the time the BGC made its recommendation, the majority of BGC members were also members of the NGPC.

53. Finally, the Board did not exercise due diligence and care in accepting the BGC's recommendation, because the BGC recommendation essentially proffered the NGPC's inadequate diligence in accepting the GAC Objection Advice in the first place, in order to absolve the NGPC of the responsibility to look into any of DCA's grievances in the context of the Request for Review. The basis for the BGC's recommendation to deny was that DCA did not state proper grounds for reconsideration, because failure to follow correct procedure is not a ground for reconsideration, and DCA did not identify the actual information an independent expert would have provided, had the NGPC consulted one. Thus, the BGC essentially found that the NGPC did not fail to take account of material information, because the NGPC did not have before it the material information that would have been provided by an independent expert's viewpoint. The BGC even claimed that if DCA had wanted the NGPC to exercise due diligence and consult an independent expert, DCA should have made such a suggestion in its Response to the GAC Objection Advice. Applicants should not have to remind the Board to comply with its Bylaws in order for the Board to exercise due diligence and care.

54. ICANN's acts and omissions with respect to the BGC's recommendation constitute further breaches of ICANN's Bylaws and Articles of Incorporation, including its duty to carry out its activities in good faith and to refrain from abusing its position as the regulator of the DNS to favor certain applicants over others.

85. Finally, DCA Trust pleads that:

> [As] a result of the Board's breaches of ICANN's Articles of Incorporation, Bylaws and general principles of international law, ICANN must halt the process of delegating .AFRICA to ZACR and ZACR should not be permitted to retain the rights to .AFRICA it has procured as a result of the Board's violations. Because ICANN's handling of the new gTLD application process for .AFRICA was so flawed and so deeply influenced by ICANN's relationships with various individuals and organizations purporting to represent "the African community," DCA believes that any chance it may have had to compete for .AFRICA has been irremediably lost and that DCA's application could not receive a fair evaluation even if the process were to be re-set from the beginning. Under the circumstances, DCA submits that ICANN should remove ZACR's application from the process altogether and allow DCA's application to proceed under the rules of the New gTLD Program, allowing DCA up to 18 months to negotiate with African governments to obtain the necessary endorsements so as to enable the delegation and management of the .AFRICA string.

ICANN's Position

86. In its Response to DCA's Memorial on the Merits filed on 3 December 2014 ("ICANN Final Memorial"), ICANN submits that:

> 2. […] Pursuant to ICANN's New gTLD Applicant Guidebook ("Guidebook"), applications for strings that represent geographic regions— such as "Africa"—require the support of at least 60% of the respective national governments in the relevant region. As DCA has acknowledged on

multiple occasions, including in its Memorial, DCA does not have the requisite governmental support; indeed, DCA now asks that ICANN be required to provide it with eighteen more months to try to gather the support that it was supposed to have on the day it submitted its application in 2012.

3. DCA is using this IRP as a means to challenge the right of African countries to support a specific (and competing) application for .AFRICA, and to rewrite the Guidebook. The Guidebook provides that countries may endorse multiple applications for the same geographic string. However, in this instance, the countries of Africa chose to endorse only the application submitted by ZA Central Registry ("ZACR") because ZACR prevailed in the Request for Proposal ("RFP") process coordinated by the African Union Commission ("AUC"), a process that DCA chose to boycott. There was nothing untoward about the AUC's decision to conduct an RFP process and select ZACR, nor was there anything inappropriate about the African countries' decision to endorse only ZACR's application.

4. Subsequently, as they had every right to do, GAC representatives from Africa urged the GAC to issue advice to the ICANN Board that DCA's application for .AFRICA not proceed (the "GAC Advice"). One or more countries from Africa—or, for that matter, from any continent—present at the relevant GAC meeting could have opposed the issuance of this GAC Advice, yet not a single country stated that it did not want the GAC to issue advice to the ICANN Board that DCA's application should not proceed. As a result, under the GAC's rules, the GAC Advice was "consensus" advice.

5. GAC consensus advice against an application for a new gTLD creates a "strong presumption" for ICANN's Board that the application should not proceed. In accordance with the Guidebook's procedures, the Board's New gTLD Program Committee (the "NGPC") considered the GAC Advice, considered DCA's response to the GAC Advice, and properly decided to accept the GAC Advice that DCA's application should not proceed. As ZACR's application for .AFRICA subsequently passed all evaluation steps, ICANN and ZACR entered into a registry agreement for the operation of .AFRICA. Following this Panel's emergency declaration, ICANN has thus far elected not to proceed with the delegation of the .AFRICA TLD into the Internet root zone.

6. DCA's papers contain much mudslinging and many accusations, which frankly do not belong in these proceedings. According to DCA, the entire ICANN community conspired to prevent DCA from being the successful applicant for .AFRICA. However, the actions that DCA views as nefarious were, in fact, fully consistent with the Guidebook. They also were not actions taken by the Board or the NGPC that in any way violated ICANN's Bylaws or Articles, the only issue that this IRP Panel is tasked with assessing.

87. ICANN submits that the Board properly advised the African Union's member states of the Guidebook Rules regarding geographic strings, the NGPC did not violate the Bylaws or Articles of Incorporation by accepting the GAC Advice, the AUC and the African GAC members properly supported the .AFRICA applicant chosen through the RFP

process, the GAC issued consensus advice opposing DCA's application and the NGPC properly accepted the consensus GAC Advice.

88. According to ICANN:

> 13. DCA's first purported basis for Independent Review is that ICANN improperly responded to a 21 October 2011 communiqué issued by African ministers in charge of Communication and Information Technologies for their respective countries ("Dakar Communiqué"). In the Dakar Communiqué, the ministers, acting pursuant to the Constitutive Act of the African Union, committed to continued and enhanced participation in ICANN and the GAC, and requested that ICANN's Board take numerous steps aimed at increasing Africa's representation in the ICANN community, including that ICANN "include ['Africa'] and its representation in any other language on the Reserved Names List in order [for those strings] to enjoy [] special legislative protection, so [they could be] managed and operated by the structure that is selected and identified by the African Union."

> 14. As DCA acknowledges, in response to the request in the Dakar Communiqué that .AFRICA (and related strings) be reserved for a operator of the African ministers' own choosing, ICANN advised that .AFRICA and its related strings could not be placed on the Reserved Names List because ICANN was "not able to take actions that would go outside of the community-established and documented guidelines of the program." Instead, ICANN explained that, pursuant to the Guidebook, "protections exist that w[ould] allow the African Union and its member states to play a prominent role in determining the outcome of any application for these top-level domain name strings."

> 15. It was completely appropriate for ICANN to point the AU member states to the publicly-stated Guidebook protections for geographic names that were put in place to address precisely the circumstance at issue here—where an application for a string referencing a geographic designation did not appear to have the support of the countries represented by the string. DCA argues that ICANN was giving "instructions . . . as to how to bypass ICANN's own rules," but all ICANN was doing was responding to the Dakar Communiqué by explaining the publicly-available rules that ICANN already had in place. This conduct certainly did not violate ICANN's Bylaws or Articles.

> 16. In particular, ICANN explained that, pursuant to the Guidebook, "Africa" constitutes a geographic name, and therefore any application for .AFRICA would need: (i) documented support from at least 60% of the national governments in the region; and (ii) no more than one written statement of objection . . . from "relevant governments in the region and/or from public authorities associated with the continent and region." Next, ICANN explained that the Guidebook provides an opportunity for the GAC, whose members include the AU member states, to provide "Early Warnings" to ICANN regarding specific gTLD applications. Finally, ICANN explained that there are four formal objection processes that can be initiated by the public, including the Community Objection process, which may be filed where 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. Each of these explanations was factually accurate and based on publicly available information. Notably, ICANN did not mention the possibility of GAC consensus advice against a particular application (and, of course, such advice could not have occurred if even a single country had voiced its disagreement with that advice during the GAC meeting when DCA's application was discussed).

17. DCA's objection to ICANN's response to the Dakar Communiqué reflects nothing more than DCA's dissatisfaction with the fact that African countries, coordinating themselves through the AUC, opposed DCA's application. However, the African countries had every right to voice that opposition, and ICANN's Board acted properly in informing those countries of the avenues the Guidebook provided them to express that opposition.

18. In another attempt to imply that ICANN improperly coordinated with the AUC, DCA insinuates that the AUC joined the GAC at ICANN's suggestion. ICANN's response to the Dakar Communiqué does not even mention this possibility. Further, in response to DCA's document requests, ICANN searched for communications between ICANN and the AUC relating to the AUC becoming a voting member of the GAC, and the search revealed no such communications. This is not surprising given that ICANN has no involvement in, much less control over, whether the GAC grants to any party voting membership status, including the AUC; that decision is within the sole discretion of the GAC. ICANN's Bylaws provide that membership in the GAC shall be open to "multinational governmental organizations and treaty organizations, on the invitation of the [GAC] through its Chair." In any event, whether the AUC was a voting member of the GAC is irrelevant to DCA's claims. As is explained further below, the AUC alone would not have been able to orchestrate consensus GAC Advice opposing DCA's application.

19. DCA's next alleged basis for Independent Review is that ICANN's NGPC improperly accepted advice from the GAC that DCA's application should not proceed. However, nearly all of DCA's Memorial relates to conduct of the AUC, the countries of the African continent, and the GAC. None of these concerns is properly the subject of an Independent Review proceeding because they do not implicate the conduct of the ICANN Board or the NGPC. The only actual decision that the NGPC made was to accept the GAC Advice that DCA's application for .AFRICA should not proceed, and that decision was undoubtedly correct, as explained below.

20. Although the purpose of this proceeding is to test whether ICANN's Board (or, in this instance, the NGPC) acted in conformance with its Bylaws and Articles, ICANN addresses the conduct of third parties in the next few sections because that additional context demonstrates that the NGPC's decision to accept the GAC Advice—the only decision reviewable here—was appropriate in all aspects.

21. After DCA's application was posted for public comment (as are all new gTLD applications), sixteen African countries—Benin, Burkina Faso, Comoros, Cameroon, Democratic Republic of Congo, Egypt, Gabon, Ghana, Kenya, Mali, Morocco, Nigeria, Senegal, South Africa, Tanzania and Uganda—submitted GAC Early Warnings regarding DCA's application.

Early Warnings are intended to "provid[e] [] applicant[s] with an indication that the[ir] application is seen as potentially sensitive or problematic by one or more governments." These African countries used the Early Warnings to notify DCA that they had requested the AUC to conduct an RFP for .AFRICA, that ZACR had been selected via that RFP, and that they objected to DCA's application for .AFRICA. They further notified DCA that they did not believe that DCA had the requisite support of 60% of the countries on the African continent.

22. DCA minimizes the import of these Early Warnings by arguing that they did not involve a "permissible reason" for objecting to DCA's application. But DCA does not explain how any of these reasons was impermissible, and the Guidebook explicitly states that Early Warnings "may be issued for any reason." DCA demonstrated the same dismissive attitude towards the legitimate concerns of the sixteen governments that issued Early Warnings by arguing to the ICANN Board and the GAC that the objecting governments had been "teleguided (or manipulated)."

23. In response to these Early Warnings, DCA conceded that it did not have the necessary level of support from African governments and asked the Board to "waive th[e] requirement [that applications for geographic names have the support of the relevant countries] because of the confusing role that was played by the African Union." DCA did not explain how the AUC's role was "confusing," and DCA ignored the fact that, pursuant to the Guidebook, the AUC had every right to promote one applicant over another. The AUC's decision to promote an applicant other than DCA did not convert the AUC's role from proper to improper or from clear to confusing.

24. Notably, long before the AUC opposed DCA's application, DCA itself recognized the AUC's important role in coordinating continent-wide technology initiatives. In 2009, DCA approached the AUC for its endorsement prior to seeking the support of individual African governments. DCA obtained the AUC's support at that time, including the AUC's commitment to "assist[] in the coordination of [the] initiative with African Ministers and Governments."

25. The AUC, however, then had a change of heart (which it was entitled to do, particularly given that the application window for gTLD applications had not yet opened and would not open for almost two more years). On 7 August 2010, African ministers in charge of Communication and Information Technologies for their respective countries signed the Abuja Declaration. In that declaration, the ministers requested that the AUC coordinate various projects aimed at promoting Information and Communication Technologies projects on the African continent. Among those projects was "set[ting] up the structure and modalities for the [i]mplementation of the DotAfrica Project."

26. Pursuant to that mandate, the AUC launched an open RFP process, seeking applications from private organizations (including DCA) interested in operating the .AFRICA gTLD. The AUC notified DCA that "following consultations with relevant stakeholders . . . [it] no longer endorse[d] individual initiatives [for .AFRICA]." Instead, "in coordination with the Member States . . . the [AUC] w[ould] go through [an] open [selection]

process"—hardly an inappropriate decision (and not a decision of ICANN or its Board). DCA then refused to participate in the RFP process, thereby setting up an inevitable clash with whatever entity the AUC selected. When DCA submitted its gTLD application in 2012 and attached its 2009 endorsement letter from the AUC, DCA knew full well (but did not disclose) that the AUC had retracted its support.

27. In sum, the objecting governments' concerns were the result of DCA's own decision to boycott the AUC's selection process, resulting in the selection of a different applicant, ZACR, for .AFRICA. Instead of addressing those governments' concerns, and instead of obtaining the necessary support of 60% of the countries on the African continent, DCA asked ICANN to re-write the Guidebook in DCA's favor by eliminating the most important feature of any gTLD application related to a geographic region—the support of the countries in that region. ICANN, in accordance with its Bylaws, Articles and Guidebook, properly ignored DCA's request to change the rules for DCA's benefit.

28. At its 10 April 2013 meeting in Beijing, the GAC advised ICANN that DCA's application for .AFRICA should not proceed.[40] As noted earlier, the GAC operates on the basis of consensus: if a single GAC member at the 10 April 2013 meeting (from any continent, not just from Africa) had opposed the advice, the advice would not have been considered "consensus."[41] As such, the fact that the GAC issued consensus GAC Advice against DCA's application shows that not a single country opposed that advice. Most importantly, this included Kenya: Michael Katundu, the GAC Representative for Kenya, and Kenya's only official GAC representative,was present at the 10 April 2013 Beijing meeting and did not oppose the issuance of the consensus GAC Advice.

29. DCA attempts to argue that the GAC Advice was not consensus advice and relies solely on the purported email objection of Sammy Buruchara, Kenya's GAC advisor (as opposed to GAC representative). As a preliminary matter (and as DCA now appears to acknowledge), the GAC's Operating Principles require that votes on GAC advice be made in person. Operating Principle 19 provides that:

If a Member's accredited representative, or alternate representative, is not present at a meeting, then it shall be taken that the Member government or organisation is not represented at that meeting. Any decision made by the GAC without the participation of a Member's accredited representative shall stand and nonetheless be valid.

Similarly, Operating Principle 40 provides:

One third of the representatives of the Current Membership with voting rights shall constitute a quorum at any meeting. A quorum shall only be necessary for any meeting at which a decision or decisions must be made. The GAC may conduct its general business face-to-face or online.

25. DCA argues that Mr. Buruchara objected to the GAC Advice via email, but even if objections could be made via email (which they cannot), Mr. Katundu, Kenya's GAC representative who was in Beijing at the GAC

meeting, not Mr. Buruchara, Kenya's GAC advisor, was authorized to speak on Kenya's behalf. Accordingly, under the GAC rules, Mr. Buruchara's email exchanges could not have constituted opposition to the GAC Advice.

26. Moreover, the full text of Mr. Buruchara's emails (only a small portion of which DCA included in it IRP Notice) demonstrate that he withdrew any opposition to the issuance of the consensus GAC Advice against DCA's application. And, tellingly, DCA did not to submit a declaration from Mr. Buruchara, which might have provided context or support for DCA's argument.

27. Redacted - GAC Designated Confidential Information

28. Notably, immediately prior to becoming Kenya's GAC advisor, Mr. Buruchara had served as the chairman of DCA's Strategic Advisory Board. But despite Mr. Buruchara's close ties with DCA and with Ms. Bekele, the Kenyan government had: (i) endorsed the Abuja Declaration; (ii) supported the AUC's processes for selecting the proposed registry operator; and (iii) issued an Early Warning objecting to DCA's application.

In other words, the Kenyan government was officially on record as supporting ZACR's application and opposing DCA's application, regardless of what Mr. Buruchara was writing in emails.

29. Furthermore, correspondence produced by DCA in this proceeding (but not referenced in either of DCA's briefs) shows that, despite Ms. Bekele's and Mr. Buruchara's efforts to obtain the support (or at least non-opposition) of the Kenyan government, the Kenyan government had rescinded its earlier support of DCA in favor of ZACR. For example, in February 2013, Ms. Bekele emailed a Kenyan government official asking that Kenya issue an Early Warning regarding ZACR's application. The official responded that he would have to escalate the matter to the Foreign Ministry because the Kenyan president "was part of the leaders of the AU who endorsed AU to be the custodian of dot Africa." On 10 April 2013, Ms. Bekele emailed Mr. Buruchara, asking him to make further points objecting to the proposed GAC advice. Mr. Buruchara responded that he was unable to do so because the Kenyan government had been informed (erroneously informed, according to Mr. Buruchara), that Mr. Buruchara was "contradict[ing] the Heads of State agreement in Abuja." On 8 July 2013,

Mr. Buruchara explained to Ms. Bekele that he "stuck [his] neck out for DCA inspite [*sic*] of lack of Govt support."

30. Because DCA did not submit a declaration from Mr. Buruchara (and because Ms. Bekele's declaration is, of course, limited to her own interpretation of email correspondence drafted by others), the Panel is left with a record demonstrating that: (i) Mr.

Buruchara was not authorized by the Kenyan government to oppose the GAC Advice; Redacted - GAC Designated Confidential Information
and (iii) the actual GAC representative from Kenya (Mr. Katundu) attended the 10 April 2013 meeting in Beijing and did not oppose the issuance of the consensus GAC Advice that DCA's application for .AFRICA should not proceed.

31. In short, DCA's primary argument in support of this Independent Review proceeding—that the GAC should not have issued consensus advice against DCA's application—is not supported by any evidence and is, instead, fully contradicted by the evidence. And, of course, Independent Review proceedings do not test whether the GAC's conduct was appropriate (even though in this instance there is no doubt that the GAC appropriately issued consensus advice).

32. As noted above, pursuant to the Guidebook, GAC consensus advice that a particular application should not proceed creates a "strong presumption for the ICANN Board that the application should not be approved." The ICANN Board would have been required to develop a reasoned and well-supported rationale for not accepting the consensus GAC Advice; no such reason existed at the time the NGPC resolved to accept that GAC Advice (5 June 2013), and no such reason has since been revealed. The consensus GAC Advice against DCA's application was issued in the ordinary course, it reflected the sentiment of numerous countries on the African continent, and it was never rescinded.

33. DCA's objection to the Board's acceptance of the GAC Advice is twofold. First, DCA argues that the NGPC failed to investigate DCA's allegation that the GAC advice was not consensus advice. Second, DCA argues that the NGPC should have consulted an independent expert prior to accepting the advice. DCA also argued in its IRP Notice that two NGPC members had conflicts of interest when they voted to accept the GAC Advice, but DCA does not pursue that argument in its Memorial (and the facts again demonstrate that DCA's argument is incorrect).

34. As to the first argument, the Guidebook provides that, when the Board receives GAC advice regarding a particular application, it publishes that advice and notifies the applicant. The applicant is given 21 days from the date of the publication of the advice to submit a response to the Board. Those procedures were followed here. Upon receipt of the GAC Advice, ICANN posted the advice and provided DCA with an opportunity to respond. DCA submitted a lengthy response explaining "[w]hy DCA Trust disagree[d]" with the GAC Advice. A primary theme was that its application had been unfairly blocked by the very countries whose support the Guidebook required DCA to obtain, and that the AUC should not have been allowed to endorse an applicant for .AFRICA. DCA argued that it had been

unfairly "victimized" and "muzzled into insignificance" by the "collective power of the governments represented at ICANN," and that "the issue of government support [should] be made irrelevant in the process so that both contending applications for .Africa would be allowed to move forward . . . ." In other words, DCA was arguing that the AUC's input was inappropriate, and DCA was requesting that ICANN change the Guidebook requirement regarding governmental support for geographic names in order to accommodate DCA. ICANN's NGPC reviewed and appropriately rejected DCA's arguments.

35. One of DCA's three "supplementary arguments," beginning on page 10 of its response to the GAC Advice, was that there had been no consensus GAC advice, in part allegedly evidenced by Mr. Buruchara's (incomplete) email addressed above. DCA, however, chose not to address the fact that: (i) DCA lacked the requisite support of the African governments; (ii) Mr. Buruchara was not the Kenyan GAC representative; (iii) Mr. Buruchara was not at the Beijing meeting; (iv) the government of Kenya had withdrawn any support it may have previously had for DCA's application; and (iv) the actual Kenyan GAC representative (Mr. Katundu) was at the ICANN meeting in Beijing and did not oppose the issuance of the GAC Advice against DCA's application for .AFRICA. All of these facts were well known to DCA at the time of its response to the GAC Advice.

36. The NGPC's resolution accepting the GAC Advice states that the NGPC considered DCA's response prior to accepting the GAC Advice, and DCA presents no evidence to the contrary. DCA's disagreement with the NGPC's decision does not, of course, demonstrate that the NGPC failed to exercise due diligence in determining to accept the consensus GAC Advice.

37. As to DCA's suggestion that the NGPC should have consulted an independent expert, the Guidebook provides that it is within the Board's discretion to decide whether to consult with an independent expert:

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 NGPC clearly did not violate its Bylaws, Articles or Guidebook in deciding that it did not need to consult any independent expert regarding the GAC Advice. Because DCA's challenge to the GAC Advice was whether one or more countries actually had opposed the advice, there was no reason for the NGPC to retain an "expert" on that subject, and DCA has never stated what useful information an independent expert possibly could have provided.

89. ICANN also submits that the NGPC properly denied DCA's request for reconsideration, ICANN's actions following the acceptance of the GAC Advice are not relevant to the IRP, and in any event they were not improper, the ICANN staff directed the ICC to treat the two

African applications consistently, and ICANN staff did not violate any policy in drafting a template letter at the AUC request.

90. According to ICANN:

> 38. DCA argues that the NGPC improperly denied DCA's Reconsideration Request, which sought reconsideration of the NGPC's acceptance of the GAC Advice. Reconsideration is an accountability mechanism available under ICANN's Bylaws and administered by ICANN's Board Governance Committee ("BGC"). DCA's Reconsideration Request asked that the NGPC's acceptance of the GAC Advice be rescinded and that DCA's application be reinstated. Pursuant to the Bylaws, reconsideration of a Board (or in this case NGPC) action is appropriate only where the NGPC took an action "without consideration of material information" or in "reliance on false or inaccurate material information."
>
> 39. In its Reconsideration Request, DCA argued (as it does here) that the NGPC failed to consider material information by failing to consult with an independent expert prior to accepting the GAC Advice. The BGC noted that DCA had not identified any material information that the NGPC had not considered, and that DCA had not identified what advice an independent expert could have provided to the NGPC or how such advice might have altered the NGPC's decision to accept the GAC Advice. The BGC further noted that, as discussed above, the Guidebook is clear that the decision to consult an independent expert is at the discretion of the NGPC.
>
> 40. DCA does not identify any Bylaws or Articles provision that the NGPC violated in denying the Reconsideration Request. Instead, DCA simply disagrees with the NGPC's determination that DCA had not identified any material information on which the NGPC failed to rely. That disagreement is not a proper basis for a Reconsideration Request or an IRP. DCA also argues (again without citing to the Bylaws or Articles) that, because the NGPC accepted the GAC Advice, the NGPC could not properly consider DCA's Reconsideration Request. In fact, the DCA's Reconsideration Request was handled exactly in the manner prescribed by ICANN's Bylaws: the BGC—a separate Board committee charged with considering Reconsideration Requests—reviewed the material and provided a recommendation to the NGPC. The NGPC then reviewed the BGC's recommendation and voted to accept it. In short, the various Board committees conducted themselves exactly as ICANN's Bylaws require.
>
> 41. The NGPC accepted the GAC Advice on 4 June 2013. As a result, DCA's application for .AFRICA did not proceed. In its Memorial, DCA attempts to cast aspersions on ICANN's evaluation of ZACR's application, but that evaluation has no bearing on whether the NGPC acted consistently with its Bylaws and Articles in handling the GAC advice related to DCA's application. Indeed, the evaluation of ZACR's application did not involve any action by ICANN's Board (or NGPC), and is therefore not a proper basis for Independent Review. Although the actions of ICANN's staff are not relevant to this proceeding, ICANN addresses DCA's allegations for the sake of thoroughness and because the record demonstrates that ZACR's application was evaluated fully in conformance with the Guidebook requirements.

42. DCA alleges that "ICANN staff worked with [the ICC] to ensure that ZACR, but not DCA, would be able to pass the GNP evaluation." DCA's argument is based on false and unsupported characterizations of the ICC's evaluation of the two .AFRICA applications.

43. First, DCA claims (without relevant citation) that ICANN determined that the AUC's endorsement would count as an endorsement from each of the AU's member states only after ICANN had stopped processing DCA's application. In fact, the record indicates that ICANN accepted the ICC's recommendation that the AUC's endorsement would qualify as an endorsement from each of the AU's member states while DCA's application was still in contention, at a time when the recommendation had the potential to benefit both applicants for .AFRICA (had DCA also in fact received the AUC's support).

44. The Guidebook provides that the Geographic Names Panel is responsible for "verifying the relevance and authenticity of supporting documentation." Accordingly, it was the ICC's responsibility to evaluate how the AUC's endorsement should be treated. The ICC recommended that the AUC's endorsement should count as an endorsement from each of the AU's member states. The ICC's analysis was based on the Abuja Declaration, which the ICC interpreted as "instruct[ing] the [AUC] to pursue the DotAfrica project, and in [the ICC's] independent opinion, provide[d] suitable evidence of support from relevant governments or public authorities." The evidence shows that ICANN accepted the ICC's recommendation before the NGPC accepted the GAC Advice regarding DCA's application— in a 26 April 2013 email discussing the preparation of clarifying questions regarding the AUC's letters of support, ICANN explained to the ICC that "if the applicant(s) is/are unable to obtain a revised letter of support from the AU [], they may be able to fulfill the requirements by approaching the individual governments."

45. DCA also claims that ICANN determined that endorsements from the UNECA would not be taken into account for geographic evaluations. This simply is not true. Pursuant to the ICC's advice, the UNECA's endorsement was taken into account. Like the AUC, the UNECA had signed letters of support for both DCA and ZACR. The ICC advised that because the UNECA was specifically named in the Abuja Declaration, it too should be treated as a relevant public authority. ICANN accepted the ICC's advice.

46. DCA argues that, after ICANN had stopped processing DCA's application, ICANN staff improperly assisted the AUC in drafting a support letter for ZACR. As is reflected in the clarifying questions the ICC drafted regarding the endorsement letters submitted on behalf of each of the two .AFRICA applications, the Guidebook contains specific requirements for letters of support from governments and public authorities. In addition to "clearly express[ing] the government's or public authority's support for or non- objection to the applicant's application," letters must "demonstrate the government's or public authority's understanding of the string being requested and its intended use" and 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 . . . ". In light of these specific requirements, the Guidebook even includes a sample letter of support.

47. The first letter of support that the AUC submitted for ZACR's application did not follow the correct format and resulted in a clarifying question from the ICC. As a result, the AUC requested ICANN staff's assistance in drafting a letter that conformed to the Guidebook's requirements. ICANN staff drafted a template based on the sample letter of support in the Guidebook, and the AUC then made significant edits to that template. DCA paints this cooperation as nefarious, but there was absolutely nothing wrong with ICANN staff assisting the AUC, assistance that DCA would certainly have welcomed, and which ICANN would have provided, had the AUC been supporting DCA instead of ZACR.

91. Finally, ICANN submits:

50. ICANN's conduct with respect to DCA's application for .AFRICA was fully consistent with ICANN's Bylaws, its Articles of Incorporation and the Applicant Guidebook. ICANN acted through open and transparent processes, evaluated DCA's application for .AFRICA in accordance with the procedures set forth in the Guidebook, and followed the procedures set forth in its Bylaws in evaluating DCA's Request for Reconsideration. ICANN provided assistance to those who requested, cooperated with governmental authorities, and respected the consensus advice issued by the GAC, which speaks on behalf of the governments of the world.

51. DCA knew, as did all applicants for new gTLDs, that some of the applications would be rejected. There can only be one registry operator for each gTLD string, and in the case of strings that relate to geographic regions, no application can succeed without the significant support of the countries in that region. There is no justification whatsoever for DCA's repeated urging that the support (or lack thereof) of the countries on the African continent be made irrelevant to the process.

52. Ultimately, the majority of the countries in Africa chose to support another application for the .AFRICA gTLD, and decided to oppose DCA's application. At a critical time, no country stood up to defend DCA's application. These countries—and the AUC— had every right to take a stand and to support the applicant of their choice. In this instance, that choice resulted in the GAC issuing consensus advice, which the GAC had every right to do. Nothing in ICANN's Bylaws or Articles, or in the Guidebook, required ICANN to challenge that decision, to ignore that decision, or to change the rules so that the input of the AUC, much less the GAC, would become irrelevant. To the contrary, the AUC's role with respect to the African community is critical, and it was DCA's decision to pursue a path at odds with the AUC that placed its application in jeopardy, not anything that ICANN (or ICANN's Board or the NGPC) did. The NGPC did exactly what it was supposed to do in this circumstance, and ICANN urges this IRP Panel to find as such. Such a finding would allow the countries of Africa to soon provide their citizens with what all parties involved believe to be a very important step for Africa – access to .AFRICA on the internet.

The Panel's Decision

92. The Panel in this IRP, has been asked to determine whether, in the case of the application of DCA Trust for the delegation of the .AFRICA top-level domain name in its 2012 General Top-Level Domains ("gTLD") Internet Expansion Program (the "New gTLD Program"), the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

93. After reviewing the documentation filed in this IRP, reading the Parties' respective written submissions, reading the written statements and listening to the testimony of the three witnesses brought forward, listening to the oral presentations of the Parties' legal representatives at the hearing in Washington, D.C., reading the transcript of the hearing, and deliberating, the Panel is of the unanimous view that certain actions and inactions of the ICANN Board (as described below) with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

94. ICANN is bound by its own Articles of Incorporation to act fairly, neutrally, non-discriminatorily and to enable competition. Article 4 of ICANN's Articles of Incorporation sets this out explicitly:

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

95. ICANN is also bound by its own Bylaws to act and make decisions "neutrally and objectively, with integrity and fairness."

96. These obligations and others are explicitly set out in a number of provisions in ICANN's Bylaws:

> **ARTICLE I: MISSION AND CORE (Council of Registrars) VALUES**
>
> **Section 2. CORE (Council of Registrars) VALUES**
>
> In performing its mission, <u>the following core values should guide the decisions and actions of ICANN</u> (Internet Corporation for Assigned Names and Numbers):

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.

[…]

7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN (Internet Corporation for Assigned Names and Numbers)'s effectiveness.

11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN (Internet Corporation for Assigned Names and Numbers) body making a recommendation or decision shall exercise its judgment to determine which core 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 (Internet Corporation for Assigned Names and Numbers) shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board.

Section 3. NON-DISCRIMINATORY TREATMENT

ICANN (Internet Corporation for Assigned Names and Numbers) shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by

substantial and reasonable cause, such as the promotion of effective competition.

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

<u>ICANN (Internet Corporation for Assigned Names and Numbers) and **its constituent bodies** shall operate to the maximum extent feasible in an open and transparent manner and consistent **with procedures designed to ensure fairness**</u>. [Underlining and bold is that of the Panel]

97. As set out in Article IV (Accountability and Review) of ICANN's Bylaws, in carrying out its mission as set out in its 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 the Bylaws.

98. As set out in Section 3 (Independent Review of Board Actions) of Article IV, "any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and casually connected to the Board's alleged violation of the Bylaws or Articles of Incorporation, and not as a result of third parties acting in line with the Board's action."

99. In this IRP, among the allegations advanced by DCA Trust against ICANN, is that the ICANN Board, and its constituent body, the GAC, breached their obligation to act transparently and in conformity with procedures that ensured fairness. In particular, DCA Trust criticizes the ICANN Board here, for allowing itself to be guided by the GAC, a body "with apparently no distinct rules, limited public records, fluid definitions of membership and quorums" and unfair procedures in dealing with the issues before it.

100. According to DCA Trust, ICANN itself asserts that the GAC is a "constituent body." The exchange between the Panel and counsel for ICANN at the in-person hearing in Washington, D.C. is a living proof of that point.

HONORABLE JUDGE CAHILL:

Are you saying we should only look at what the Board does? The reason I'm asking is that your -- the Bylaws say that ICANN and its constituent bodies shall operate, to the maximum extent feasible, in an open and transparent manner. Does the constituent bodies include, I don't know,

41

GAC or anything? What is "constituent bodies"?

MR. LEVEE:

Yeah. What I'll talk to you about tomorrow in closing when I lay out what an IRP Panel is supposed to address, the Bylaws are very clear. Independent Review Proceedings are for the purpose of testing conduct or inaction of the ICANN Board. They don't apply to the GAC. They don't apply to supporting organizations. They don't apply to Staff.

HONORABLE JUDGE CAHILL:

So you think that the situation is a -- we shouldn't be looking at what the constituent -- whatever the constituent bodies are, even though that's part of your Bylaws?

MR. LEVEE:

Well, when I say not -- when you say not looking, part of DCA's claims that the GAC did something wrong and that ICANN knew that.

HONORABLE JUDGE CAHILL:

So is GAC a constituent body?

MR. LEVEE:

It is a constituent body, to be clear –

HONORABLE JUDGE CAHILL:

Yeah.

MR. LEVEE:

-- whether -- I don't think an IRP Panel -- if the only thing that happened here was that the GAC did something wrong --

HONORABLE JUDGE CAHILL:

Right.

MR. LEVEE:

-- an IRP Panel would not be -- an Independent Review Proceeding is not supposed to address that, whether the GAC did something wrong.

Now, if ICANN knew -- the Board knew that the GAC did something wrong, and that's how they link it, they say, Look, the GAC did something wrong, and ICANN knew it, the Board -- if the Board actually knew it, then we're dealing with Board conduct.

The Board knew that the GAC did not, in fact, issue consensus advice. That's the allegation. So it's fair to look at the GAC's conduct.

101. The Panel is unanimously of the view that the GAC is a constituent body of ICANN. This is not only clear from the above exchange between the Panel and counsel for ICANN, but also from Article XI (Advisory Committees) of ICANN's Bylaws and the Operating Principles of the GAC. Section 1 (General) of Article XI of ICANN's Bylaws states:

> 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. <u>Advisory Committees shall have no legal authority to act for ICANN (Internet Corporation for Assigned Names and Numbers), but shall report their findings and recommendations to the Board.</u>

Section 2, under the heading, Specific Advisory Committees states:

> There shall be at least the following Advisory Committees:
>
> 1. Governmental Advisory Committee
>
> a. <u>The Governmental Advisory Committee should consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers) as they relate to concerns of governments</u>, particularly matters where there may be an interaction between ICANN (Internet Corporation for Assigned Names and Numbers)'s policies and various laws and international agreements or where they may affect public policy issues. [Underlining is that of the Panel]

Section 6 of the preamble of GAC's Operating Principles is also relevant. That Section reads as follows:

> The GAC commits itself to implement efficient procedures in support of ICANN and to provide thorough and timely advice and analysis on relevant matters of concern with regard to government and public interests.

102. According to DCA Trust, based on the above, and in particular, Article III (Transparency), Section 1 of ICANN's Bylaws, therefore, the GAC was bound to the transparency and fairness obligations of that provision to "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness", but as ICANN's own witness, Ms. Heather Dryden acknowledged during the hearing, the GAC did not act with transparency or in a manner designed to insure fairness.

> **Mr. ALI:**
>
> Q. But what was the purpose of the discussion at the Prague meeting with respect to AUC? If there really is no difference or distinction between voting/nonvoting, observer or whatever might be the opposite of observer,

or the proper terminology, what was -- what was the point?

THE WITNESS:

A. I didn't say there was no difference. The issue is that there isn't GAC agreement about what are the -- the rights, if you will, of -- of entities like the AUC. And there might be in some limited circumstances, but it's also an extremely sensitive issue. And so not all countries have a shared view about what those -- those entities, like the AUC, should be able to do.

Q. So not all countries share the same view as to what entities, such as the AUC, should be able to do. Is that what you said? I'm sorry. I didn't --

A. Right, because that would only get clarified if there is a circumstance where that link is forced. In our business, we talk about creative ambiguity. We leave things unclear so we don't have conflict.

103. As explained by ICANN in its Closing Presentation at the hearing, ICANN's witness, Ms. Heather Dryden also asserted that the GAC Advice was meaningless until the Board acted upon it. This last point is also clear from examining Article I, Principle 2 and 5 of ICANN GAC's Operating Principles. Principle 2 states that "the GAC is not a decision making body" and Principle 5 states that "the GAC shall have no legal authority to act for ICANN".

> **MR. ALI:**
>
> Q. I would like to know what it is that you, as the GAC Chair, understand to be the consequences of the actions that the GAC will take --
>
> **HONORABLE JUDGE CAHILL:**
>
> The GAC will take?
>
> **MR. ALI:**
>
> Q. -- the GAC will take -- the consequences of the actions taken by the GAC, such as consensus advice?
>
> **HONORABLE JUDGE CAHILL:**
>
> There you go.
>
> **THE WITNESS:**
>
> That isn't my concern as the Chair. It's really for the Board to interpret the outputs coming from the GAC.

104. Ms. Dryden also stated that the GAC made its decision without providing any rationale and primarily based on politics and not on potential violations of national laws and sensitivities.

ARBITRATOR KESSEDJIAN:

So, basically, you're telling us that the GAC takes a decision to object to an applicant, and no reasons, no rationale, no discussion of the concepts that are in the rules?

THE WITNESS:

I'm telling you the GAC did not provide a rationale. And that was not a requirement for issuing a GAC --

HONORABLE JUDGE CAHILL:

But you also want to check to see if the countries are following the right -- following the rules, if there are reasons for rejecting this or it falls within the three things that my colleague's talking about.

THE WITNESS:

The practice among governments is that governments can express their view, whatever it may be. And so there's a deference to that.

That's certainly the case here as well.

105. ICANN was bound by its Bylaws to conduct adequate diligence to ensure that it was applying its procedures fairly. Section 1 of Article III of ICANN's Bylaws, require it and its constituent bodies to "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. The Board must also as per Article IV, Section 3, Paragraph 4 exercise due diligence and care in having a reasonable amount of facts in front of it.

106. In this case, on 4 June 2013, the NGPC accepted the GAC Objection Advice to stop processing DCA Trust's application. On 1 August 2013, the BGC recommended to the NGPC that it deny DCA Trust's Request for Reconsideration of the NGPC's 4 June 2013 decision, and on 13 August 2013, the NGPC accepted the BGC's recommendation (i.e., the NGPC declined to reconsider its own decision) without any further consideration.

107. In this case, ICANN through the BGC was bound to conduct a meaningful review of the NGPC's decision. According to ICANN's Bylaws, Article IV, Section 2, the Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The [BGC] shall have the authority to, among other things, conduct whatever factual investigation is deemed appropriate, and request additional written submissions from the affected party, or from others.

108. Finally, the NGPC was not bound by – nor was it required to give deference to – the decision of the BGC.

109. The above, combined with the fact that DCA Trust was never given any notice or an opportunity in Beijing or elsewhere to make its position known or defend its own interests before the GAC reached consensus on the GAC Objection Advice, and that the Board of ICANN did not take any steps to address this issue, leads this Panel to conclude that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were not procedures designed to insure the fairness required by Article III, Sec. 1 above, and are therefore inconsistent with the Articles of Incorporation and Bylaws of ICANN.

110. The following excerpt of exchanges between the Panel and one of ICANN's witnesses, Ms. Heather Dryden, the then Chair of the GAC, provides a useful background for the decisions reached in this IRP:

> **PRESIDENT BARIN:**
>
> But be specific in this case. Is that what happened in the .AFRICA case?
>
> **THE WITNESS:**
>
> The decision was very quick, and --
>
> **PRESIDENT BARIN:**
>
> But what about the consultations prior? In other words, were -- were you privy to --
>
> **THE WITNESS:**
>
> No. If -- if colleagues are talking among themselves, then that's not something that the GAC, as a whole, is -- is tracking or -- or involved in. It's really those interested countries that are.
>
> **PRESIDENT BARIN:**
>
> Understood. But I assume -- I also heard you say, as the Chair, you never want to be surprised with something that comes up. So you are aware of -- or you were aware of exactly what was happening?
>
> **THE WITNESS:**
>
> No. No. You do want to have a good sense of where the problems are, what's going to come unresolved back to the full GAC meeting, but that's -- that's the extent of it.

And that's the nature of -- of the political process.

Redacted - GAC Designated Confidential Information

HONORABLE JUDGE CAHILL:

Okay.

THE WITNESS:

-- that question was addressed via having that meeting.

PRESIDENT BARIN:

And what's your understanding of what -- what the consequence of that decision is or was when you took it? So what happens from that moment on?

THE WITNESS:

It's conveyed to the Board, so all the results, the agreed language coming out of GAC is conveyed to the Board, as was the case with the communiqué from the Beijing meeting.

PRESIDENT BARIN:

And how is that conveyed to the Board?

THE WITNESS:

Well, it's a written document, and usually Support Staff are forwarding it to Board Staff.

ARBITRATOR KESSEDJIAN:

Could you speak a little bit louder? I don't know whether I am tired, but I --

THE WITNESS:

Okay. So as I was saying, the document is conveyed to the Board once it's concluded.

PRESIDENT BARIN:

When you say "the document", are you referring to the communiqué?

THE WITNESS:

Yes.

PRESIDENT BARIN:

Okay. And there are no other documents?

THE WITNESS:

The communiqué --

PRESIDENT BARIN:

In relation to .AFRICA. I'm not interested in any other.

THE WITNESS:

Yes, it's the communiqué.

PRESIDENT BARIN:

And it's prepared by your staff? You look at it?

THE WITNESS:

Right --

PRESIDENT BARIN:

And then it's sent over to --

THE WITNESS:

-- right, it's agreed by the GAC in full, the contents.

PRESIDENT BARIN:

And then sent over to the Board?

THE WITNESS:

And then sent, yes.

PRESIDENT BARIN:

And what happens to that communiqué? Does the Board receive that and say, Ms. Dryden, we have some questions for you on this, or --

THE WITNESS:

Not really. If they have questions for clarification, they can certainly ask that in a meeting. But it is for them to receive that and then interpret it and -- and prepare the Board for discussion or decision.

PRESIDENT BARIN:

Okay. And in this case, you weren't asked any questions or anything?

THE WITNESS:

I don't believe so. I don't recall.

PRESIDENT BARIN:

Any follow-ups, right?

THE WITNESS:

Right.

PRESIDENT BARIN:

And in the subsequent meeting, I guess the issue was tabled. The Board meeting that it was tabled, were you there?

THE WITNESS:

Yes. I don't particularly recall the meeting, but yes.

 […]

ARBITRATOR KESSEDJIAN:

Can I turn your attention to Paragraph 5 of your declaration?

Here, you basically repeat what is in the ICANN Guidebook literature, whatever. These are the exact words, actually, that you use in your declaration in terms of why there could be an objection to an applicant -- to a specific applicant. And you use three criteria: problematic, potentially violating national law, and raise sensitivities.

Now, I'd like you to, for us -- for our benefit, to explain precisely, as concrete as you can be, what those three concepts -- how those three concepts translate in the DCA case. Because this must have been discussed in order to get this very quick decision that you are mentioning. So I'd like to understand, you know, because these are the criteria -- these are the three criteria; is that correct?

THE WITNESS:

That is what the witness statement says, but the link to the GAC and the role that I played in terms of the GAC discussion did not involve me interpreting those three things. In fact, the GAC did not provide rationale for the consensus objection.

ARBITRATOR KESSEDJIAN:

No.

But, I mean, look, the GAC is taking a decision which -- very quickly -- I'm using your words, "very quickly" -- erases years and years and years of work, a lot of effort that have been put by a single applicant. And the way I understand the rules is that the -- the GAC advice -- consensus advice against that applicant are -- is based on those three criteria. Am I wrong in that analysis?

THE WITNESS:

I'm saying that the GAC did not identify a rationale for those governments that put forward a string or an application for consensus objection. They might have identified their reasons, but there was not GAC agreement about those reasons or -- or -- or -- or rationale for that. We had some discussion earlier about Early Warnings. So Early Warnings were issued by individual countries, and they indicated their rationale. But, again, that's not a GAC view.

ARBITRATOR KESSEDJIAN:

So, basically, you're telling us that the GAC takes a decision to object to an applicant, and no reasons, no rationale, no discussion of the concepts that are in the rules?

THE WITNESS:

I'm telling you the GAC did not provide a rationale. And that was not a requirement for issuing a GAC --

HONORABLE JUDGE CAHILL:

But you also want to check to see if the countries are following the right -- following the rules, if there are reasons for rejecting this or it falls within the three things that my colleague's talking about.

THE WITNESS:

The practice among governments is that governments can express their view, whatever it may be. And so there's […] deference to that. That's certainly the case here as well. The -- if a country tells -- tells the GAC or says it has a concern, that's not really something that -- that's evaluated, in the sense you mean, by the other governments. That's not the way governments work with each other.

HONORABLE JUDGE CAHILL:

So you don't go into the reasons at all with them?

THE WITNESS:

To issue a consensus objection, no.

HONORABLE JUDGE CAHILL:

Okay. ---

[…]

PRESIDENT BARIN:

I have one question for you. We spent, now, a bit of time or a considerable amount of time talking to you about the process, or the procedure leading to the consensus decision.

Can you tell me what your understanding is of why the GAC consensus objection was made finally?

[…]

But in terms of the .AFRICA, the decision -- the issue came up, the agenda -- the issue came up, and you made a decision, correct?

THE WITNESS:

The GAC made a decision.

PRESIDENT BARIN:

Right. When I say "you", I mean the GAC.

Do you know -- are you able to express to us what your understanding of the substance behind that decision was? I mean, in other words, we've spent a bit of time dealing with the process.

Can you tell us why the decision happened?

THE WITNESS:

The sum of the GAC's advice is reflected in its written advice in the communiqué. That is the view to GAC. That's -- that's --

[…]

ARBITRATOR KESSEDJIAN:

I just want to come back to the point that I was making earlier. To your Paragraph 5, you said -- you answered to me saying that is my declaration, but it was not exactly what's going on. Now, we are here to --

at least the way I understand the Panel's mandate, to make sure that the rules have been obeyed by, basically. I'm synthesizing. So I don't understand how, as the Chair of the GAC, you can tell us that, basically, the rules do not matter -- again, I'm rephrasing what you said, but I'd like to give you another opportunity to explain to us why you are mentioning those criteria in your written declaration, but, now, you're telling us this doesn't matter.

If you want to read again what you wrote, or supposedly wrote, it's Paragraph 5.

THE WITNESS:

I don't need to read again my declaration. Thank you. The header for the GAC's discussions throughout was to refer to strings or applications that were controversial or sensitive. That's very broad. And –

ARBITRATOR KESSEDJIAN:

I'm sorry. You say the rules say problematic, potentially violate national law, raise sensitivities. These are precise concepts.

THE WITNESS:

Problematic, violate national law -- there are a lot of laws -- and sensitivities does strike me as being quite broad.

[…]

ARBITRATOR KESSEDJIAN:

Okay. So we are left with what? No rules?

THE WITNESS:

No rationale with the consensus objections.

That's the -- the effect.

ARBITRATOR KESSEDJIAN:

I'm done.

HONORABLE JUDGE CAHILL:

I'm done.

PRESIDENT BARIN:

So am I.

111. The Panel understands that the GAC provides advice to the ICANN Board on matters of public policy, especially in cases where ICANN activities and policies may interact with national laws or international agreements. The Panel also understands that GAC advice is developed through consensus among member nations. Finally, the Panel understands that although the ICANN Board is required to consider GAC advice and recommendations, it is not obligated to follow those recommendations.

112. Paragraph IV of ICANN's Beijing, People's Republic of China 11 April 2013 Communiqué [Exhibit C-43] under the heading "GAC Advice to the ICANN Board" states:

> **IV.   GAC Advice to the ICANN Board**
> **1.   New gTLDs**
> **a.   GAC Objections to the Specific Applications**
> **i.   The GAC Advises the ICANN Board that:**
>
> i.   The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:
>
> 1.   The application for .africa (Application number 1-1165-42560)
>
> [...]

Footnote 3 to Paragraph IV.1. (a)(i)(i) above in the original text adds, "Module 3.1: The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." A similar statement in this regard can be found in paragraph 5 of Ms. Dryden's 7 February 2014 witness statement.

113. In light of the clear "Transparency" obligation provisions found in ICANN's Bylaws, the Panel would have expected the ICANN Board to, at a minimum, investigate the matter further before rejecting DCA Trust's application.

114. The Panel would have had a similar expectation with respect to the NGPC Response to the GAC Advice regarding .AFRICA which was expressed in ANNEX 1 to NGPC Resolution No. 2013.06.04.NG01 [Exhibit C-45]. In that document, in response to DCA Trust's application, the NGPC stipulated:

The NGPC accepts this advice. The AGB provides that "if GAC advised ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved. The NGPC directs staff that pursuant to the GAC advice and Section 3.1 of the Applicant Guidebook, Application number 1-1165-42560 for .africa will not be approved. In accordance with the AGB the applicant may with draw […] or seek relief according to ICANN's accountability mechanisms (see ICANN's Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.

115. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

116. As indicated above, there are perhaps a number of other instances, including certain decisions made by ICANN, that did not proceed in the manner and spirit in which they should have under the Articles of Incorporation and Bylaws of ICANN.

117. DCA Trust has criticized ICANN for its various actions and decisions throughout this IRP and ICANN has responded to each of these criticisms in detail. However, the Panel, having carefully considered these criticisms and decided that the above is dispositive of this IRP, it does not find it necessary to determine who was right, to what extent and for what reasons in respect to the other criticisms and other alleged shortcomings of the ICANN Board identified by DCA Trust.

2) **Can the IRP Panel recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?**

118. In the conclusion of its Memorial on the Merits filed with the Panel on 3 November 2014, DCA Trust submitted that ICANN should remove ZACR's application from the process altogether and allow DCA's application to proceed under the rules of the New gTLD Program, allowing DCA up to 18 months to negotiate with African governments

to obtain the necessary endorsements so as to enable the delegation and management of the .AFRICA string.

119. In its Final Request for Relief filed with the Panel on 23 May 2015, DCA Trust requested that this Panel recommend to the ICANN Board that it cease all preparations to delegate the .AFRICA gTLD to ZACR and recommend that ICANN permit DCA's application to proceed through the remainder of the new gTLD application process and be granted a period of no less than 18 months to obtain Government support as set out in the AGB and interpreted by the Geographic Names Panel, or accept that the requirement is satisfied as a result of the endorsement of DCA Trust's application by UNECA.

120. DCA Trust also requested that this Panel recommend to ICANN that it compensate DCA Trust for the costs it has incurred as a result of ICANN's violations of its Articles of Incorporation, Bylaws and AGB.

121. In its response to DCA Trust's request for the recommendations set out in DCA Trust's Memorial on the Merits, ICANN submitted that this Panel does not have the authority to grant the affirmative relief that DCA Trust had requested.

122. According to ICANN:

> 48. DCA's request should be denied in its entirety, including its request for relief. DCA requests that this IRP Panel issue a declaration requiring ICANN to "rescind its contract with ZACR" and to "permit DCA's application to proceed through the remainder of the application process." Acknowledging that it currently lacks the requisite governmental support for its application, DCA also requests that it receive "18 months to negotiate with African governments to obtain the necessary endorsements." In sum, DCA requests not only that this Panel remove DCA's rival for .AFRICA from contention (requiring ICANN to repudiate its contract with ZACR), but also that it rewrite the Guidebook's rules in DCA's favor.

> 49. IRP Panels do not have authority to award affirmative relief. Rather, an IRP Panel is limited to stating its opinion as to "whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws" and recommending (as this IRP Panel has done previously) that the Board stay any action or decision, or take any interim action until such time as the Board reviews and acts upon the opinion of the IRP Panel. The Board will, of course, give extremely serious consideration to the Panel's recommendations.

123. In its response to DCA Trust's amended request for recommendations filed on 23 May 2015, ICANN argued that because the Panel's authority is limited to declaring whether the Board's conduct was inconsistent with the Articles or the Bylaws, the Panel should limit its declaration to that question and refrain from

recommending how the Board should then proceed in light of the Panel's declaration.

124. In response, DCA Trust submitted that according to ICANN's Bylaws, the Independent Review Process is designed to provide a remedy for "any" person materially affected by a decision or action by the Board. Further, "in order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation.

125. According to ICANN, "indeed, the ICANN New gTLD Program Committee, operating under the delegated authority of the ICANN Board, itself [suggests] that DCA could seek relief through ICANN's accountability mechanisms or, in other words, the Reconsideration process and the Independent Review Process." Furthermore:

> If the IRP mechanism – the mechanism of last resort for gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, and it serves as the only alternative to litigation, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm.

126. After considering the Parties' respective submissions in this regard, the Panel is of the view that it does have the power to recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook.

127. Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws states:

> **ARTICLE IV: ACCOUNTABILITY AND REVIEW**
> **Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS**
>
> 11.   The IRP Panel shall have the authority to:
>
> d. recommend that the Board stay any action or decision or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP.

128. The Panel finds that both the language and spirit of the above section gives it authority to recommend how the ICANN Board might fashion a remedy to redress injury or harm that is directly related and causally connected to the Board's violation of the Bylaws or the Articles of Incorporation.

129. As DCA Trust correctly points out, with which statement the Panel agrees, "if the IRP mechanism – the mechanism of last resort for

gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, <u>and it serves as the only alternative to litigation</u>, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm."

130. Use of the imperative language in Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, is clearly supportive of this point. That provision clearly states that the IRP Panel has the authority to recommend a course of action until such time as the Board considers the opinion of the IRP and acts upon it.

131. Furthermore, use of the word "opinion", which means the formal statement by a judicial authority, court, arbitrator or "Panel" of the reasoning and the principles of law used in reaching a decision of a case, is demonstrative of the point that the Panel has the authority to recommend affirmative relief. Otherwise, like in section 7 of the Supplementary Procedures, the last sentence in paragraph 11 would have simply referred to the "declaration of the IRP". Section 7 under the heading "Interim Measures of Protection" says in part, that an "IRP PANEL may 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 IRP declaration."

132. The scope of Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws is clearly broader than Section 7 of the Supplementary Procedures.

133. Pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, therefore, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.

3) Who is the prevailing party in this IRP?

134. In its letter of 1 July 2015, ICANN submits that, "ICANN believes that the Panel should and will determine that ICANN is the prevailing party. Even so, ICANN does not seek in this instance the putative effect that would result if DCA were required to reimburse ICANN for all of the costs that ICANN incurred. This IRP was much longer [than] anticipated (in part due to the passing of one of the panelists last summer), and the Panelists' fees were far greater than an ordinary IRP, particularly because the Panel elected to conduct a live hearing."

135. DCA Trust on the other hand, submits that, "should it prevail in this IRP, ICANN should be responsible for all of the costs of this IRP, including the interim measures proceeding." In particular, DCA Trust writes:

> On March 23, 2014, DCA learned via email from a supporter of ZA Central Registry ("ZACR"), DCA's competitor for .AFRICA, that ZACR would sign a registry agreement with ICANN in three days' time (March 26) to be the registry operator for .AFRICA. The very same day, we sent a letter on behalf of DCA to ICANN's counsel asking ICANN to refrain from executing the registry agreement with ZACR in light of the pending IRP proceedings. *See* DCA's Request for Emergency Arbitrator and Interim Measures of Protection, Annex I (28 Mar. 2014). Instead, ICANN entered into the registry agreement with ZACR the very next day—two days ahead of schedule. […] Later that same day, ICANN responded to DCA's request by treating the execution of the contract as a *fait accompli* and, for the first time, informed DCA that it would accept the application of Rule 37 of the 2010 [ICDR Rules], which provides for emergency measures of protection, even though ICANN's Supplementary Procedures for ICANN Independent Review Process expressly provide that Rule 37 does not apply to IRPs. A few days later, on March 28, 2014, DCA filed a Request for Emergency Arbitrator and Interim Measures of Protection with the ICDR. ICANN responded to DCA's request on April 4, 2014. An emergency arbitrator was appointed by the ICDR; however, the following week, the original panel was fully constituted and the parties' respective submissions were submitted to the Panel for its review on April 13, 2014. After a teleconference with the parties on April 22 and a telephonic hearing on May 5, the Panel ruled that "ICANN must immediately refrain from any further processing of any application for .AFRICA" during the pendency of the IRP. Decision on Interim Measures of Protection, ¶ 51 (12 May 2014).

136. A review of the various procedural orders, decisions, and declarations in this IRP clearly indicates that DCA Trust prevailed in many of the questions and issues raised.

137. In its letter of 1 July 2015, DCA Trust refers to several instances in which ICANN was not successful in its position before this Panel. According to DCA Trust, the following are some examples, "ICANN's Request for Partial Reconsideration, ICANN's request for the Panel to rehear the proceedings, and the evidentiary treatment of ICANN's written witness testimony in the event it refused to make its witnesses available for questioning during the merits hearing."

138. The Panel has no doubt, as ICANN writes in its letter of 1 July 2015, that the Parties' respective positions in this IRP "were asserted in good faith." According to ICANN, "although those positions were in many instances diametrically opposed, ICANN does not doubt that DCA believed in the credibility of the positions that it took, and

[ICANN believes] that DCA feels the same about the positions ICANN took."

139. The above said, after reading the Parties' written submissions concerning the issue of costs and deliberation, the Panel is unanimously of the view that DCA Trust is the prevailing party in this IRP.

4) Who is responsible for bearing the costs of this IRP and the cost of the IRP Provider?

140. DCA Trust submits that ICANN should be responsible for *all* costs of this IRP, including the interim measures proceeding. Among other arguments, DCA Trust submits:

> This is consistent with ICANN's Bylaws and Supplementary Procedures, which together provide that in ordinary circumstances, the party not prevailing shall be responsible for all costs of the proceeding. Although ICANN's Supplementary Procedures do not explain what is meant by "all costs of the proceeding," the ICDR Rules that apply to this IRP provide that "costs" include the following:
>
> > (a) the fees and expenses of the arbitrators;
> >
> > (b) the costs of assistance required by the tribunal, including its experts;
> >
> > (c) the fees and expenses of the administrator;
> >
> > (d) the reasonable costs for legal representation of a successful party; and
> >
> > (e) any such costs incurred in connection with an application for interim or emergency relief pursuant to Article 21.
>
> Specifically, these costs include all of the fees and expenses paid and owed to the [ICDR], including the filing fees DCA paid to the ICDR (totaling $4,750), all panelist fees and expenses, including for the emergency arbitrator, incurred between the inception of this IRP and its final resolution, legal costs incurred in the course of the IRP, and all expenses related to conducting the merits hearing (*e.g.*, renting the audiovisual equipment for the hearing, printing hearing materials, shipping hard copies of the exhibits to the members of the Panel).
>
> Although in "extraordinary" circumstances, the Panel may allocate up to half of the costs to the prevailing party, DCA submits that the circumstances of this IRP do not warrant allocating costs to DCA should it prevail. The reasonableness of DCA's positions, as well as the meaningful contribution this IRP has made to the public dialogue about both ICANN's accountability mechanisms and the appropriate deference owed by ICANN to its Governmental Advisory Committee, support a full award of costs to

DCA.

[…]

> To the best of DCA's knowledge, this IRP was the first to be commenced against ICANN under the new rules, and as a result there was little guidance as to how these proceedings should be conducted. Indeed, at the very outset there was controversy about the applicable version of the Supplemental Rules as well as the form to be filed to initiate a proceeding. From the very outset, ICANN adopted positions on a variety of procedural issues that have increased the costs of these proceedings. In DCA's respectful submission, ICANN's positions throughout these proceedings are inconsistent with ICANN's obligations of transparency and the overall objectives of the IRP process, which is the only independent accountability mechanism available to parties such as DCA.

141. DCA Trust also submits that ICANN's conduct in this IRP increased the duration and expense of this IRP. For example, ICANN failed to appoint a standing panel, it entered into a registry agreement with DCA's competitor for .AFRICA during the pendency of this IRP, thereby forcing DCA Trust to request for interim measures of protection in order to preserve its right to a meaningful remedy, ICANN attempted to appeal declarations of the Panel on procedural matters where no appeal mechanism was provided for under the applicable procedures and rules, and finally, ICANN refused only a couple of months prior to the merits hearing, to make its witnesses available for viva voce questioning at the hearing.

142. ICANN in response submits that, "both the Bylaws and the Supplementary Procedures provide that, in the ordinary course, costs shall be allocated to the prevailing party. These costs include the Panel's fees and the ICDR's fees, [they] would also include the costs of the transcript."

143. ICANN explains on the other hand that this case was extraordinary and this Panel should exercise its discretion to have each side bear its own costs as this IRP "was in many senses a first of its kind." According to ICANN, among other things:

> This IRP was the first associated with the Board's acceptance of GAC advice that resulted in the blocking of an application for a new gTLD under the new gTLD Program;

> This was the first IRP associated with a claim that one or more ICANN Board members had a conflict of interest with a Board vote; and

> This was the first (and still only) IRP related to the New gTLD Program that involved a live hearing, with a considerable amount of debate associated with whether to have a hearing.

144. After reading the Parties' written submissions concerning the issue of costs and their allocation, and deliberation, the Panel is unanimous in deciding that DCA Trust is the prevailing party in this IRP and ICANN shall bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider.

145. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, however, DCA Trust and ICANN shall each bear their own expenses, and they shall also each bear their own legal representation fees.

146. For the avoidance of any doubt therefore, the Panel concludes that ICANN shall be responsible for paying the following costs and expenses:

   a) the fees and expenses of the panelists;
   b) the fees and expenses of the administrator, the ICDR;
   c) the fees and expenses of the emergency panelist incurred in connection with the application for interim emergency relief sought pursuant to the Supplementary Procedures and the ICDR Rules; and
   d) the fees and expenses of the reporter associated with the hearing on 22 and 23 May 2015 in Washington, D.C.

147. The above amounts are easily quantifiable and the Parties are invited to cooperate with one another and the ICDR to deal with this part of this Final Declaration.

V.   DECLARATION OF THE PANEL

148. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to

refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.

150. The Panel declares DCA Trust to be the prevailing party in this IRP and further declares that ICANN is to bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider as follows:

   a) the fees and expenses of the panelists;
   b) the fees and expenses of the administrator, the ICDR;
   c) the fees and expenses of the emergency panelist incurred in connection with the application for interim emergency relief sought pursuant to the Supplementary Procedures and the ICDR Rules; and
   d) the fees and expenses of the reporter associated with the hearing on 22 and 23 May 2015 in Washington, D.C.
   e) As a result of the above, the administrative fees of the ICDR totaling US$4,600 and the Panelists' compensation and expenses totaling US$403,467.08 shall be born entirely by ICANN, therefore, ICANN shall reimburse DCA Trust the sum of US$198,046.04

151. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, DCA Trust and ICANN shall each bear their own expenses. The Parties shall also each bear their own legal representation fees.

The Panel finally would like to take this opportunity to fondly remember its collaboration with the Hon. Richard C. Neal (Ret. and now Deceased) and to congratulate both Parties' legal teams for their hard work, civility and responsiveness during the entire proceedings. The Panel was extremely impressed with the quality of the written work presented to it and oral advocacy skills of the Parties' legal representatives.

This Final Declaration has sixty-three (63) pages.

Date: Thursday, 9 July 2015.

Place of the IRP, Los Angeles, California.

_____
Professor Catherine Kessedjian

_____
Hon. William J. Cahill (Ret.)

_____
Babak Barin, President

EXHIBIT 2

gTLD Applicant Guidebook

Version 2012-06-04

ICANN

4 June 2012

Preamble

New gTLD Program Background

New gTLDs have been in the forefront of ICANN's agenda since its creation. The new gTLD program will open up the top level of the Internet's namespace to foster diversity, encourage competition, and enhance the utility of the DNS.

Currently the namespace consists of 22 gTLDs and over 250 ccTLDs operating on various models. Each of the gTLDs has a designated "registry operator" and, in most cases, a Registry Agreement between the operator (or sponsor) and ICANN. The registry operator is responsible for the technical operation of the TLD, including all of the names registered in that TLD. The gTLDs are served by over 900 registrars, who interact with registrants to perform domain name registration and other related services. The new gTLD program will create a means for prospective registry operators to apply for new gTLDs, and create new options for consumers in the market. When the program launches its first application round, ICANN expects a diverse set of applications for new gTLDs, including IDNs, creating significant potential for new uses and benefit to Internet users across the globe.

The program has its origins in carefully deliberated policy development work by the ICANN community. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinate global Internet policy at ICANN—formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations. Representatives from a wide variety of stakeholder groups—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months on such questions as the demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries going forward. The culmination of this policy development process was a decision by the ICANN Board of Directors to adopt the community-developed policy in June 2008. A thorough brief to the policy process and outcomes can be found at http://gnso.icann.org/issues/new-gtlds.

ICANN's work next focused on implementation: creating an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation, including Board approval. This implementation work is reflected in the drafts of the applicant guidebook that were released for public comment, and in the explanatory papers giving insight into rationale behind some of the conclusions reached on specific topics. Meaningful community input has led to revisions of the draft applicant guidebook. In parallel, ICANN has established the resources needed to successfully launch and operate the program. This process concluded with the decision by the ICANN Board of Directors in June 2011 to launch the New gTLD Program.

For current information, timelines and activities related to the New gTLD Program, please go to http://www.icann.org/en/topics/new-gtld-program.htm.

gTLD Applicant Guidebook

(v. 2012-06-04)

Module 1

4 June 2012

Module 1

Introduction to the gTLD Application Process

This module gives applicants an overview of the process for applying for a new generic top-level domain, and includes instructions on how to complete and submit an application, the supporting documentation an applicant must submit with an application, the fees required, and when and how to submit them.

This module also describes the conditions associated with particular types of applications, and the stages of the application life cycle.

Prospective applicants are encouraged to read and become familiar with the contents of this entire module, as well as the others, before starting the application process to make sure they understand what is required of them and what they can expect at each stage of the application evaluation process.

For the complete set of the supporting documentation and more about the origins, history and details of the policy development background to the New gTLD Program, please see http://gnso.icann.org/issues/new-gtlds/.

This Applicant Guidebook is the implementation of Board-approved consensus policy concerning the introduction of new gTLDs, and has been revised extensively via public comment and consultation over a two-year period.

1.1 Application Life Cycle and Timelines

This section provides a description of the stages that an application passes through once it is submitted. Some stages will occur for all applications submitted; others will only occur in specific circumstances. Applicants should be aware of the stages and steps involved in processing applications received.

1.1.1 Application Submission Dates

The user registration and application submission periods open at **00:01 UTC 12 January 2012**.

The user registration period closes at **23:59 UTC 29 March 2012.** New users to TAS will not be accepted beyond this

time. Users already registered will be able to complete the application submission process.

Applicants should be aware that, due to required processing steps (i.e., online user registration, application submission, fee submission, and fee reconciliation) and security measures built into the online application system, it might take substantial time to perform all of the necessary steps to submit a complete application. Accordingly, applicants are encouraged to submit their completed applications and fees as soon as practicable after the Application Submission Period opens. Waiting until the end of this period to begin the process may not provide sufficient time to submit a complete application before the period closes. Accordingly, new user registrations will not be accepted after the date indicated above.

The application submission period closes at **23:59 UTC 12 April 2012.**

To receive consideration, all applications must be submitted electronically through the online application system by the close of the application submission period.

An application will not be considered, in the absence of exceptional circumstances, if:

- It is received after the close of the application submission period.

- The application form is incomplete (either the questions have not been fully answered or required supporting documents are missing). Applicants will not ordinarily be permitted to supplement their applications after submission.

- The evaluation fee has not been paid by the deadline. Refer to Section 1.5 for fee information.

ICANN has gone to significant lengths to ensure that the online application system will be available for the duration of the application submission period. In the event that the system is not available, ICANN will provide alternative instructions for submitting applications on its website.

1.1.2 Application Processing Stages

This subsection provides an overview of the stages involved in processing an application submitted to ICANN. Figure 1-1 provides a simplified depiction of the process. The shortest and most straightforward path is marked with bold lines, while certain stages that may or may not be

applicable in any given case are also shown. A brief description of each stage follows.
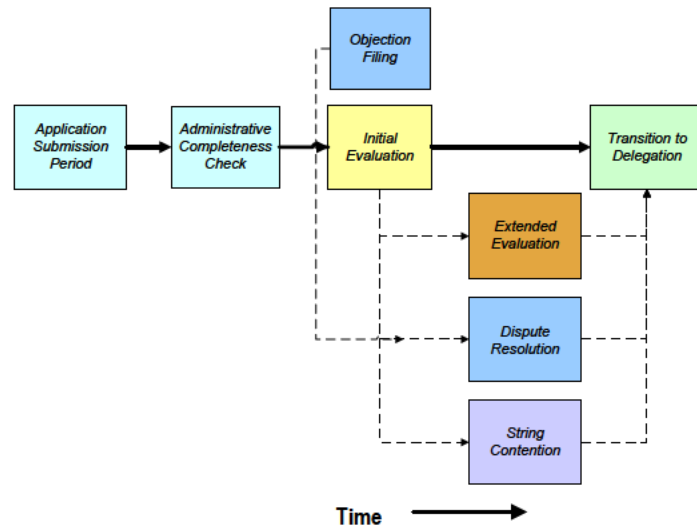

Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

1.1.2.1 Application Submission Period

At the time the application submission period opens, those wishing to submit new gTLD applications can become registered users of the TLD Application System (TAS).

After completing the user registration, applicants will supply a deposit for each requested application slot (see section 1.4), after which they will receive access to the full application form. To complete the application, users will answer a series of questions to provide general information, demonstrate financial capability, and demonstrate technical and operational capability. The supporting documents listed in subsection 1.2.2 of this module must also be submitted through the online application system as instructed in the relevant questions.

Applicants must also submit their evaluation fees during this period. Refer to Section 1.5 of this module for additional information about fees and payments.

Each application slot is for one gTLD. An applicant may submit as many applications as desired; however, there is no means to apply for more than one gTLD in a single application.

Following the close of the application submission period, ICANN will provide applicants with periodic status updates on the progress of their applications.

1.1.2.2 Administrative Completeness Check

Immediately following the close of the application submission period, ICANN will begin checking all applications for completeness. This check ensures that:

- All mandatory questions are answered;

- Required supporting documents are provided in the proper format(s); and

- The evaluation fees have been received.

ICANN will post the public portions of all applications considered complete and ready for evaluation within two weeks of the close of the application submission period. Certain questions relate to internal processes or information: applicant responses to these questions will not be posted. Each question is labeled in the application form as to whether the information will be posted. See posting designations for the full set of questions in the attachment to Module 2.

The administrative completeness check is expected to be completed for all applications in a period of approximately 8 weeks, subject to extension depending on volume. In the event that all applications cannot be processed within this period, ICANN will post updated process information and an estimated timeline.

1.1.2.3 Comment Period

Public comment mechanisms are part of ICANN's policy development, implementation, and operational processes. As a private-public partnership, ICANN is dedicated to: preserving the operational security and stability of the Internet, promoting competition, achieving broad representation of global Internet communities, and developing policy appropriate to its mission through bottom-up, consensus-based processes. This necessarily involves the participation of many stakeholder groups in a public discussion.

ICANN will open a comment period (the Application Comment period) at the time applications are publicly posted on ICANN's website (refer to subsection 1.1.2.2). This period will allow time for the community to review and submit comments on posted application materials

(referred to as "application comments.") The comment forum will require commenters to associate comments with specific applications and the relevant panel. Application comments received within a 60-day period from the posting of the application materials will be available to the evaluation panels performing the Initial Evaluation reviews. This period is subject to extension, should the volume of applications or other circumstances require. **To be considered by evaluators, comments must be received in the designated comment forum within the stated time period.**

Evaluators will perform due diligence on the application comments (i.e., determine their relevance to the evaluation, verify the accuracy of claims, analyze meaningfulness of references cited) and take the information provided in these comments into consideration. In cases where consideration of the comments has impacted the scoring of the application, the evaluators will seek clarification from the applicant. Statements concerning consideration of application comments that have impacted the evaluation decision will be reflected in the evaluators' summary reports, which will be published at the end of Extended Evaluation.

Comments received after the 60-day period will be stored and available (along with comments received during the comment period) for other considerations, such as the dispute resolution process, as described below.

In the new gTLD application process, all applicants should be aware that comment fora are a mechanism for the public to bring relevant information and issues to the attention of those charged with handling new gTLD applications. Anyone may submit a comment in a public comment forum.

Comments and the Formal Objection Process: A distinction should be made between application comments, which may be relevant to ICANN's task of determining whether applications meet the established criteria, and formal objections that concern matters outside those evaluation criteria. The formal objection process was created to allow a full and fair consideration of objections based on certain limited grounds outside ICANN's evaluation of applications on their merits (see subsection 3.2).

Public comments will not be considered as formal objections. Comments on matters associated with formal objections will not be considered by panels during Initial Evaluation. These comments will be available to and may

be subsequently considered by an expert panel during a dispute resolution proceeding (see subsection 1.1.2.9). However, in general, application comments have a very limited role in the dispute resolution process.

String Contention: Comments designated for the Community Priority Panel, as relevant to the criteria in Module 4, may be taken into account during a Community Priority Evaluation.

Government Notifications: Governments may provide a notification using the application comment forum to communicate concerns relating to national laws. However, a government's notification of concern will not in itself be deemed to be a formal objection. A notification by a government does not constitute grounds for rejection of a gTLD application. A government may elect to use this comment mechanism to provide such a notification, in addition to or as an alternative to the GAC Early Warning procedure described in subsection 1.1.2.4 below.

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

General Comments: A general public comment forum will remain open through all stages of the evaluation process, to provide a means for the public to bring forward any other relevant information or issues.

1.1.2.4 GAC Early Warning

Concurrent with the 60-day comment period, ICANN's Governmental Advisory Committee (GAC) may issue a GAC Early Warning notice concerning an application. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments.

The GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs (see subsection 1.1.2.7) or of a formal objection (see subsection 1.1.2.6) at a later stage in the process.

A GAC Early Warning typically results from a notice to the GAC by one or more governments that an application might be problematic, e.g., potentially violate national law or raise sensitivities. A GAC Early Warning may be issued for any reason.[1] The GAC may then send that notice to the Board – constituting the GAC Early Warning. ICANN will notify applicants of GAC Early Warnings as soon as practicable after receipt from the GAC. The GAC Early Warning notice may include a nominated point of contact for further information.

GAC consensus is not required for a GAC Early Warning to be issued. Minimally, the GAC Early Warning must be provided in writing to the ICANN Board, and be clearly labeled as a GAC Early Warning. This may take the form of an email from the GAC Chair to the ICANN Board. For GAC Early Warnings to be most effective, they should include the reason for the warning and identify the objecting countries.

Upon receipt of a GAC Early Warning, the applicant may elect to withdraw the application for a partial refund (see subsection 1.5.1), or may elect to continue with the application (this may include meeting with representatives from the relevant government(s) to try to address the concern). To qualify for the refund described in subsection 1.5.1, the applicant must provide notification to ICANN of its election to withdraw the application within 21 calendar days of the date of GAC Early Warning delivery to the applicant.

To reduce the possibility of a GAC Early Warning, all applicants are encouraged to identify potential sensitivities in advance of application submission, and to work with the relevant parties (including governments) beforehand to mitigate concerns related to the application.

1.1.2.5   Initial Evaluation

Initial Evaluation will begin immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation. At the beginning of this period, background screening on the applying entity and the individuals named in the application will be conducted. Applications

---

[1] While definitive guidance has not been issued, the GAC has indicated that strings that could raise sensitivities include those that "purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)" and "those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse."

must pass this step in conjunction with the Initial Evaluation reviews.

There are two main elements of the Initial Evaluation:

1. String reviews (concerning the applied-for gTLD string). String reviews include a determination that the applied-for gTLD string is not likely to cause security or stability problems in the DNS, including problems caused by similarity to existing TLDs or reserved names.

2. Applicant reviews (concerning the entity applying for the gTLD and its proposed registry services). Applicant reviews include a determination of whether the applicant has the requisite technical, operational, and financial capabilities to operate a registry.

By the conclusion of the Initial Evaluation period, ICANN will post notice of all Initial Evaluation results. Depending on the volume of applications received, such notices may be posted in batches over the course of the Initial Evaluation period.

The Initial Evaluation is expected to be completed for all applications in a period of approximately 5 months. If the volume of applications received significantly exceeds 500, applications will be processed in batches and the 5-month timeline will not be met. The first batch will be limited to 500 applications and subsequent batches will be limited to 400 to account for capacity limitations due to managing extended evaluation, string contention, and other processes associated with each previous batch.

If batching is required, a secondary time-stamp process will be employed to establish the batches. (Batching priority will not be given to an application based on the time at which the application was submitted to ICANN, nor will batching priority be established based on a random selection method.)

The secondary time-stamp process will require applicants to obtain a time-stamp through a designated process which will occur after the close of the application submission period. The secondary time stamp process will occur, if required, according to the details to be published on ICANN's website. (Upon the Board's approval of a final designation of the operational details of the "secondary timestamp" batching process, the final plan will be added as a process within the Applicant Guidebook.)

If batching is required, the String Similarity review will be completed on all applications prior to the establishment of evaluation priority batches. For applications identified as part of a contention set, the entire contention set will be kept together in the same batch.

If batches are established, ICANN will post updated process information and an estimated timeline.

Note that the processing constraints will limit delegation rates to a steady state even in the event of an extremely high volume of applications. The annual delegation rate will not exceed 1,000 per year in any case, no matter how many applications are received.[2]

1.1.2.6   *Objection Filing*

Formal objections to applications can be filed on any of four enumerated grounds, by parties with standing to object. The objection filing period will open after ICANN posts the list of complete applications as described in subsection 1.1.2.2, and will last for approximately 7 months.

Objectors must file such formal objections directly with dispute resolution service providers (DRSPs), not with ICANN. The objection filing period will close following the end of the Initial Evaluation period (refer to subsection 1.1.2.5), with a two-week window of time between the posting of the Initial Evaluation results and the close of the objection filing period. Objections that have been filed during the objection filing period will be addressed in the dispute resolution stage, which is outlined in subsection 1.1.2.9 and discussed in detail in Module 3.

All applicants should be aware that third parties have the opportunity to file objections to any application during the objection filing period. Applicants whose applications are the subject of a formal objection will have an opportunity to file a response according to the dispute resolution service provider's rules and procedures. An applicant wishing to file a formal objection to another application that has been submitted would do so within the objection filing period, following the objection filing procedures in Module 3.

Applicants are encouraged to identify possible regional, cultural, property interests, or other sensitivities regarding TLD strings and their uses before applying and, where

---

[2] See "Delegation Rate Scenarios for New gTLDs" at http://icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf for additional discussion.

possible, consult with interested parties to mitigate any concerns in advance.

1.1.2.7 Receipt of GAC Advice on New gTLDs

The GAC may provide public policy advice directly to the ICANN Board on any application. The procedure for GAC Advice on New gTLDs described in Module 3 indicates that, to be considered by the Board during the evaluation process, the GAC Advice on New gTLDs must be submitted by the close of the objection filing period. A GAC Early Warning is not a prerequisite to use of the GAC Advice process.

If the Board receives GAC Advice on New gTLDs stating that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application should not be approved.   If the Board does not act in accordance with this type of advice, it must provide rationale for doing so.

See Module 3 for additional detail on the procedures concerning GAC Advice on New gTLDs.

1.1.2.8 Extended Evaluation

Extended Evaluation is available only to certain applicants that do not pass Initial Evaluation.

Applicants failing certain elements of the Initial Evaluation can request an Extended Evaluation. If the applicant does not pass Initial Evaluation and does not expressly request an Extended Evaluation, the application will proceed no further. The Extended Evaluation period allows for an additional exchange of information between the applicant and evaluators to clarify information contained in the application. The reviews performed in Extended Evaluation do not introduce additional evaluation criteria.

An application may be required to enter an Extended Evaluation if one or more proposed registry services raise technical issues that might adversely affect the security or stability of the DNS. The Extended Evaluation period provides a time frame for these issues to be investigated. Applicants will be informed if such a review is required by the end of the Initial Evaluation period.

Evaluators and any applicable experts consulted will communicate the conclusions resulting from the additional review by the end of the Extended Evaluation period.

At the conclusion of the Extended Evaluation period, ICANN will post summary reports, by panel, from the Initial and Extended Evaluation periods.

If an application passes the Extended Evaluation, it can then proceed to the next relevant stage. If the application does not pass the Extended Evaluation, it will proceed no further.

The Extended Evaluation is expected to be completed for all applications in a period of approximately 5 months, though this timeframe could be increased based on volume. In this event, ICANN will post updated process information and an estimated timeline.

1.1.2.9   *Dispute Resolution*

Dispute resolution applies only to applicants whose applications are the subject of a formal objection.

Where formal objections are filed and filing fees paid during the objection filing period, independent dispute resolution service providers (DRSPs) will initiate and conclude proceedings based on the objections received. The formal objection procedure exists to provide a path for those who wish to object to an application that has been submitted to ICANN. Dispute resolution service providers serve as the fora to adjudicate the proceedings based on the subject matter and the needed expertise. Consolidation of objections filed will occur where appropriate, at the discretion of the DRSP.

As a result of a dispute resolution proceeding, either the applicant will prevail (in which case the application can proceed to the next relevant stage), or the objector will prevail (in which case either the application will proceed no further or the application will be bound to a contention resolution procedure). In the event of multiple objections, an applicant must prevail in all dispute resolution proceedings concerning the application to proceed to the next relevant stage. Applicants will be notified by the DRSP(s) of the results of dispute resolution proceedings.

Dispute resolution proceedings, where applicable, are expected to be completed for all applications within approximately a 5-month time frame. In the event that volume is such that this timeframe cannot be accommodated, ICANN will work with the dispute resolution service providers to create processing procedures and post updated timeline information.

1-12

1.1.2.10 String Contention

String contention applies only when there is more than one qualified application for the same or similar gTLD strings.

String contention refers to the scenario in which there is more than one qualified application for the identical gTLD string or for similar gTLD strings. In this Applicant Guidebook, "similar" means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

Applicants are encouraged to resolve string contention cases among themselves prior to the string contention resolution stage. In the absence of resolution by the contending applicants, string contention cases are resolved either through a community priority evaluation (if a community-based applicant elects it) or through an auction.

In the event of contention between applied-for gTLD strings that represent geographic names, the parties may be required to follow a different process to resolve the contention. See subsection 2.2.1.4 of Module 2 for more information.

Groups of applied-for strings that are either identical or similar are called contention sets. All applicants should be aware that if an application is identified as being part of a contention set, string contention resolution procedures will not begin until all applications in the contention set have completed all aspects of evaluation, including dispute resolution, if applicable.

To illustrate, as shown in Figure 1-2, Applicants A, B, and C all apply for .EXAMPLE and are identified as a contention set. Applicants A and C pass Initial Evaluation, but Applicant B does not. Applicant B requests Extended Evaluation. A third party files an objection to Applicant C's application, and Applicant C enters the dispute resolution process. Applicant A must wait to see whether Applicants B and C successfully complete the Extended Evaluation and dispute resolution phases, respectively, before it can proceed to the string contention resolution stage. In this example, Applicant B passes the Extended Evaluation, but Applicant C does not prevail in the dispute resolution proceeding. String contention resolution then proceeds between Applicants A and B.
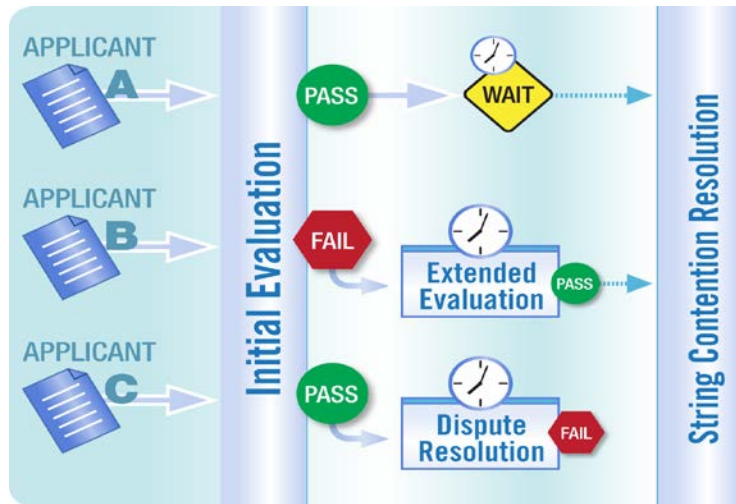
Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

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

String contention resolution for a contention set is estimated to take from 2.5 to 6 months to complete. The time required will vary per case because some contention cases may be resolved in either a community priority evaluation or an auction, while others may require both processes.

1.1.2.11 Transition to Delegation

Applicants successfully completing all the relevant stages outlined in this subsection 1.1.2 are required to carry out a series of concluding steps before delegation of the applied-for gTLD into the root zone. These steps include execution of a registry agreement with ICANN and completion of a pre-delegation technical test to validate information provided in the application.

Following execution of a registry agreement, the prospective registry operator must complete technical set-up and show satisfactory performance on a set of technical tests before delegation of the gTLD into the root zone may be initiated. If the pre-delegation testing requirements are not satisfied so that the gTLD can be delegated into the root zone within the time frame specified in the registry agreement, ICANN may in its sole and absolute discretion elect to terminate the registry agreement.

1-14

Once all of these steps have been successfully completed, the applicant is eligible for delegation of its applied-for gTLD into the DNS root zone.

It is expected that the transition to delegation steps can be completed in approximately 2 months, though this could take more time depending on the applicant's level of preparedness for the pre-delegation testing and the volume of applications undergoing these steps concurrently.

1.1.3 Lifecycle Timelines

Based on the estimates for each stage described in this section, the lifecycle for a straightforward application could be approximately 9 months, as follows:

2 Months	Administrative Check
5 Months	Initial Evaluation
2 Months	Transition to Delegation
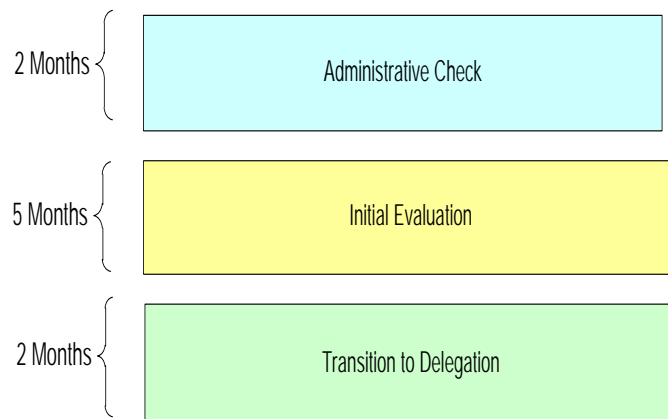
Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

The lifecycle for a highly complex application could be much longer, such as 20 months in the example below:
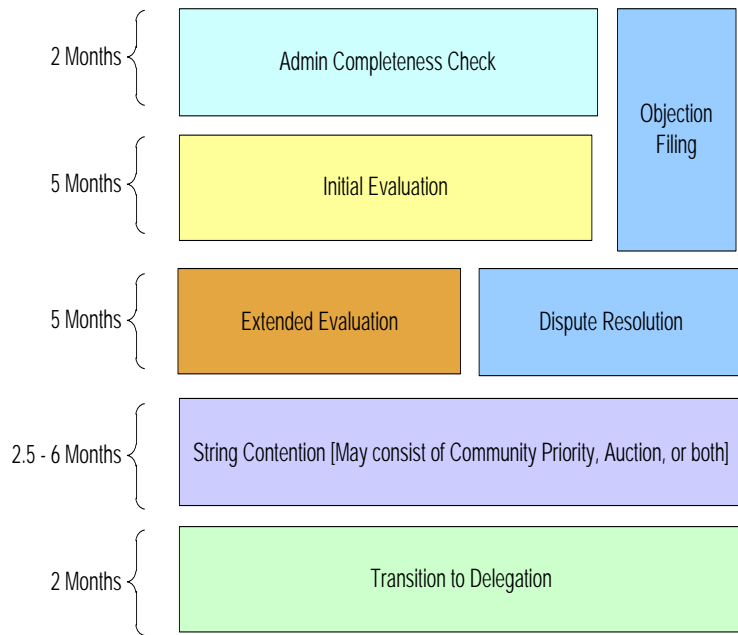
Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

1.1.4 Posting Periods

The results of application reviews will be made available to the public at various stages in the process, as shown below.

Period	Posting Content
During Administrative Completeness Check	Public portions of all applications (posted within 2 weeks of the start of the Administrative Completeness Check).
End of Administrative Completeness Check	Results of Administrative Completeness Check.
GAC Early Warning Period	GAC Early Warnings received.
During Initial Evaluation	Status updates for applications withdrawn or ineligible for further review. Contention sets resulting from String Similarity review.

Period	Posting Content
End of Initial Evaluation	Application status updates with all Initial Evaluation results.
GAC Advice on New gTLDs	GAC Advice received.
End of Extended Evaluation	Application status updates with all Extended Evaluation results. Evaluation summary reports from the Initial and Extended Evaluation periods.
During Objection Filing/Dispute Resolution	Information on filed objections and status updates available via Dispute Resolution Service Provider websites. Notice of all objections posted by ICANN after close of objection filing period.
During Contention Resolution (Community Priority Evaluation)	Results of each Community Priority Evaluation posted as completed.
During Contention Resolution (Auction)	Results from each auction posted as completed.
Transition to Delegation	Registry Agreements posted when executed. Pre-delegation testing status updated.

1.1.5   Sample Application Scenarios

The following scenarios briefly show a variety of ways in which an application may proceed through the evaluation process. The table that follows exemplifies various processes and outcomes. This is not intended to be an exhaustive list of possibilities. There are other possible combinations of paths an application could follow.

Estimated time frames for each scenario are also included, based on current knowledge. Actual time frames may vary depending on several factors, including the total number

of applications received by ICANN during the application submission period. It should be emphasized that most applications are expected to pass through the process in the shortest period of time, i.e., they will not go through extended evaluation, dispute resolution, or string contention resolution processes. Although most of the scenarios below are for processes extending beyond nine months, it is expected that most applications will complete the process within the nine-month timeframe.

Scenario Number	Initial Eval-uation	Extended Eval-uation	Objec-tion(s) Filed	String Conten-tion	Ap-proved for Dele-gation Steps	Esti-mated Elapsed Time
1	Pass	N/A	None	No	Yes	9 months
2	Fail	Pass	None	No	Yes	14 months
3	Pass	N/A	None	Yes	Yes	11.5 – 15 months
4	Pass	N/A	Applicant prevails	No	Yes	14 months
5	Pass	N/A	Objector prevails	N/A	No	12 months
6	Fail	Quit	N/A	N/A	No	7 months
7	Fail	Fail	N/A	N/A	No	12 months
8	Fail	Pass	Applicant prevails	Yes	Yes	16.5 – 20 months
9	Fail	Pass	Applicant prevails	Yes	No	14.5 – 18 months

Scenario 1 – Pass Initial Evaluation, No Objection, No Contention – In the most straightforward case, the application passes Initial Evaluation and there is no need for an Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. As there is no contention for the applied-for gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD. Most applications are expected to complete the process within this timeframe.

Scenario 2 – Extended Evaluation, No Objection, No Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. As with Scenario 1, no objections are filed

during the objection period, so there is no dispute to resolve. As there is no contention for the gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 3 – Pass Initial Evaluation, No Objection, Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the application prevails in the contention resolution, so the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing (refer to Module 3, Objection Procedures). The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. The applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 5 – Pass Initial Evaluation, Lose Objection – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection period, multiple objections are filed by one or more objectors with standing for one or more of the four enumerated objection grounds. Each objection is heard by a dispute resolution service provider panel. In this case, the panels find in favor of the applicant for most of the objections, but one finds in favor of the objector. As one of the objections has been upheld, the application does not proceed.

Scenario 6 – Fail Initial Evaluation, Applicant Withdraws – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant decides to withdraw the application rather than continuing with Extended Evaluation. The application does not proceed.

Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation -- In this case, the application fails one or more aspects of the Initial Evaluation. The applicant requests Extended Evaluation for the appropriate elements. However, the

application fails Extended Evaluation also. The application does not proceed.

Scenario 8 – Extended Evaluation, Win Objection, Pass Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing. The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the applicant prevails over other applications in the contention resolution procedure, the applicant can enter into a registry agreement, and the application can proceed toward delegation of the applied-for gTLD.

Scenario 9 – Extended Evaluation, Objection, Fail Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing. The objection is heard by a dispute resolution service provider that finds in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, another applicant prevails in the contention resolution procedure, and the application does not proceed.

Transition to Delegation – After an application has successfully completed Initial Evaluation, and other stages as applicable, the applicant is required to complete a set of steps leading to delegation of the gTLD, including execution of a registry agreement with ICANN, and completion of pre-delegation testing. Refer to Module 5 for a description of the steps required in this stage.

1.1.6 *Subsequent Application Rounds*

ICANN's goal is to launch subsequent gTLD application rounds as quickly as possible. The exact timing will be based on experiences gained and changes required after this round is completed. The goal is for the next application round to begin within one year of the close of the application submission period for the initial round.

ICANN has committed to reviewing the effects of the New gTLD Program on the operations of the root zone system after the first application round, and will defer the delegations in a second application round until it is determined that the delegations resulting from the first round did not jeopardize root zone system security or stability.

It is the policy of ICANN that there be subsequent application rounds, and that a systemized manner of applying for gTLDs be developed in the long term.

1.2   Information for All Applicants

1.2.1   Eligibility

Established corporations, organizations, or institutions in good standing may apply for a new gTLD. Applications from individuals or sole proprietorships will not be considered. Applications from or on behalf of yet-to-be-formed legal entities, or applications presupposing the future formation of a legal entity (for example, a pending Joint Venture) will not be considered.

ICANN has designed the New gTLD Program with multiple stakeholder protection mechanisms. Background screening, features of the gTLD Registry Agreement, data and financial escrow mechanisms are all intended to provide registrant and user protections.

The application form requires applicants to provide information on the legal establishment of the applying entity, as well as the identification of directors, officers, partners, and major shareholders of that entity. The names and positions of individuals included in the application will be published as part of the application; other information collected about the individuals will not be published.

Background screening at both the entity level and the individual level will be conducted for all applications to confirm eligibility. This inquiry is conducted on the basis of the information provided in questions 1-11 of the application form. ICANN may take into account information received from any source if it is relevant to the criteria in this section. If requested by ICANN, all applicants will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct background screening activities.

ICANN will perform background screening in only two areas: (1) General business diligence and criminal history; and (2) History of cybersquatting behavior. The criteria used for criminal history are aligned with the "crimes of trust" standard sometimes used in the banking and finance industry.

In the absence of exceptional circumstances, applications from any entity with or including any individual with convictions or decisions of the types listed in (a) – (m) below will be automatically disqualified from the program.

a. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these;

b. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of the funds of others;

c. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;

d. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;

e. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;

f. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;

g. has ever been convicted of any violent or sexual offense victimizing children, the

elderly, or individuals with disabilities;

h. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988[3];

i. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols)[4] [5];

j. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes above (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) – (i) above);

k. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents), within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (a) – (d) above, or ever for the crimes listed in (e) – (i) above);

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

m. has been involved in a pattern of adverse, final decisions indicating that the applicant

---

[3] http://www.unodc.org/unodc/en/treaties/illicit-trafficking.html

[4] http://www.unodc.org/unodc/en/treaties/CTOC/index.html

[5] It is recognized that not all countries have signed on to the UN conventions referenced above. These conventions are being used solely for identification of a list of crimes for which background screening will be performed. It is not necessarily required that an applicant would have been convicted pursuant to the UN convention but merely convicted of a crime listed under these conventions, to trigger these criteria.

or individual named in the application was engaged in cybersquatting as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), the Anti-Cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern.

n. fails to provide ICANN with the identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the background screening process;

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

Background screening is in place to protect the public interest in the allocation of critical Internet resources, and ICANN reserves the right to deny an otherwise qualified application based on any information identified during the background screening process. For example, a final and legally binding decision obtained by a national law enforcement or consumer protection authority finding that the applicant was engaged in fraudulent and deceptive commercial practices as defined in the Organization for Economic Co-operation and Development (OECD) Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders[6] may cause an application to be rejected. ICANN may also contact the applicant with additional questions based on information obtained in the background screening process.

All applicants are required to provide complete and detailed explanations regarding any of the above events as part of the application. Background screening information will not be made publicly available by ICANN.

Registrar Cross-Ownership -- ICANN-accredited registrars are eligible to apply for a gTLD. However, all gTLD registries

---

[6] http://www.oecd.org/document/56/0,3746,en_2649_34267_2515000_1_1_1_1,00.html

are required to abide by a Code of Conduct addressing, *inter alia*, non-discriminatory access for all authorized registrars. ICANN reserves the right to refer any application to the appropriate competition authority relative to any cross-ownership issues.

Legal Compliance -- ICANN must comply with all U.S. laws, rules, and regulations. One such set of regulations is the economic and trade sanctions program administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. These sanctions have been imposed on certain countries, as well as individuals and entities that appear on OFAC's List of Specially Designated Nationals and Blocked Persons (the SDN List). ICANN is prohibited from providing most goods or services to residents of sanctioned countries or their governmental entities or to SDNs without an applicable U.S. government authorization or exemption. ICANN generally will not seek a license to provide goods or services to an individual or entity on the SDN List. In the past, when ICANN has been requested to provide services to individuals or entities that are not SDNs, but are residents of sanctioned countries, ICANN has sought and been granted licenses as required. In any given case, however, OFAC could decide not to issue a requested license.

1.2.2   Required Documents

All applicants should be prepared to submit the following documents, which are required to accompany each application:

1. **Proof of legal establishment –** Documentation of the applicant's establishment as a specific type of entity in accordance with the applicable laws of its jurisdiction.

2. **Financial statements –** Applicants must provide audited or independently certified financial statements for the most recently completed fiscal year for the applicant. In some cases, unaudited financial statements may be provided.

As indicated in the relevant questions, supporting documentation should be submitted in the original language. English translations are not required.

All documents must be valid at the time of submission. Refer to the Evaluation Criteria, attached to Module 2, for additional details on the requirements for these documents.

Some types of supporting documentation are required only in certain cases:

1. *Community endorsement –* If an applicant has designated its application as community-based (see section 1.2.3), it will be asked to submit a written endorsement of its application by one or more established institutions representing the community it has named. An applicant may submit written endorsements from multiple institutions. If applicable, this will be submitted in the section of the application concerning the community-based designation.

   At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement of support for the application, and supply the contact information of the entity providing the endorsement.

   Written endorsements from individuals need not be submitted with the application, but may be submitted in the application comment forum.

2. *Government support or non-objection* – If an applicant has applied for a gTLD string that is a geographic name (as defined in this Guidebook), the applicant is required to submit documentation of support for or non-objection to its application from the relevant governments or public authorities. Refer to subsection 2.2.1.4 for more information on the requirements for geographic names. If applicable, this will be submitted in the geographic names section of the application.

3. *Documentation of third-party funding commitments –* If an applicant lists funding from third parties in its application, it must provide evidence of commitment by the party committing the funds. If applicable, this will be submitted in the financial section of the application.

1.2.3   Community-Based Designation

All applicants are required to designate whether their application is **community-based**.

1.2.3.1   Definitions

For purposes of this Applicant Guidebook, a **community-based gTLD** is a gTLD that is operated for the benefit of a clearly delineated community. Designation or non-

designation of an application as community-based is entirely at the discretion of the applicant. Any applicant may designate its application as community-based; however, each applicant making this designation is asked to substantiate its status as representative of the community it names in the application by submission of written endorsements in support of the application. Additional information may be requested in the event of a community priority evaluation (refer to section 4.2 of Module 4). An applicant for a community-based gTLD is expected to:

1. Demonstrate an ongoing relationship with a clearly delineated community.

2. Have applied for a gTLD string strongly and specifically related to the community named in the application.

3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD, including appropriate security verification procedures, commensurate with the community-based purpose it has named.

4. Have its application endorsed in writing by one or more established institutions representing the community it has named.

For purposes of differentiation, an application that has not been designated as community-based will be referred to hereinafter in this document as a **standard application.** A standard gTLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. A standard applicant may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions. Standard simply means here that the applicant has not designated the application as community-based.

1.2.3.2   *Implications of Application Designation*

Applicants should understand how their designation as community-based or standard will affect application processing at particular stages, and, if the application is successful, execution of the registry agreement and subsequent obligations as a gTLD registry operator, as described in the following paragraphs.

Objection / Dispute Resolution – All applicants should understand that a formal objection may be filed against any application on community grounds, even if the applicant has not designated itself as community-based or

declared the gTLD to be aimed at a particular community. Refer to Module 3, Objection Procedures.

String Contention – Resolution of string contention may include one or more components, depending on the composition of the contention set and the elections made by community-based applicants.

- A **settlement between the parties** can occur at any time after contention is identified. The parties will be encouraged to meet with an objective to settle the contention. Applicants in contention always have the opportunity to resolve the contention voluntarily, resulting in the withdrawal of one or more applications, before reaching the contention resolution stage.

- A **community priority evaluation** will take place only if a community-based applicant in a contention set elects this option. All community-based applicants in a contention set will be offered this option in the event that there is contention remaining after the applications have successfully completed all previous evaluation stages.

- An **auction** will result for cases of contention not resolved by community priority evaluation or agreement between the parties. Auction occurs as a contention resolution means of last resort. If a community priority evaluation occurs but does not produce a clear winner, an auction will take place to resolve the contention.

Refer to Module 4, String Contention Procedures, for detailed discussions of contention resolution procedures.

Contract Execution and Post-Delegation – A community-based applicant will be subject to certain post-delegation contractual obligations to operate the gTLD in a manner consistent with the restrictions associated with its community-based designation. Material changes to the contract, including changes to the community-based nature of the gTLD and any associated provisions, may only be made with ICANN's approval. The determination of whether to approve changes requested by the applicant will be at ICANN's discretion. Proposed criteria for approving such changes are the subject of policy discussions.

Community-based applications are intended to be a narrow category, for applications where there are

unambiguous associations among the applicant, the community served, and the applied-for gTLD string. Evaluation of an applicant's designation as community-based will occur only in the event of a contention situation that results in a community priority evaluation. However, any applicant designating its application as community-based will, if the application is approved, be bound by the registry agreement to implement the community-based restrictions it has specified in the application. This is true even if there are no contending applicants.

1.2.3.3   *Changes to Application Designation*

An applicant may not change its designation as standard or community-based once it has submitted a gTLD application for processing.

1.2.4   *Notice concerning Technical Acceptance Issues with New gTLDs*

All applicants should be aware that approval of an application and entry into a registry agreement with ICANN do not guarantee that a new gTLD will immediately function throughout the Internet. Past experience indicates that network operators may not immediately fully support new top-level domains, even when these domains have been delegated in the DNS root zone, since third-party software modification may be required and may not happen immediately.

Similarly, software applications sometimes attempt to validate domain names and may not recognize new or unknown top-level domains. ICANN has no authority or ability to require that software accept new top-level domains, although it does prominently publicize which top-level domains are valid and has developed a basic tool to assist application providers in the use of current root-zone data.

ICANN encourages applicants to familiarize themselves with these issues and account for them in their startup and launch plans. Successful applicants may find themselves expending considerable efforts working with providers to achieve acceptance of their new top-level domains.

Applicants should review http://www.icann.org/en/topics/TLD-acceptance/ for background. IDN applicants should also review the material concerning experiences with IDN test strings in the root zone (see http://idn.icann.org/).

1-29

1.2.5   Notice concerning TLD Delegations

ICANN is only able to create TLDs as delegations in the DNS root zone, expressed using NS records with any corresponding DS records and glue records. There is no policy enabling ICANN to place TLDs as other DNS record types (such as A, MX, or DNAME records) in the root zone.

1.2.6   Terms and Conditions

All applicants must agree to a standard set of Terms and Conditions for the application process. The Terms and Conditions are available in Module 6 of this guidebook.

1.2.7   Notice of Changes to Information

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.

Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

1.2.8   Voluntary Designation for High Security Zones

An ICANN stakeholder group has considered development of a possible special designation for "High Security Zone Top Level Domains" ("HSTLDs"). The group's Final Report can be found at http://www.icann.org/en/topics/new-gtlds/hstld-final-report-11mar11-en.pdf.

The Final Report may be used to inform further work. ICANN will support independent efforts toward developing voluntary high-security TLD designations, which may be available to gTLD applicants wishing to pursue such designations.

1.2.9   Security and Stability

Root Zone Stability: There has been significant study, analysis, and consultation in preparation for launch of the

New gTLD Program, indicating that the addition of gTLDs to the root zone will not negatively impact the security or stability of the DNS.

It is estimated that 200-300 TLDs will be delegated annually, and determined that in no case will more than 1000 new gTLDs be added to the root zone in a year. The delegation rate analysis, consultations with the technical community, and anticipated normal operational upgrade cycles all lead to the conclusion that the new gTLD delegations will have no significant impact on the stability of the root system. Modeling and reporting will continue during, and after, the first application round so that root-scaling discussions can continue and the delegation rates can be managed as the program goes forward.

All applicants should be aware that delegation of any new gTLDs is conditional on the continued absence of significant negative impact on the security or stability of the DNS and the root zone system (including the process for delegating TLDs in the root zone). In the event that there is a reported impact in this regard and processing of applications is delayed, the applicants will be notified in an orderly and timely manner.

1.2.10 Resources for Applicant Assistance

A variety of support resources are available to gTLD applicants. Financial assistance will be available to a limited number of eligible applicants. To request financial assistance, applicants must submit a separate financial assistance application in addition to the gTLD application form.

To be eligible for consideration, all financial assistance applications must be received by **23:59 UTC 12 April 2012**. Financial assistance applications will be evaluated and scored against pre-established criteria.

In addition, ICANN maintains a webpage as an informational resource for applicants seeking assistance, and organizations offering support.

See http://newgtlds.icann.org/applicants/candidate-support for details on these resources.

1.2.11 Updates to the Applicant Guidebook

As approved by the ICANN Board of Directors, this Guidebook forms the basis of the New gTLD Program. ICANN reserves the right to make reasonable updates and

changes to the Applicant Guidebook at any time, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process. Any such updates or revisions will be posted on ICANN's website.

1.3 Information for Internationalized Domain Name Applicants

Some applied-for gTLD strings are expected to be Internationalized Domain Names (IDNs). IDNs are domain names including characters used in the local representation of languages not written with the basic Latin alphabet (a - z), European-Arabic digits (0 - 9), and the hyphen (-). As described below, IDNs require the insertion of A-labels into the DNS root zone.

1.3.1 IDN-Specific Requirements

An applicant for an IDN string must provide information indicating compliance with the IDNA protocol and other technical requirements. The IDNA protocol and its documentation can be found at http://icann.org/en/topics/idn/rfcs.htm.

Applicants must provide applied-for gTLD strings in the form of both a **U-label** (the IDN TLD in local characters) and an **A-label**.

An A-label is the ASCII form of an IDN label. Every IDN A-label begins with the IDNA ACE prefix, "xn--", followed by a string that is a valid output of the Punycode algorithm, making a maximum of 63 total ASCII characters in length. The prefix and string together must conform to all requirements for a label that can be stored in the DNS including conformance to the LDH (host name) rule described in RFC 1034, RFC 1123, and elsewhere.

A U-label is the Unicode form of an IDN label, which a user expects to see displayed in applications.

For example, using the current IDN test string in Cyrillic script, the U-label is <**испытание**> and the A-label is <**xn--80akhbyknj4f>.** An A-label must be capable of being produced by conversion from a U-label and a U-label must be capable of being produced by conversion from an A-label.

Applicants for IDN gTLDs will also be required to provide the following at the time of the application:

ICANN

1. Meaning or restatement of string in English. The applicant will provide a short description of what the string would mean or represent in English.

2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for gTLD string, both according to the ISO codes for the representation of names of languages, and in English.

3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO codes for the representation of names of scripts, and in English.

4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.

5. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator (i.e., the dot).[7]

   If an applicant is applying for a string with known issues, it should document steps that will be taken to mitigate these issues in applications. While it is not possible to ensure that all rendering problems are avoided, it is important that as many as possible are identified early and that the potential registry operator is aware of these issues. Applicants can become familiar with these issues by understanding the IDNA protocol (see http://www.icann.org/en/topics/idn/rfcs.htm), and by active participation in the IDN wiki (see http://idn.icann.org/) where some rendering problems are demonstrated.

6. **[Optional]** - Representation of label in phonetic alphabet. The applicant may choose to provide its applied-for gTLD string notated according to the International Phonetic Alphabet (http://www.langsci.ucl.ac.uk/ipa/). Note that this information will not be evaluated or scored. The information, if provided, will be used as a guide to ICANN in responding to inquiries or speaking of the application in public presentations.

---

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

1.3.2   IDN Tables

An IDN table provides the list of characters eligible for registration in domain names according to the registry's policy. It identifies any multiple characters that are considered equivalent for domain name registration purposes ("variant characters"). Variant characters occur where two or more characters can be used interchangeably.

Examples of IDN tables can be found in the Internet Assigned Numbers Authority (IANA) IDN Repository at http://www.iana.org/procedures/idn-repository.html.

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

Each applicant is responsible for developing its IDN Tables, including specification of any variant characters. Tables must comply with ICANN's IDN Guidelines[8] and any updates thereto, including:

- Complying with IDN technical standards.

- Employing an inclusion-based approach (i.e., code points not explicitly permitted by the registry are prohibited).

- Defining variant characters.

- Excluding code points not permissible under the guidelines, e.g., line-drawing symbols, pictographic dingbats, structural punctuation marks.

- Developing tables and registration policies in collaboration with relevant stakeholders to address common issues.

- Depositing IDN tables with the IANA Repository for IDN Practices (once the TLD is delegated).

An applicant's IDN tables should help guard against user confusion in the deployment of IDN gTLDs. Applicants are strongly urged to consider specific linguistic and writing system issues that may cause problems when characters are used in domain names, as part of their work of defining variant characters.

---

[8] *See* http://www.icann.org/en/topics/idn/implementation-guidelines.htm

To avoid user confusion due to differing practices across TLD registries, it is recommended that applicants cooperate with TLD operators that offer domain name registration with the same or visually similar characters.

As an example, languages or scripts are often shared across geographic boundaries. In some cases, this can cause confusion among the users of the corresponding language or script communities. Visual confusion can also exist in some instances between different scripts (for example, Greek, Cyrillic and Latin).

Applicants will be asked to describe the process used in developing the IDN tables submitted. ICANN may compare an applicant's IDN table with IDN tables for the same languages or scripts that already exist in the IANA repository or have been otherwise submitted to ICANN. If there are inconsistencies that have not been explained in the application, ICANN may ask the applicant to detail the rationale for differences. For applicants that wish to conduct and review such comparisons prior to submitting a table to ICANN, a table comparison tool will be available.

ICANN will accept the applicant's IDN tables based on the factors above.

Once the applied-for string has been delegated as a TLD in the root zone, the applicant is required to submit IDN tables for lodging in the IANA Repository of IDN Practices. For additional information, see existing tables at http://iana.org/domains/idn-tables/, and submission guidelines at http://iana.org/procedures/idn-repository.html.

1.3.3   IDN Variant TLDs

A variant TLD string results from the substitution of one or more characters in the applied-for gTLD string with variant characters based on the applicant's top level tables.

Each application contains one applied-for gTLD string. The applicant may also declare any variant strings for the TLD in its application. However, no variant gTLD strings will be delegated through the New gTLD Program until variant management solutions are developed and implemented.[9] Declaring variant strings is informative only and will not imply any right or claim to the declared variant strings.

---

[9] The ICANN Board directed that work be pursued on variant management in its resolution on 25 Sep 2010, http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.5.

When a variant delegation process is established, applicants may be required to submit additional information such as implementation details for the variant TLD management mechanism, and may need to participate in a subsequent evaluation process, which could contain additional fees and review steps.

The following scenarios are possible during the gTLD evaluation process:

a. Applicant declares variant strings to the applied-for gTLD string in its application. If the application is successful, the applied-for gTLD string will be delegated to the applicant. The declared variant strings are noted for future reference. These declared variant strings will not be delegated to the applicant along with the applied-for gTLD string, nor will the applicant have any right or claim to the declared variant strings.

   Variant strings listed in successful gTLD applications will be tagged to the specific application and added to a "Declared Variants List" that will be available on ICANN's website. A list of pending (i.e., declared) variant strings from the IDN ccTLD Fast Track is available at http://icann.org/en/topics/idn/fast-track/string-evaluation-completion-en.htm.

   ICANN may perform independent analysis on the declared variant strings, and will not necessarily include all strings listed by the applicant on the Declared Variants List.

b. Multiple applicants apply for strings that are identified by ICANN as variants of one another. These applications will be placed in a contention set and will follow the contention resolution procedures in Module 4.

c. Applicant submits an application for a gTLD string and does not indicate variants to the applied-for gTLD string. ICANN will not identify variant strings unless scenario (b) above occurs.

Each variant string declared in the application must also conform to the string requirements in section 2.2.1.3.2.

Variant strings declared in the application will be reviewed for consistency with the top-level tables submitted in the application. Should any declared variant strings not be

based on use of variant characters according to the submitted top-level tables, the applicant will be notified and the declared string will no longer be considered part of the application.

Declaration of variant strings in an application does not provide the applicant any right or reservation to a particular string. Variant strings on the Declared Variants List may be subject to subsequent additional review per a process and criteria to be defined.

It should be noted that while variants for second and lower-level registrations are defined freely by the local communities without any ICANN validation, there may be specific rules and validation criteria specified for variant strings to be allowed at the top level. It is expected that the variant information provided by applicants in the first application round will contribute to a better understanding of the issues and assist in determining appropriate review steps and fee levels going forward.

1.4   Submitting an Application

Applicants may complete the application form and submit supporting documents using ICANN's TLD Application System (TAS). To access the system, each applicant must first register as a TAS user.

As TAS users, applicants will be able to provide responses in open text boxes and submit required supporting documents as attachments. Restrictions on the size of attachments as well as the file formats are included in the instructions on the TAS site.

Except where expressly provided within the question, all application materials must be submitted in English.

ICANN will not accept application forms or supporting materials submitted through other means than TAS (that is, hard copy, fax, email), unless such submission is in accordance with specific instructions from ICANN to applicants.

1.4.1   Accessing the TLD Application System

The TAS site will be accessible from the New gTLD webpage (http://www.icann.org/en/topics/new-gtld-program.htm), and will be highlighted in communications regarding the opening of the application submission period. Users of TAS will be expected to agree to a standard set of terms of use

1-37

including user rights, obligations, and restrictions in relation to the use of the system.

1.4.1.1 User Registration

TAS user registration (creating a TAS user profile) requires submission of preliminary information, which will be used to validate the identity of the parties involved in the application. An overview of the information collected in the user registration process is below:

No.	Questions
1	Full legal name of Applicant
2	Principal business address
3	Phone number of Applicant
4	Fax number of Applicant
5	Website or URL, if applicable
6	Primary Contact: Name, Title, Address, Phone, Fax, Email
7	Secondary Contact: Name, Title, Address, Phone, Fax, Email
8	Proof of legal establishment
9	Trading, subsidiary, or joint venture information
10	Business ID, Tax ID, VAT registration number, or equivalent of Applicant
11	Applicant background: previous convictions, cybersquatting activities
12	Deposit payment confirmation and payer information

A subset of identifying information will be collected from the entity performing the user registration, in addition to the applicant information listed above. The registered user could be, for example, an agent, representative, or

employee who would be completing the application on behalf of the applicant.

The registration process will require the user to request the desired number of application slots. For example, a user intending to submit five gTLD applications would complete five application slot requests, and the system would assign the user a unique ID number for each of the five applications.

Users will also be required to submit a deposit of USD 5,000 per application slot. This deposit amount will be credited against the evaluation fee for each application. The deposit requirement is in place to help reduce the risk of frivolous access to the online application system.

After completing the registration, TAS users will receive access enabling them to enter the rest of the application information into the system. Application slots will be populated with the registration information provided by the applicant, which may not ordinarily be changed once slots have been assigned.

No new user registrations will be accepted after **23:59 UTC 29 March 2012.**

ICANN will take commercially reasonable steps to protect all applicant data submitted from unauthorized access, but cannot warrant against the malicious acts of third parties who may, through system corruption or other means, gain unauthorized access to such data.

1.4.1.2 Application Form

Having obtained the requested application slots, the applicant will complete the remaining application questions. An overview of the areas and questions contained in the form is shown here:

No.	Application and String Information
12	Payment confirmation for remaining evaluation fee amount
13	Applied-for gTLD string
14	IDN string information, if applicable
15	IDN tables, if applicable

16	Mitigation of IDN operational or rendering problems, if applicable
17	Representation of string in International Phonetic Alphabet (Optional)
18	Mission/purpose of the TLD
19	Is the application for a community-based TLD?
20	If community based, describe elements of community and proposed policies
21	Is the application for a geographic name? If geographic, documents of support required
22	Measures for protection of geographic names at second level
23	Registry Services: name and full description of all registry services to be provided
	Technical and Operational Questions (External)
24	Shared registration system (SRS) performance
25	EPP
26	Whois
27	Registration life cycle
28	Abuse prevention & mitigation
29	Rights protection mechanisms
30(a)	Security
	Technical and Operational Questions (Internal)
30(b)	Security
31	Technical overview of proposed registry
32	Architecture

33	Database capabilities
34	Geographic diversity
35	DNS service compliance
36	IPv6 reachability
37	Data backup policies and procedures
38	Escrow
39	Registry continuity
40	Registry transition
41	Failover testing
42	Monitoring and fault escalation processes
43	DNSSEC
44	IDNs (Optional)
	Financial Questions
45	Financial statements
46	Projections template: costs and funding
47	Costs: setup and operating
48	Funding and revenue
49	Contingency planning: barriers, funds, volumes
50	Continuity: continued operations instrument

1.4.2   *Customer Service during the Application Process*

Assistance will be available to applicants throughout the application process via the Applicant Service Center (ASC). The ASC will be staffed with customer service agents

to answer questions relating to the New gTLD Program, the application process, and TAS.

1.4.3 Backup Application Process

If the online application system is not available, ICANN will provide alternative instructions for submitting applications.

1.5 Fees and Payments

This section describes the fees to be paid by the applicant. Payment instructions are also included here.

1.5.1 gTLD Evaluation Fee

The gTLD evaluation fee is required from all applicants. This fee is in the amount of USD 185,000. The evaluation fee is payable in the form of a 5,000 deposit submitted at the time the user requests an application slot within TAS, and a payment of the remaining 180,000 submitted with the full application. ICANN will not begin its evaluation of an application unless it has received the full gTLD evaluation fee by **23:59 UTC 12 April 2012**.

The gTLD evaluation fee is set to recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions.

The gTLD evaluation fee covers all required reviews in Initial Evaluation and, in most cases, any required reviews in Extended Evaluation. If an extended Registry Services review takes place, an additional fee will be incurred for this review (see section 1.5.2). There is no additional fee to the applicant for Extended Evaluation for geographic names, technical and operational, or financial reviews.

Refunds -- In certain cases, refunds of a portion of the evaluation fee may be available for applications that are withdrawn before the evaluation process is complete. An applicant may request a refund at any time until it has executed a registry agreement with ICANN. The amount of the refund will depend on the point in the process at which the withdrawal is requested, as follows:

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 calendar days of a GAC Early	80%	USD 148,000

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Warning		
After posting of applications until posting of Initial Evaluation results	70%	USD 130,000
After posting Initial Evaluation results	35%	USD 65,000
After the applicant has completed Dispute Resolution, Extended Evaluation, or String Contention Resolution(s)	20%	USD 37,000
After the applicant has entered into a registry agreement with ICANN		None

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

An applicant that wishes to withdraw an application must initiate the process through TAS. Withdrawal of an application is final and irrevocable. Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank transfer or transaction fees incurred by ICANN, or any unpaid evaluation fees, will be deducted from the amount paid. Any refund paid will be in full satisfaction of ICANN's obligations to the applicant. The applicant will have no entitlement to any additional amounts, including for interest or currency exchange rate changes.

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

1-43

- 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[10] include:

- ***Registry Services Review Fee –*** If applicable, this fee is payable for additional costs incurred in referring an application to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review. Applicants will be notified if such a fee is due. The fee for a three-member RSTEP review team is anticipated to be USD 50,000. In some cases, five-member panels might be required, or there might be increased scrutiny at a greater cost. The amount of the fee will cover the cost of the RSTEP review. In the event that reviews of proposed registry services can be consolidated across multiple applications or applicants, ICANN will apportion the fees in an equitable manner. In every case, the applicant will be advised of the cost before initiation of the review. Refer to subsection 2.2.3 of Module 2 on Registry Services review.

---

[10] The estimated fee amounts provided in this section 1.5.2 will be updated upon engagement of panel service providers and establishment of fees.

- ***Dispute Resolution Filing Fee –*** This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable directly to the applicable dispute resolution service provider in accordance with the provider's payment instructions. ICANN estimates that filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.

- ***Advance Payment of Costs –*** In the event of a formal objection, this amount is payable directly to the applicable dispute resolution service provider in accordance with that provider's procedures and schedule of costs. Ordinarily, both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. In cases where disputes are consolidated and there are more than two parties involved, the advance payment will occur according to the dispute resolution service provider's rules.

  The prevailing party in a dispute resolution proceeding will have its advance payment refunded, while the non-prevailing party will not receive a refund and thus will bear the cost of the proceeding. In cases where disputes are consolidated and there are more than two parties involved, the refund of fees will occur according to the dispute resolution service provider's rules.

  ICANN estimates that adjudication fees for a proceeding involving a fixed amount could range from USD 2,000 to USD 8,000 (or more) per proceeding. ICANN further estimates that an hourly rate based proceeding with a one-member panel could range from USD 32,000 to USD 56,000 (or more) and with a three-member panel it could range from USD 70,000 to USD 122,000 (or more). These estimates may be lower if the panel does not call for written submissions beyond the objection and response, and does not allow a hearing. Please

refer to the appropriate provider for the relevant amounts or fee structures.

- ***Community Priority Evaluation Fee –*** In the event that the applicant participates in a community priority evaluation, this fee is payable as a deposit in an amount to cover the cost of the panel's review of that application (currently estimated at USD 10,000). The deposit is payable to the provider appointed to handle community priority evaluations. Applicants will be notified if such a fee is due. Refer to Section 4.2 of Module 4 for circumstances in which a community priority evaluation may take place. An applicant who scores at or above the threshold for the community priority evaluation will have its deposit refunded.

ICANN will notify the applicants of due dates for payment in respect of additional fees (if applicable). This list does not include fees (annual registry fees) that will be payable to ICANN following execution of a registry agreement.

1.5.3   Payment Methods

Payments to ICANN should be submitted by **wire transfer**. Instructions for making a payment by wire transfer will be available in TAS.[11]

Payments to Dispute Resolution Service Providers should be submitted in accordance with the provider's instructions.

1.5.4   Requesting a Remittance Form

The TAS interface allows applicants to request issuance of a remittance form for any of the fees payable to ICANN. This service is for the convenience of applicants that require an invoice to process payments.

1.6   Questions about this Applicant Guidebook

For assistance and questions an applicant may have in the process of completing the application form, applicants should use the customer support resources available via the ASC. Applicants who are unsure of the information being sought in a question or the parameters for acceptable documentation are encouraged to communicate these questions through the appropriate

---

[11] Wire transfer is the preferred method of payment as it offers a globally accessible and dependable means for international transfer of funds. This enables ICANN to receive the fee and begin processing applications as quickly as possible.
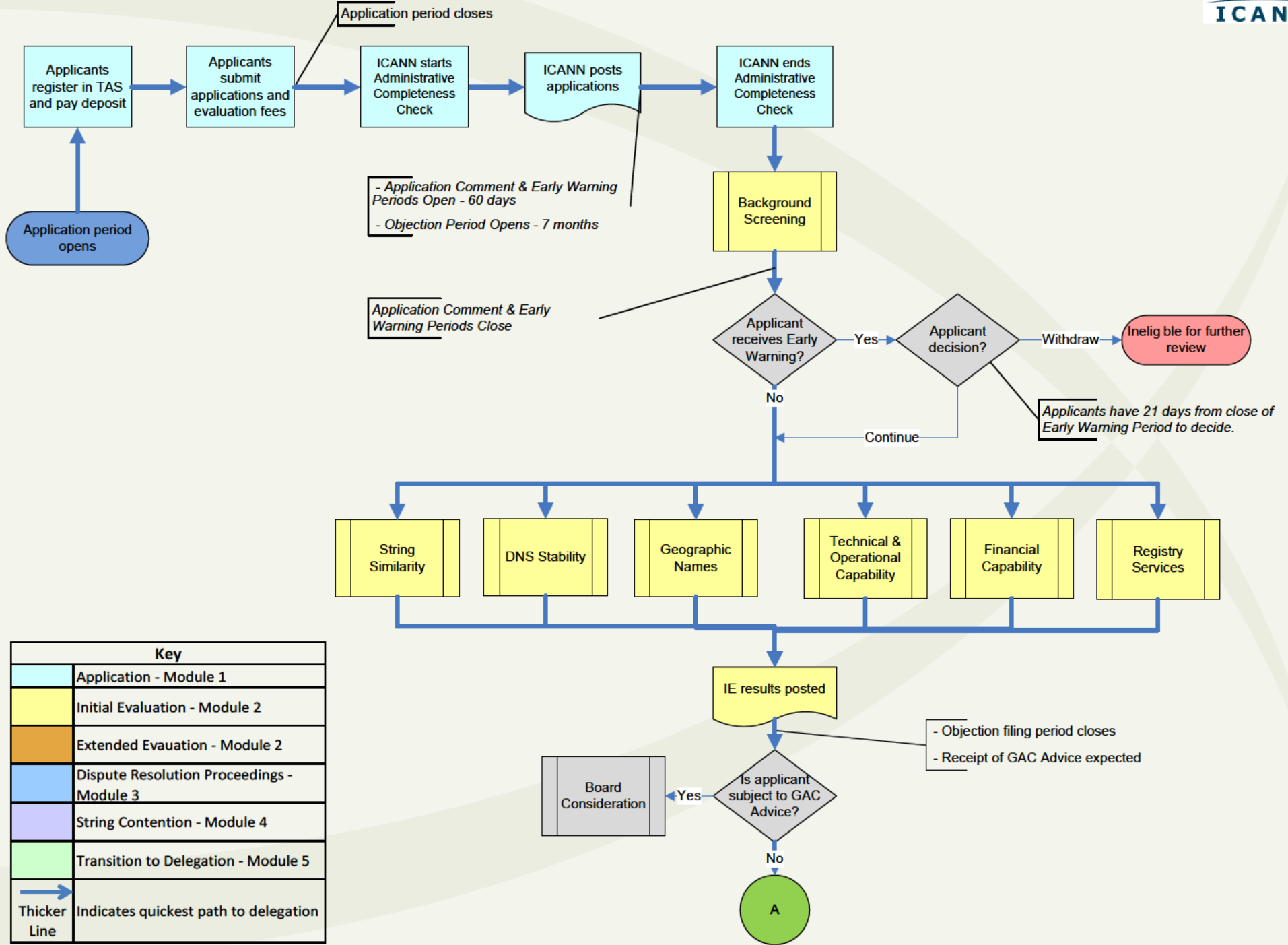
support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with processing the application.

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

All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted to the ASC. ICANN will not grant requests from applicants for personal or telephone consultations regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the ASC.

Answers to inquiries will only provide clarification about the application forms and procedures. ICANN will not provide consulting, financial, or legal advice.

DRAFT - New gTLD Program - Evaluation Process

ICANN

Applicants register in TAS and pay deposit → Applicants submit applications and evaluation fees → ICANN starts Administrative Completeness Check → ICANN posts applications → ICANN ends Administrative Completeness Check

Application period closes

Application period opens

- Application Comment & Early Warning Periods Open - 60 days
- Objection Period Opens - 7 months

Background Screening

Application Comment & Early Warning Periods Close

Applicant receives Early Warning? —Yes→ Applicant decision? —Withdraw→ Ineligible for further review

No

Continue

Applicants have 21 days from close of Early Warning Period to decide.

String Similarity | DNS Stability | Geographic Names | Technical & Operational Capability | Financial Capability | Registry Services

IE results posted

- Objection filing period closes
- Receipt of GAC Advice expected

Board Consideration ←Yes— Is applicant subject to GAC Advice?

No

A

Key

Key	
	Application - Module 1
	Initial Evaluation - Module 2
	Extended Evauation - Module 2
	Dispute Resolution Proceedings - Module 3
	String Contention - Module 4
	Transition to Delegation - Module 5
Thicker Line	Indicates quickest path to delegation

A

DRAFT - New gTLD Program - Evaluation Process, Page 2

ICANN

Extended Evaluation and Dispute Resolution will run concurrently

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.

Applicant passes all elements of Initial Evaluation? — No →

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

Yes ↓

Applicant passes all elements of Extended Evaluation? — Yes →

No ↓

Inelig ble for further review

Are there any objections? — No →

Yes →

- String Confusion proceedings
- Legal Rights proceedings
- Limited Public Interest proceedings
- Community Objection proceedings

Does applicant clear all objections? — No → / Yes →

Is there string contention? — No → / Yes ↓

Are applicants with contending strings able to self-resolve contention? — No → / Yes →

One or more community-based applicant(s) elected Community Priority? — Yes →

Community Priority Evaluation

Is there a clear winner? — No → / Yes →

No ↓

Auction proceedings → Successful applicant secures string →

Contract execution

Pre-delegation check

Delegation

gTLD Applicant Guidebook

(v. 2012-06-04)
Module 2

4 June 2012

Module 2

Evaluation Procedures

This module describes the evaluation procedures and criteria used to determine whether applied-for gTLDs are approved for delegation. All applicants will undergo an Initial Evaluation and those that do not pass all elements may request Extended Evaluation.

The first, required evaluation is the **Initial Evaluation**, during which ICANN assesses an applied-for gTLD string, an applicant's qualifications, and its proposed registry services.

The following assessments are performed in the **Initial Evaluation**:

- String Reviews

    - String similarity

    - Reserved names

    - DNS stability

    - Geographic names

- Applicant Reviews

    - Demonstration of technical and operational capability

    - Demonstration of financial capability

    - Registry services reviews for DNS stability issues

An application must pass all these reviews to pass the Initial Evaluation. Failure to pass any one of these reviews will result in a failure to pass the Initial Evaluation.

Extended Evaluation may be applicable in cases in which an applicant does not pass the Initial Evaluation. See Section 2.3 below.

2.1 *Background Screening*

Background screening will be conducted in two areas:

(a) General business diligence and criminal history; and

(b) History of cybersquatting behavior.

The application must pass both background screening areas to be eligible to proceed. Background screening results are evaluated according to the criteria described in section 1.2.1. Due to the potential sensitive nature of the material, applicant background screening reports will not be published.

The following sections describe the process ICANN will use to perform background screening.

2.1.1 General business diligence and criminal history

Applying entities that are publicly traded corporations listed and in good standing on any of the world's largest 25 stock exchanges (as listed by the World Federation of Exchanges) will be deemed to have passed the general business diligence and criminal history screening. The largest 25 will be based on the domestic market capitalization reported at the end of the most recent calendar year prior to launching each round.[1]

Before an entity is listed on an exchange, it must undergo significant due diligence including an investigation by the exchange, regulators, and investment banks. As a publicly listed corporation, an entity is subject to ongoing scrutiny from shareholders, analysts, regulators, and exchanges. All exchanges require monitoring and disclosure of material information about directors, officers, and other key personnel, including criminal behavior. In totality, these requirements meet or exceed the screening ICANN will perform.

For applicants not listed on one of these exchanges, ICANN will submit identifying information for the entity, officers, directors, and major shareholders to an international background screening service. The service provider(s) will use the criteria listed in section 1.2.1 and return results that match these criteria. Only publicly available information will be used in this inquiry.

ICANN is in discussions with INTERPOL to identify ways in which both organizations can collaborate in background screenings of individuals, entities and their identity documents consistent with both organizations' rules and regulations. Note that the applicant is expected to disclose potential problems in meeting the criteria in the application, and provide any clarification or explanation at the time of application submission. Results returned from

---

[1] See http://www.world-exchanges.org/statistics/annual/2010/equity-markets/domestic-market-capitalization

the background screening process will be matched with the disclosures provided by the applicant and those cases will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will generally pass this portion of the background screening.

2.1.2 *History of cybersquatting*

ICANN will screen applicants against UDRP cases and legal databases as financially feasible for data that may indicate a pattern of cybersquatting behavior pursuant to the criteria listed in section 1.2.1.

The applicant is required to make specific declarations regarding these activities in the application. Results returned during the screening process will be matched with the disclosures provided by the applicant and those instances will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will generally pass this portion of the background screening.

2.2   *Initial Evaluation*

The Initial Evaluation consists of two types of review. Each type is composed of several elements.

String review: The first review focuses on the applied-for gTLD string to test:

- Whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion;

- Whether the applied-for gTLD string might adversely affect DNS security or stability; and

- Whether evidence of requisite government approval is provided in the case of certain geographic names.

Applicant review: The second review focuses on the applicant to test:

- Whether the applicant has the requisite technical, operational, and financial capability to operate a registry; and

- Whether the registry services offered by the applicant might adversely affect DNS security or stability.

2.2.1 String Reviews

In the Initial Evaluation, ICANN reviews every applied-for gTLD string. Those reviews are described in greater detail in the following subsections.

2.2.1.1 String Similarity Review

This review involves a preliminary comparison of each applied-for gTLD string against existing TLDs, Reserved Names (see subsection 2.2.1.2), and other applied-for strings. The objective of this review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings.

Note: In this Applicant Guidebook, "similar" means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

The visual similarity check that occurs during Initial Evaluation is intended to augment the objection and dispute resolution process (see Module 3, Dispute Resolution Procedures) that addresses all types of similarity.

This similarity review will be conducted by an independent String Similarity Panel.

2.2.1.1.1 Reviews Performed

The String Similarity Panel's task is to identify visual string similarities that would create a probability of user confusion.

The panel performs this task of assessing similarities that would lead to user confusion in four sets of circumstances, when comparing:

- Applied-for gTLD strings against <u>existing TLDs</u> and <u>reserved names</u>;

- Applied-for gTLD strings against other <u>applied-for gTLD strings</u>;

- Applied-for gTLD strings against <u>strings requested as IDN ccTLDs; and</u>

- Applied-for 2-character IDN gTLD strings against:

  o Every other single character.

  o Any other 2-character ASCII string (to protect possible future ccTLD delegations).

Similarity to Existing TLDs or Reserved Names – This review involves cross-checking between each applied-for string and the lists of existing TLD strings and Reserved Names to determine whether two strings are so similar to one another that they create a probability of user confusion.

In the simple case in which an applied-for gTLD string is identical to an existing TLD or reserved name, the online application system will not allow the application to be submitted.

Testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. For example, protocols treat equivalent labels as alternative forms of the same label, just as "foo" and "Foo" are treated as alternative forms of the same label (RFC 3490).

All TLDs currently in the root zone can be found at http://iana.org/domains/root/db/.

IDN tables that have been submitted to ICANN are available at http://www.iana.org/domains/idn-tables/.

Similarity to Other Applied-for gTLD Strings (String Contention Sets) – All applied-for gTLD strings will be reviewed against one another to identify any similar strings. In performing this review, the String Similarity Panel will create contention sets that may be used in later stages of evaluation.

A contention set contains at least two applied-for strings identical or similar to one another. Refer to Module 4, String Contention Procedures, for more information on contention sets and contention resolution.

ICANN will notify applicants who are part of a contention set as soon as the String Similarity review is completed. (This provides a longer period for contending applicants to reach their own resolution before reaching the contention resolution stage.) These contention sets will also be published on ICANN's website.

Similarity to TLD strings requested as IDN ccTLDs -- Applied-for gTLD strings will also be reviewed for similarity to TLD strings requested in the IDN ccTLD Fast Track process (see http://www.icann.org/en/topics/idn/fast-track/). Should a conflict with a prospective fast-track IDN ccTLD be identified, ICANN will take the following approach to resolving the conflict.

2-6

If one of the applications has completed its respective process before the other is lodged, that TLD will be delegated. A gTLD application that has successfully completed all relevant evaluation stages, including dispute resolution and string contention, if applicable, and is eligible for entry into a registry agreement will be considered complete, and therefore would not be disqualified by a newly-filed IDN ccTLD request. Similarly, an IDN ccTLD request that has completed evaluation (i.e., is validated) will be considered complete and therefore would not be disqualified by a newly-filed gTLD application.

In the case where neither application has completed its respective process, where the gTLD application does not have the required approval from the relevant government or public authority, a validated request for an IDN ccTLD will prevail and the gTLD application will not be approved. The term "validated" is defined in the IDN ccTLD Fast Track Process Implementation, which can be found at http://www.icann.org/en/topics/idn.

In the case where a gTLD applicant has obtained the support or non-objection of the relevant government or public authority, but is eliminated due to contention with a string requested in the IDN ccTLD Fast Track process, a full refund of the evaluation fee is available to the applicant if the gTLD application was submitted prior to the publication of the ccTLD request.

Review of 2-character IDN strings — In addition to the above reviews, an applied-for gTLD string that is a 2-character IDN string is reviewed by the String Similarity Panel for visual similarity to:

a) Any one-character label (in any script), and

b) Any possible two-character ASCII combination.

An applied-for gTLD string that is found to be too similar to a) or b) above will not pass this review.

2.2.1.1.2   Review Methodology

The String Similarity Panel is informed in part by an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs and reserved names. The score will provide one objective measure for consideration by the panel, as part of the process of identifying strings likely to result in user confusion. In general, applicants should expect that a higher visual similarity score suggests a higher probability

that the application will not pass the String Similarity review. However, it should be noted that the score is only indicative and that the final determination of similarity is entirely up to the Panel's judgment.

The algorithm, user guidelines, and additional background information are available to applicants for testing and informational purposes.[2] Applicants will have the ability to test their strings and obtain algorithmic results through the application system prior to submission of an application.

The algorithm supports the common characters in Arabic, Chinese, Cyrillic, Devanagari, Greek, Japanese, Korean, and Latin scripts. It can also compare strings in different scripts to each other.

The panel will also take into account variant characters, as defined in any relevant language table, in its determinations. For example, strings that are not visually similar but are determined to be variant TLD strings based on an IDN table would be placed in a contention set. Variant TLD strings that are listed as part of the application will also be subject to the string similarity analysis.[3]

The panel will examine all the algorithm data and perform its own review of similarities between strings and whether they rise to the level of string confusion. In cases of strings in scripts not yet supported by the algorithm, the panel's assessment process is entirely manual.

The panel will use a common standard to test for whether string confusion exists, as follows:

Standard for String Confusion – String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

2.2.1.1.3 *Outcomes of the String Similarity Review*

An application that fails the String Similarity review due to similarity to an existing TLD will not pass the Initial Evaluation,

---

[2] *See* http://icann.sword-group.com/algorithm/

[3] In the case where an applicant has listed Declared Variants in its application (see subsection 1.3.3), the panel will perform an analysis of the listed strings to confirm that the strings are variants according to the applicant's IDN table. This analysis may include comparison of applicant IDN tables with other existing tables for the same language or script, and forwarding any questions to the applicant.

and no further reviews will be available. Where an application does not pass the String Similarity review, the applicant will be notified as soon as the review is completed.

An application for a string that is found too similar to another applied-for gTLD string will be placed in a contention set.

An application that passes the String Similarity review is still subject to objection by an existing TLD operator or by another gTLD applicant in the current application round. That process requires that a string confusion objection be filed by an objector having the standing to make such an objection. Such category of objection is not limited to visual similarity. Rather, confusion based on any type of similarity (including visual, aural, or similarity of meaning) may be claimed by an objector. Refer to Module 3, Dispute Resolution Procedures, for more information about the objection process.

An applicant may file a formal objection against another gTLD application on string confusion grounds. Such an objection may, if successful, change the configuration of the preliminary contention sets in that the two applied-for gTLD strings will be considered in direct contention with one another (see Module 4, String Contention Procedures). The objection process will not result in removal of an application from a contention set.

2.2.1.2   *Reserved Names and Other Unavailable Strings*

Certain names are not available as gTLD strings, as detailed in this section.

2.2.1.2.1 Reserved Names

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

Top-Level Reserved Names List

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.

2.2.1.2.2   Declared Variants

Names appearing on the Declared Variants List (see section 1.3.3) will be posted on ICANN's website and will be treated essentially the same as Reserved Names, until such time as variant management solutions are developed and variant TLDs are delegated. That is, an application for a gTLD string that is identical or similar to a string on the Declared Variants List will not pass this review.

2.2.1.2.3   Strings Ineligible for Delegation

The following names are prohibited from delegation as gTLDs in the initial application round. Future application rounds may differ according to consideration of further policy advice.

These names are not being placed on the Top-Level Reserved Names List, and thus are not part of the string similarity review conducted for names on that list. Refer to subsection 2.2.1.1: where applied-for gTLD strings are reviewed for similarity to existing TLDs and reserved names, the strings listed in this section are not reserved names and accordingly are not incorporated into this review.

Applications for names appearing on the list included in this section will not be approved.

2-10

International Olympic Committee		
OLYMPIC	OLYMPIAD	OLYMPIQUE
OLYMPIADE	OLYMPISCH	OLÍMPICO
OLIMPÍADA	أوليمبي	أوليمبياد
奥林匹克	奥林匹亚	奥林匹克
奧林匹亞	Ολυμπιακοί	Ολυμπιάδα
올림픽	올림피아드	Олимпийский
Олимпиада		
International Red Cross and Red Crescent Movement		
REDCROSS	REDCRESCENT	REDCRYSTAL
REDLIONANDSUN	MAGENDDAVIDADOM	REDSTAROFDAVID
CROIXROUGE	CROIX-ROUGE	CROISSANTROUGE
CROISSANT-ROUGE	CRISTALROUGE	CRISTAL-ROUGE
מגן דוד אדום	CRUZROJA	MEDIALUNAROJA
CRISTALROJO	Красный Крест	Красный Полумесяц
Красный Кристалл	الصليب الأحمر	الهلال الأحمر
البلورة الحمراء	الكريستلة الحمراء	紅十字
红十字	红新月	红新月
红水晶	红水晶	

2.2.1.3 *DNS Stability Review*

This review determines whether an applied-for gTLD string might cause instability to the DNS. In all cases, this will involve a review for conformance with technical and other requirements for gTLD strings (labels). In some exceptional cases, an extended review may be necessary to investigate possible technical stability problems with the applied-for gTLD string.

Note: All applicants should recognize issues surrounding invalid TLD queries at the root level of the DNS.

Any new TLD registry operator may experience unanticipated queries, and some TLDs may experience a non-trivial load of unanticipated queries. For more information, see the Security and Stability Advisory Committee (SSAC)'s report on this topic at http://www.icann.org/en/committees/security/sac045.pdf. Some publicly available statistics are also available at http://stats.l.root-servers.org/.

ICANN will take steps to alert applicants of the issues raised in SAC045, and encourage the applicant to prepare to minimize the possibility of operational difficulties that would pose a stability or availability problem for its registrants and users. However, this notice is merely an advisory to applicants and is not part of the evaluation, unless the string raises significant security or stability issues as described in the following section.

2.2.1.3.1 DNS Stability: String Review Procedure

New gTLD labels must not adversely affect the security or stability of the DNS. During the Initial Evaluation period, ICANN will conduct a preliminary review on the set of applied-for gTLD strings to:

- ensure that applied-for gTLD strings comply with the requirements provided in section 2.2.1.3.2, and

- determine whether any strings raise significant security or stability issues that may require further review.

There is a very low probability that extended analysis will be necessary for a string that fully complies with the string requirements in subsection 2.2.1.3.2 of this module. However, the string review process provides an additional safeguard if unanticipated security or stability issues arise concerning an applied-for gTLD string.

In such a case, the DNS Stability Panel will perform an extended review of the applied-for gTLD string during the Initial Evaluation period. The panel will determine whether the string fails to comply with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, and will report on its findings.

If the panel determines that the string complies with relevant standards and does not create the conditions

described above, the application will pass the DNS Stability review.

If the panel determines that the string does not comply with relevant technical standards, or that it creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, the application will not pass the Initial Evaluation, and no further reviews are available. In the case where a string is determined likely to cause security or stability problems in the DNS, the applicant will be notified as soon as the DNS Stability review is completed.

2.2.1.3.2 String Requirements

ICANN will review each applied-for gTLD string to ensure that it complies with the requirements outlined in the following paragraphs.

If an applied-for gTLD string is found to violate any of these rules, the application will not pass the DNS Stability review. No further reviews are available.

Part I -- Technical Requirements for all Labels (Strings) – The technical requirements for top-level domain labels follow.

1.1   The ASCII label (i.e., the label as transmitted on the wire) must be valid as specified in technical standards *Domain Names: Implementation and Specification* (RFC 1035), and *Clarifications to the DNS Specification* (RFC 2181) and any updates thereto. This includes the following:

    1.1.1   The label must have no more than 63 characters.

    1.1.2   Upper and lower case characters are treated as identical.

1.2   The ASCII label must be a valid host name, as specified in the technical standards *DOD Internet Host Table Specification* (RFC 952), *Requirements for Internet Hosts — Application and Support* (RFC 1123), and *Application Techniques for Checking and Transformation of Names (RFC 3696), Internationalized Domain Names in Applications (IDNA)(RFCs 5890-5894), and any updates thereto.* This includes the following:

    1.2.1   The ASCII label must consist entirely of letters (alphabetic characters a-z), or

2-13

      1.2.2   The label must be a valid IDNA A-label (further restricted as described in Part II below).

Part II -- Requirements for Internationalized Domain Names – These requirements apply only to prospective top-level domains that contain non-ASCII characters. Applicants for these internationalized top-level domain labels are expected to be familiar with the Internet Engineering Task Force (IETF) IDNA standards, Unicode standards, and the terminology associated with Internationalized Domain Names.

2.1   The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further restricted by the following, non-exhaustive, list of limitations:

    2.1.1   Must be a valid A-label according to IDNA.

    2.1.2   The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (accompanied by unambiguous contextual rules).[4]

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

    2.1.4   The U-label must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms.* See also examples in http://unicode.org/faq/normalization.html.

    2.1.5   The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.

2.2   The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names.* See http://www.icann.org/en/topics/idn/implementatio

---

[4] It is expected that conversion tools for IDNA will be available before the Application Submission period begins, and that labels will be checked for validity under IDNA. In this case, labels valid under the previous version of the protocol (IDNA2003) but not under IDNA will not meet this element of the requirements. Labels that are valid under both versions of the protocol will meet this element of the requirements. Labels valid under IDNA but not under IDNA2003 may meet the requirements; however, applicants are strongly advised to note that the duration of the transition period between the two protocols cannot presently be estimated nor guaranteed in any specific timeframe. The development of support for IDNA in the broader software applications environment will occur gradually. During that time, TLD labels that are valid under IDNA, but not under IDNA2003, will have limited functionality.

n-guidelines.htm. This includes the following, non-exhaustive, list of limitations:

2.2.1   All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property (See http://www.unicode.org/reports/tr24/).

2.2.2   Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table are clearly defined.

Part III - Policy Requirements for Generic Top-Level Domains – These requirements apply to all prospective top-level domain strings applied for as gTLDs.

3.1   Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard.

3.2   Applied-for gTLD strings in IDN scripts must be composed of two or more visually distinct characters in the script, as appropriate.[5] Note, however, that a two-character IDN string will not be approved if:

3.2.1   It is visually similar to any one-character label (in any script); or

3.2.2   It is visually similar to any possible two-character ASCII combination.

See the String Similarity review in subsection 2.2.1.1 for additional information on this requirement.

---

[5] Note that the Joint ccNSO-GNSO IDN Working Group (JIG) has made recommendations that this section be revised to allow for single-character IDN gTLD labels. See the JIG Final Report at http://gnso.icann.org/drafts/jig-final-report-30mar11-en.pdf. Implementation models for these recommendations are being developed for community discussion.

2.2.1.4   *Geographic Names Review*

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

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

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

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

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

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

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

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

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

---

[6] Country and territory names are excluded from the process based on advice from the Governmental Advisory Committee in recent communiqués providing interpretation of Principle 2.2 of the GAC Principles regarding New gTLDs to indicate that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccPDP, and other geographic strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

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

vii.   it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization.

2.2.1.4.2 *Geographic Names Requiring Government Support*

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

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

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

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

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

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

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

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

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

Strings that include but do not match a geographic name (as defined in this section) will not be considered geographic names as defined by section 2.2.1.4.2, and therefore will not require documentation of government support in the evaluation process.

---

[7] City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

[8] *See* http://www.unesco.org/new/en/unesco/worldwide/.

[9] *See* http://unstats.un.org/unsd/methods/m49/m49regin.htm.

For each application, the Geographic Names Panel will determine which governments are relevant based on the inputs of the applicant, governments, and its own research and analysis. In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

- identify whether its applied-for gTLD string falls into any of the above categories; and

- identify and consult with the relevant governments or public authorities; and

- identify which level of government support is required.

Note: the level of government and which administrative agency is responsible for the filing of letters of support or non-objection is a matter for each national administration to determine. Applicants should consult within the relevant jurisdiction to determine the appropriate level of support.

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

2.2.1.4.3 Documentation Requirements

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant

2-19

Governmental Advisory Committee (GAC) representative.[10]

The letter must clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and its intended use.

The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.)

A sample letter of support is available as an attachment to this module.

Applicants and governments may conduct discussions concerning government support for an application at any time. Applicants are encouraged to begin such discussions at the earliest possible stage, and enable governments to follow the processes that may be necessary to consider, approve, and generate a letter of support or non-objection.

It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.

It is also possible that a government may withdraw its support for an application at a later time, including after the new gTLD has been delegated, if the registry operator has deviated from the conditions of original support or non-objection. Applicants should be aware that ICANN has committed to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, **ICANN will comply with a legally binding order** from a court in the jurisdiction of the government or public authority that has given support to an application.

2.2.1.4.4 *Review Procedure for Geographic Names*

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic

---

[10] *See* https://gacweb.icann.org/display/gacweb/GAC+Members

name, and verify the relevance and authenticity of the supporting documentation where necessary.

The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the application will not pass the Geographic Names review and will be denied. No additional reviews will be available.

For any application where the GNP determines that the applied-for gTLD string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.

The GNP may communicate with the signing entity of the letter to confirm their intent and their understanding of the terms on which the support for an application is given.

In cases where an applicant has not provided the required documentation, the applicant will be contacted and notified of the requirement, and given a limited time frame to provide the documentation. If the applicant is able to provide the documentation before the close of the Initial Evaluation period, and the documentation is found to meet the requirements, the applicant will pass the Geographic Names review. If not, the applicant will have additional time to obtain the required documentation; however, if the applicant has not produced the required documentation by the required date (at least 90 calendar days from the date of notice), the application will be considered incomplete and will be ineligible for further review. The applicant may reapply in subsequent application rounds, if desired, subject to the fees and requirements of the specific application rounds.

If there is more than one application for a string representing a certain geographic name as described in this section, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. If the applicants have not reached a resolution by either the date of the end of the application round (as announced by ICANN), or the date on which ICANN opens a subsequent application round, whichever comes first, the applications will be rejected and applicable refunds will be available to applicants according to the conditions described in section 1.5.

However, in the event that a contention set is composed of multiple applications with documentation of support from the same government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation.

If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the string contention will be resolved using the string contention procedures described in Module 4.

2.2.2   Applicant Reviews

Concurrent with the applied-for gTLD string reviews described in subsection 2.2.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

2.2.2.1   Technical/Operational Review

In its application, the applicant will respond to a set of questions (see questions 24 – 44 in the Application Form) intended to gather information about the applicant's technical capabilities and its plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete

a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

2.2.2.2 Financial Review

In its application, the applicant will respond to a set of questions (see questions 45-50 in the Application Form) intended to gather information about the applicant's financial capabilities for operation of a gTLD registry and its financial planning in preparation for long-term stability of the new gTLD.

Because different registry types and purposes may justify different responses to individual questions, evaluators will pay particular attention to the consistency of an application across all criteria. For example, an applicant's scaling plans identifying system hardware to ensure its capacity to operate at a particular volume level should be consistent with its financial plans to secure the necessary equipment. That is, the evaluation criteria scale with the applicant plans to provide flexibility.

2.2.2.3 Evaluation Methodology

Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews, according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

The evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators. These communications will occur via TAS. Unless otherwise noted, such communications will include a 2-week deadline for the applicant to respond. Any supplemental information provided by the applicant will become part of the application.

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made

available in the application and submitted by the due date, unless explicitly requested by the evaluators.

2.2.3   Registry Services Review

Concurrent with the other reviews that occur during the Initial Evaluation period, ICANN will review the applicant's proposed registry services for any possible adverse impact on security or stability. The applicant will be required to provide a list of proposed registry services in its application.

2.2.3.1   Definitions

Registry services are defined as:

1. operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement;

2. other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and

3. any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

Proposed registry services will be examined to determine if they might raise significant stability or security issues. Examples of services proposed by existing registries can be found at http://www.icann.org/en/registries/rsep/. In most cases, these proposed services successfully pass this inquiry.

Registry services currently provided by gTLD registries can be found in registry agreement appendices. See http://www.icann.org/en/registries/agreements.htm.

A full definition of registry services can be found at http://www.icann.org/en/registries/rsep/rsep.html.

For purposes of this review, security and stability are defined as follows:

Security – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or

2-24

resources on the Internet by systems operating in accordance with all applicable standards.

Stability – an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator's delegation information or provisioning services.

2.2.3.2   Customary Services

The following registry services are customary services offered by a registry operator:

- Receipt of data from registrars concerning registration of domain names and name servers

- Dissemination of TLD zone files

- Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois)

- DNS Security Extensions

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

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

2.2.3.3   TLD Zone Contents

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

- Apex SOA record.

- Apex NS records and in-bailiwick glue for the TLD's DNS servers.

2-25

- NS records and in-bailiwick glue for DNS servers of registered names in the TLD.

- DS records for registered names in the TLD.

- Records associated with signing the TLD zone (i.e., RRSIG, DNSKEY, NSEC, and NSEC3).

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

2.2.3.4   *Methodology*

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

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

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

2.2.4   *Applicant's Withdrawal of an Application*

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

2.3   Extended Evaluation

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

- Geographic names (refer to subsection 2.2.1.4). There is no additional fee for an extended evaluation in this instance.

- Demonstration of technical and operational capability (refer to subsection 2.2.2.1). There is no additional fee for an extended evaluation in this instance.

- Demonstration of financial capability (refer to subsection 2.2.2.2). There is no additional fee for an extended evaluation in this instance.

- Registry services (refer to subsection 2.2.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

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

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

2.3.1   Geographic Names Extended Evaluation

In the case of an application that has been identified as a geographic name requiring government support, but where the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the Initial Evaluation period, the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation.

If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in

section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 calendar days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.

2.3.2 *Technical/Operational or Financial Extended Evaluation*

The following applies to an Extended Evaluation of an applicant's technical and operational capability or financial capability, as described in subsection 2.2.2.

An applicant who has requested Extended Evaluation will again access the online application system (TAS) and clarify its answers to those questions or sections on which it received a non-passing score (or, in the case of an application where individual questions were passed but the total score was insufficient to pass Initial Evaluation, those questions or sections on which additional points are possible). The answers should be responsive to the evaluator report that indicates the reasons for failure, or provide any amplification that is not a material change to the application. Applicants may not use the Extended Evaluation period to substitute portions of new information for the information submitted in their original applications, i.e., to materially change the application.

An applicant participating in an Extended Evaluation on the Technical / Operational or Financial reviews will have the option to have its application reviewed by the same evaluation panelists who performed the review during the Initial Evaluation period, or to have a different set of panelists perform the review during Extended Evaluation.

The Extended Evaluation allows an additional exchange of information between the evaluators and the applicant to further clarify information contained in the application. This supplemental information will become part of the application record. Such communications will include a deadline for the applicant to respond.

ICANN will notify applicants at the end of the Extended Evaluation period as to whether they have passed. If an application passes Extended Evaluation, it continues to the next stage in the process. If an application does not pass Extended Evaluation, it will proceed no further. No further reviews are available.

2.3.3   Registry Services Extended Evaluation

This section applies to Extended Evaluation of registry services, as described in subsection 2.2.3.

If a proposed registry service has been referred to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review, the RSTEP will form a review team of members with the appropriate qualifications.

The review team will generally consist of three members, depending on the complexity of the registry service proposed. In a 3-member panel, the review could be conducted within 30 to 45 calendar days. In cases where a 5-member panel is needed, this will be identified before the extended evaluation starts. In a 5-member panel, the review could be conducted in 45 calendar days or fewer.

The cost of an RSTEP review will be covered by the applicant through payment of the Registry Services Review Fee. Refer to payment procedures in section 1.5 of Module 1. The RSTEP review will not commence until payment has been received.

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant's registry agreement with ICANN. If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD. In this instance, an applicant has 15 calendar days to notify ICANN of its intent to proceed with the application. If an applicant does not explicitly provide such notice within this time frame, the application will proceed no further.

2.4   Parties Involved in Evaluation

A number of independent experts and groups play a part in performing the various reviews in the evaluation process. A brief description of the various panels, their evaluation roles, and the circumstances under which they work is included in this section.

2.4.1 Panels and Roles

The **String Similarity Panel** will assess whether a proposed gTLD string creates a probability of user confusion due to similarity with any reserved name, any existing TLD, any requested IDN ccTLD, or any new gTLD string applied for in the current application round. This occurs during the String Similarity review in Initial Evaluation. The panel may also review IDN tables submitted by applicants as part of its work.

The **DNS Stability Panel** will determine whether a proposed string might adversely affect the security or stability of the DNS. This occurs during the DNS Stability String review in Initial Evaluation.

The **Geographic Names Panel** will review each application to determine whether the applied-for gTLD represents a geographic name, as defined in this guidebook. In the event that the string is a geographic name requiring government support, the panel will ensure that the required documentation is provided with the application and verify that the documentation is from the relevant governments or public authorities and is authentic.

The **Technical Evaluation Panel** will review the technical components of each application against the criteria in the Applicant Guidebook, along with proposed registry operations, in order to determine whether the applicant is technically and operationally capable of operating a gTLD registry as proposed in the application. This occurs during the Technical/Operational reviews in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Financial Evaluation Panel** will review each application against the relevant business, financial and organizational criteria contained in the Applicant Guidebook, to determine whether the applicant is financially capable of maintaining a gTLD registry as proposed in the application. This occurs during the Financial review in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Registry Services Technical Evaluation Panel (RSTEP)** will review proposed registry services in the application to determine if they pose a risk of a meaningful adverse impact on security or stability. This occurs, if applicable, during the Extended Evaluation period.

Members of all panels are required to abide by the established Code of Conduct and Conflict of Interest guidelines included in this module.

2.4.2 Panel Selection Process

ICANN has selected qualified third-party providers to perform the various reviews, based on an extensive selection process.[11] In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:

- The provider must be able to convene – or have the capacity to convene - globally diverse panels and be able to evaluate applications from all regions of the world, including applications for IDN gTLDs.

- The provider should be familiar with the IETF IDNA standards, Unicode standards, relevant RFCs and the terminology associated with IDNs.

- The provider must be able to scale quickly to meet the demands of the evaluation of an unknown number of applications. At present it is not known how many applications will be received, how complex they will be, and whether they will be predominantly for ASCII or non-ASCII gTLDs.

- The provider must be able to evaluate the applications within the required timeframes of Initial and Extended Evaluation.

2.4.3 Code of Conduct Guidelines for Panelists

The purpose of the New gTLD Program ("Program") Code of Conduct ("Code") is to prevent real and apparent conflicts of interest and unethical behavior by any Evaluation Panelist ("Panelist").

Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected

---

[11] http://newgtlds.icann.org/about/evaluation-panels-selection-process

to be guided by the following principles in carrying out their respective responsibilities. This Code is intended to summarize the principles and nothing in this Code should be considered as limiting duties, obligations or legal requirements with which Panelists must comply.

Bias -- Panelists shall:

- not advance personal agendas or non-ICANN approved agendas in the evaluation of applications;

- examine facts as they exist and not be influenced by past reputation, media accounts, or unverified statements about the applications being evaluated;

- exclude themselves from participating in the evaluation of an application if, to their knowledge, there is some predisposing factor that could prejudice them with respect to such evaluation; and

- exclude themselves from evaluation activities if they are philosophically opposed to or are on record as having made generic criticism about a specific type of applicant or application.

Compensation/Gifts -- Panelists shall not request or accept any compensation whatsoever or any gifts of substance from the Applicant being reviewed or anyone affiliated with the Applicant. (Gifts of substance would include any gift greater than USD 25 in value).

If the giving of small tokens is important to the Applicant's culture, Panelists may accept these tokens; however, the total of such tokens must not exceed USD 25 in value. If in doubt, the Panelist should err on the side of caution by declining gifts of any kind.

Conflicts of Interest -- Panelists shall act in accordance with the "New gTLD Program Conflicts of Interest Guidelines" (see subsection 2.4.3.1).

Confidentiality -- Confidentiality is an integral part of the evaluation process. Panelists must have access to sensitive information in order to conduct evaluations. Panelists must maintain confidentiality of information entrusted to them by ICANN and the Applicant and any other confidential information provided to them from whatever source,

2-32

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:

  o Director, officer, or employee, or in any capacity equivalent to that of a member of management of the Applicant;

  o Promoter, underwriter, or voting trustee of the Applicant; or

  o 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

gTLD application restrictions on country or territory names are tied to listing in property fields of the ISO 3166-1 standard. Notionally, the ISO 3166-1 standard has an "English short name" field which is the common name for a country and can be used for such protections; however, in some cases this does not represent the common name. This registry seeks to add additional protected elements which are derived from definitions in the ISO 3166-1 standard. An explanation of the various classes is included below.

Separable Country Names List

Code	English Short Name	Cl.	Separable Name
ax	Åland Islands	B1	Åland
as	American Samoa	C	Tutuila
		C	Swain's Island
ao	Angola	C	Cabinda
ag	Antigua and Barbuda	A	Antigua
		A	Barbuda
		C	Redonda Island
au	Australia	C	Lord Howe Island
		C	Macquarie Island
		C	Ashmore Island
		C	Cartier Island
		C	Coral Sea Islands
bo	Bolivia, Plurinational State of	B1	Bolivia
bq	Bonaire, Sint Eustatius and Saba	A	Bonaire
		A	Sint Eustatius
		A	Saba
ba	Bosnia and Herzegovina	A	Bosnia
		A	Herzegovina
br	Brazil	C	Fernando de Noronha Island
		C	Martim Vaz Islands
		C	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
mk	Macedonia, the Former Yugoslav Republic of	B1	**
my	Malaysia	C	Sabah
		C	Sarawak
mh	Marshall Islands	C	Jaluit
			Kwajalein
			Majuro
mu	Mauritius	C	Agalega Islands
		C	Cargados Carajos Shoals
		C	Rodrigues Island
fm	Micronesia, Federated States of	B1	Micronesia

		C	Caroline Islands (see also pw)
		C	Chuuk
		C	Kosrae
		C	Pohnpei
		C	Yap
md	Moldova, Republic of	B1	Moldova
		C	Moldava
nc	New Caledonia	C	Loyalty Islands
mp	Northern Mariana Islands	C	Mariana Islands
		C	Saipan
om	Oman	C	Musandam Peninsula
pw	Palau	C	Caroline Islands (see also fm)
		C	Babelthuap
ps	Palestinian Territory, Occupied	B1	Palestine
pg	Papua New Guinea	C	Bismarck Archipelago
		C	Northern Solomon Islands
		C	Bougainville
pn	Pitcairn	C	Ducie Island
		C	Henderson Island
		C	Oeno Island
re	Réunion	C	Bassas da 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, in the event of a dispute between [government/public authority] and the applicant, ICANN will comply with a legally binding order from a court in the jurisdiction of [government/public authority].

[Optional] This application is being submitted as a community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the application. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.

[Optional] I can advise that in the event that this application is successful [government/public authority] will enter into a separate agreement with the applicant. This agreement will outline the conditions under which we support them in the operation of the TLD, and circumstances under which we would withdraw that support. ICANN will not be a party to this agreement, and enforcement of this agreement lies fully with [government/public authority].

[Government / public authority] understands that the Geographic Names Panel engaged by ICANN will, among other things, conduct due diligence on the authenticity of this documentation. I would request that if additional information is required during this process, that [name and contact details] be contacted in the first instance.

Thank you for the opportunity to support this application.

Yours sincerely

Signature from relevant government/public authority

Attachment to Module 2

Evaluation Questions and Criteria

Since ICANN was founded in 1998 as a not-for-profit, multi-stakeholder organization, one of its key mandates has been to promote competition in the domain name market. ICANN's mission specifically calls for the corporation to maintain and build on processes that will ensure competition and consumer interests – without compromising Internet security and stability. This includes the consideration and implementation of new gTLDs. It is ICANN's goal to make the criteria and evaluation as objective as possible.

While new gTLDs are viewed by ICANN as important to fostering choice, innovation and competition in domain registration services, the decision to launch these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community.

Any public or private sector organization can apply to create and operate a new gTLD. However the process is not like simply registering or buying a second-level domain name. Instead, the application process is to evaluate and select candidates capable of running a registry, a business that manages top level domains such as, for example, .COM or .INFO. Any successful applicant will need to meet published operational and technical criteria in order to preserve Internet stability and interoperability.

I. Principles of the Technical and Financial New gTLD Evaluation Criteria

- Principles of conservatism. This is the first round of what is to be an ongoing process for the introduction of new TLDs, including Internationalized Domain Names. Therefore, the criteria in this round require applicants to provide a thorough and thoughtful analysis of the technical requirements to operate a registry and the proposed business model.

- The <u>criteria and evaluation should be as objective as possible</u>.

  - With that goal in mind, an important objective of the new TLD process is to <u>diversify the namespace</u>, 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 <u>provide for an objective evaluation framework, but allow for adaptation according to the differing models applicants will present</u>. Within that framework, applicant responses will be evaluated against the criteria in light of the proposed model.

  - Therefore the <u>criteria should be flexible</u>: 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 <u>objective in areas of registrant protection</u>, 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 <u>balance</u> between establishing the business and technical competence of the applicant to operate a registry (to <u>serve the interests of registrants</u>), 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 <u>DNS stability and security</u>. 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.

- <u>Registrant protection</u> is emphasized in both the criteria and the scoring. Examples of this include asking the applicant to:

  - Plan for the <u>occurrence of contingencies and registry failure</u> 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 <u>protections through the marketplace</u>,
  - Adhere <u>to DNS stability and security requirements</u> as described in the technical section, and
  - Provide <u>access</u> to the widest variety of services.

II. *Aspects of the Questions Asked in the Application and Evaluation Criteria*

The technical and financial questions are intended to inform and guide the applicant in aspects of registry start-up and operation. The established registry operator should find the questions straightforward while inexperienced applicants should find them a natural part of planning.

Evaluation and scoring (detailed below) will emphasize:

- How thorough are the answers? Are they well thought through and do they provide a sufficient basis for evaluation?

- Demonstration of the ability to operate and fund the registry on an ongoing basis:

  - Funding sources to support technical operations in a manner that ensures stability and security and supports planned expenses,
  - Resilience and sustainability in the face of ups and downs, anticipation of contingencies,
  - Funding to carry on operations in the event of failure.

- Demonstration that the technical plan will likely deliver on best practices for a registry and identification of aspects that might raise DNS stability and security issues.

- Ensures plan integration, consistency and compatibility (responses to questions are not evaluated individually but in comparison to others):
  - Funding adequately covers technical requirements,
  - Funding covers costs,
  - Risks are identified and addressed, in comparison to other aspects of the plan.

III. *Scoring*

Evaluation

- The questions, criteria, scoring and evaluation methodology are to be conducted in accordance with the principles described earlier in section I. With that in mind, globally diverse evaluation panelists will staff evaluation panels. The diversity of evaluators and access to experts in all regions of the world will ensure application evaluations take into account cultural, technical and business norms in the regions from which applications originate.

- Evaluation teams will consist of two independent panels. One will evaluate the applications against the financial criteria. The other will evaluate the applications against the technical & operational criteria. Given the requirement that technical and financial planning be well integrated, the panels will work together and coordinate information transfer where necessary. Other relevant experts (e.g., technical, audit, legal, insurance, finance) in pertinent regions will provide advice as required.

- Precautions will be taken to ensure that no member of the Evaluation Teams will have any interest or association that may be viewed as a real or potential conflict of interest with an applicant or application. All members must adhere to the Code of Conduct and Conflict of Interest guidelines that are found in Module 2.

- Communications between the evaluation teams and the applicants will be through an online interface. During the evaluation, evaluators may pose a set of clarifying questions to an applicant, to which the applicant may respond through the interface.

Confidentiality: ICANN will post applications after the close of the application submission period. The application form notes which parts of the application will be posted.

Scoring

- Responses will be evaluated against each criterion. A score will be assigned according to the scoring schedule linked to each question or set of questions. In several questions, 1 point is the maximum score that may be awarded. In several other questions, 2 points are awarded for a response that exceeds requirements, 1 point is awarded for a response that meets requirements and 0 points are awarded for a response that fails to meet requirements. Each question must receive at least a score of "1," making each a "pass/fail" question.

- In the Continuity question in the financial section(see Question #50), up to 3 points are awarded if an applicant provides, at the application stage, a financial instrument that will guarantee ongoing registry operations in the event of a business failure. This extra

point can serve to guarantee passing the financial criteria for applicants who score the minimum passing score for each of the individual criteria. The purpose of this weighting is to reward applicants who make early arrangements for the protection of registrants and to accept relatively riskier business plans where registrants are protected.

- There are 21 Technical & Operational questions. Each question has a criterion and scoring associated with it. The scoring for each is 0, 1, or 2 points as described above. One of the questions (IDN implementation) is optional. Other than the optional questions, all Technical & Operational criteria must be scored a 1 or more or the application will fail the evaluation.

- The total technical score must be equal to or greater than 22 for the application to pass. That means the applicant can pass by:

  - Receiving a 1 on all questions, including the optional question, and a 2 on at least one mandatory question; or
  - Receiving a 1 on all questions, excluding the optional question and a 2 on at least two mandatory questions.

  This scoring methodology requires a minimum passing score for each question and a slightly higher average score than the per question minimum to pass.

- There are six Financial questions and six sets of criteria that are scored by rating the answers to one or more of the questions. For example, the question concerning registry operation costs requires consistency between the technical plans (described in the answers to the Technical & Operational questions) and the costs (described in the answers to the costs question).

- The scoring for each of the Financial criteria is 0, 1 or 2 points as described above with the exception of the Continuity question, for which up to 3 points are possible. All questions must receive at least a 1 or the application will fail the evaluation.

- The total financial score on the six criteria must be 8 or greater for the application to pass. That means the applicant can pass by:

  - Scoring a 3 on the continuity criteria, or
  - Scoring a 2 on any two financial criteria.

- Applications that do not pass Initial Evaluation can enter into an extended evaluation process as described in Module 2. The scoring is the same.

Instructions: TLD Applicant – Financial Projections

The application process requires the applicant to submit two cash basis Financial Projections.

The first projection (Template 1) should show the Financial Projections associated with the Most Likely scenario expected. This projection should include the forecasted registration volume, registration fee, and all costs and capital expenditures expected during the start-up period and during the first three years of operations. Template 1 relates to Question 46 (Projections Template) in the application.

We also ask that applicants show as a separate projection (Template 2) the Financial Projections associated with a realistic Worst Case scenario. Template 2 relates to Question 49 (Contingency Planning) in the application.

For each Projection prepared, please include Comments and Notes on the bottom of the projection (in the area provided) to provide those reviewing these projections with information regarding:

1. Assumptions used, significant variances in Operating Cash Flows and Capital Expenditures from year-to-year;
2. How you plan to fund operations;
3. Contingency planning

As you complete Template 1 and Template 2, please reference data points and/or formulas used in your calculations (where appropriate).

Section I – Projected Cash inflows and outflows

Projected Cash Inflows

Lines A and B. Provide the number of forecasted registrations and the registration fee for years 1, 2, and 3. Leave the *Start-up* column blank. The start-up period is for cash costs and capital expenditures only; there should be no cash projections input to this column.

Line C. Multiply lines A and B to arrive at the *Registration Cash Inflow* for line C.

Line D. Provide projected cash inflows from any other revenue source for years 1, 2, and 3. For any figures provided on line *D*, please disclose the source in the *Comments/Notes* box of Section I. Note, do not include funding in Line *D as that is covered in Section VI*.

Line E. Add lines *C* and *D* to arrive at the total cash inflow.

Projected Operating Cash Outflows

Start up costs - For all line items (F thru L) Please describe the total period of time this start-up cost is expected to cover in the *Comments/Notes* box.

Line F. Provide the projected labor costs for marketing, customer support, and technical support for start-up, year 1, year 2, and year 3. Note, other labor costs should be put in line *L* (*Other Costs*) and specify the type of labor and associated projected costs in the *Comments/Notes* box of this section.

Line G. *Marketing Costs* represent the amount spent on advertising, promotions, and other marketing activities. This amount should not include labor costs included in Marketing Labor (line *F)*.

Lines H through K. Provide projected costs for facilities, G&A, interests and taxes, and Outsourcing for start-up as well as for years 1, 2, and 3. Be sure to list the type of activities that are being outsourced. You may combine certain activities from the same provider as long as an appropriate description of the services being combined is listed in the *Comments/Notes* box.

Line L. Provide any other projected operating costs for start-up, year 1, year 2, year 3. Be sure to specify the type of cost in the *Comments/Notes* box.

Line M. Add lines *F* through *L* to arrive at the total costs for line *M*.

Line N. Subtract line *E* from line *M* to arrive at the projected net operation number for line *N*.

Section IIa – Breakout of Fixed and Variable Operating Cash Outflows

Line A. Provide the projected variable operating cash outflows including labor and other costs that are not fixed in nature. Variable operating cash outflows are expenditures that fluctuate in relationship with increases or decreases in production or level of operations.

Line B. Provide the projected fixed operating cash outflows. Fixed operating cash outflows are expenditures that do not generally fluctuate in relationship with increases or decreases in production or level of operations. Such costs are generally necessary to be incurred in order to operate the base line operations of the organization or are expected to be incurred based on contractual commitments.

Line C – Add lines *A* and *B* to arrive at total Fixed and Variable Operating Cash Outflows for line *C*. This must equal Total Operating Cash Outflows from Section I, Line *M*.

Section IIb – Breakout of Critical Registry Function Operating Cash Outflows

Lines A – E. Provide the projected cash outflows for the five critical registry functions. If these functions are outsourced, the component of the outsourcing fee representing these functions must be separately identified and provided. These costs are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50.

Line F. If there are other critical registry functions based on the applicant's registry business model then the projected cash outflow for this function must be provided with a description added to the *Comment/Notes* box. This projected cash outflow may also be included in the 3-year reserve.

Line G. Add lines *A* through *F* to arrive at the Total Critical Registry Function Cash Outflows.

Section III – Projected Capital Expenditures

Lines A through C. Provide projected hardware, software, and furniture & equipment capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Provide any projected capital expenditures as a result of outsourcing. This should be included for start-up and years 1, 2, and 3. Specify the type of expenditure and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section III.

Line E – Please describe "other" capital expenditures in the *Comments/Notes* box.

Line F. Add lines *A* through *E* to arrive at the Total Capital Expenditures.

Section IV – Projected Assets & Liabilities

Lines A through C. Provide projected cash, account receivables, and other current assets for start-up as well as for years 1, 2, and 3. For *Other Current Assets*, specify the type of asset and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Add lines *A*, *B*, *C* to arrive at the Total Current Assets.

Lines E through G. Provide projected accounts payable, short-term debt, and other current liabilities for start-up as well as for years 1, 2, and 3. For *Other Current Liabilities*, specify the type of liability and describe the total period of time the start-up up cost is expected to cover in the *Comments/Notes* box.

Line H. Ad lines *E* through *G* to arrive at the total current liabilities.

Lines I through K. Provide the projected fixed assets (PP&E), the 3-year reserve, and long-term assets for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line L. Ad lines *I* through *K* to arrive at the total long-term assets.

Line M. Provide the projected long-term debt for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box

Section V – Projected Cash Flow

Cash flow is driven by *Projected Net Operations* (Section I), *Projected Capital Expenditures* (Section III), and *Projected Assets & Liabilities* (Section IV).

Line A. Provide the projected net operating cash flows for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line B. Provide the projected capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section V.

Lines C through F. Provide the projected change in non-cash current assets, total current liabilities, debt adjustments, and other adjustments for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line G. Add lines *A* through *F* to arrive at the projected net cash flow for line *H*.

Section VI – Sources of Funds

Lines A & B. Provide projected funds from debt and equity at start-up. Describe the sources of debt and equity funding as well as the total period of time the start-up is expected to cover in the *Comments/Notes* box. Please also provide evidence the funding (e.g., letter of commitment).

Line C. Add lines *A* and *B* to arrive at the total sources of funds for line *C*.

General Comments – Regarding Assumptions Used, Significant Variances Between Years, etc.

Provide explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding.

General Comments – Regarding how the Applicant Plans to Fund Operations

Provide general comments explaining how you will fund operations. Funding should be explained in detail in response to question 48.

General Comments – Regarding Contingencies

Provide general comments to describe your contingency planning. Contingency planning should be explained in detail in response to question 49.

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

In local currency (unless noted otherwise)

Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3	Comments / Notes
			Live / Operational			
I) Projected Cash Inflows and Outflows						
A) Forecasted registration volume		-	62 000	81 600	105 180	Registration was forecasted based on recent market surveys which we have attached and disccused below.
B) Registration fee		$ -	$ 5.00 $	5.50 $	6.05	We do not anticipate sign ficant increases in Registration Fees subsequent to year 3.
C) Registration cash inflows	A * B	-	310 000	448 800	636 339	
D) Other cash inflows		-	35 000	48 000	62 000	Other cash inflows represent advertising monies expected from display ads on our website.
E) Total Cash Inflows		-	345 000	496 800	698 339	
Projected Operating Cash Outflows						
F) Labor:						
i) Marketing Labor		25 000	66 000	72 000	81 000	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) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						Provide a list and associated cost for each outsourced function.
i) Hot site maintenance		5 000	7 500	7 500	7 500	Outsourcing hot site to ABC Company cost based on number of servers hosted and customer support
ii) Partial Registry Functions		32 000	37 500	41 000	43 000	Outsourced certain registry and other functions to ABC registry (applicant shou d list outsourced functions). Costs for each year are based on expected domains under management
iii) {list type of activities being outsourced}		-	-	-	-	
iv) {list type of activities being outsourced}		-	-	-	-	
v) {list type of activities being outsourced}		-	-	-	-	
vi) {list type of activities being outsourced}		-	-	-	-	
L) Other Operating Costs		12 200	18 000	21 600	25 920	
M) Total Operating Cash Outflows		199 700	437 000	450 800	493 260	
N) Projected Net Operating Cash flow	E - M	(199 700)	(92 000)	46 000	205 079	
IIa) Break out of Fixed and Variable Operating Cash Outflows						
A) Total Variable Operating Costs		92 000	195 250	198 930	217 416	Variable Costs: -Start Up equals all labor plus 75% of marketing. -Years 1 through 3 equal 75% of all labor plus 50% of Marketing and 30% of G&A and Other Operating Costs
B) Total Fixed Operating Costs		107 700	241 750	251 870	275 844	Fixed Costs: equals Total Costs less Variable Costs
C) Total Operating Cash Outflows	= Sec. I) M	199 700	437 000	450 800	493 260	
	CHECK	-	-	-	-	Check that II) C equals I) N.
IIb) Break out of Critical Registry Function Operating Cash Outflows						Note: these are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50
A) Operation of SRS			5 000	5 500	6 050	Commensurate with Question 24
B) Provision of Whois			6 000	6 600	7 260	Commensurate with Question 26
C) DNS Resolution for Registered Domain Names			7 000	7 700	8 470	Commensurate with Question 35
D) Registry Data Escrow			8 000	8 800	9 680	Commensurate with Question 38
E) Maintenance of Zone in accordance with DNSSEC			9 000	9 900	10 890	Commensurate with Question 43
F) Other						
G) Total Critical Function Cash Outflows		-	35 000	38 500	42 350	
		-	-			
III) Projected Capital Expenditures						
A) Hardware		98 000	21 000	16 000	58 000	-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 l fe of 5 years
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
i)		-	-	-	-	List and describe each identifiable type of outsourcing.
ii)		-	-	-	-	List and describe each identifiable type of outsourcing.
iii)		-	-	-	-	List and describe each identifiable type of outsourcing.
iv)		-	-	-	-	List and describe each identifiable type of outsourcing.
v)		-	-	-	-	List and describe each identifiable type of outsourcing.
vi)		-	-	-	-	List and describe each identifiable type of outsourcing.
E) Other Capital Expenditures						
F) Total Capital Expenditures		173 000	61 000	54 000	85 000	
IV) Projected Assets & Liabilities						
A) Cash		668 300	474 300	413 00	471 679	
B) Accounts receivable			70 000	106 000	160 000	
C) Other current assets			40 000	60 000	80 000	
D) Total Current Assets		668 300	584 300	579 00	711 679	
E) Accounts payable		41 000	110 000	113 000	125 300	
F) Short-term Debt						
G) Other Current Liabilities						
H) Total Current Liabilities		41 000	110 000	113 000	125 300	
I) Total Property, Plant & Equipment (PP&E)	= Sec III) F: cumulative Prior Years Cur Yr	173 000	234 000	288 000	373 000	
J) 3-year Reserve		186 000	186 000	186 000	186 000	Should equal amount calculated for Question 50
K) Other Long-term Assets						
L) Total Long-term Assets		359 000	420 000	474 000	559 000	
M) Total Long-term Debt		1 000 000	1 000 000	1 000 000	1 000 000	Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest wi l be paid as incurred and is reflected in Sec I) J.
V) Projected Cash flow (excl. 3-year Reserve)						
A) Net operating cash flows	= Sec. I) N	(199 700)	(92 000)	46 000	205 079	
B) Capital expenditures	= Sec. III) FE	(173 000)	(61 000)	(54 000)	(85 000)	
C) Change in Non Cash Current Assets	= Sec. IV) (B C): Prior Yr - Cur Yr	n/a	(110 000)	(56 000)	(74 000)	
D) Change in Total Current Liab lities	= Sec. IV) H: 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 Liabi ities where Prior Year is subtracted from the Current year
E) Debt Adjustments	= Sec IV) F and M: Cur Yr - Prior Yr	n/a	-	-	-	
F) Other Adjustments						
G) Projected Net Cash flow		(331,700)	(194,000)	(61,000)	58,379	
VI) Sources of funds						
A) Debt:						
i) On-hand at time of application		1 000 000				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. These volume assumptions are based on the attached (i) market data and (ii) published benchmark regsitry growth. Fee assumptions are aligned with the growth plan and anticipated demand based on the registration curve. We anticipate our costs will increase at a controlled pace over the first three years except for marketing costs which will be higher in the start-up and first year as we establish our brand name and work to increase registrations. Operating costs are supported by the attached (i) benchmark report for a basket of similar registries and (ii) a build-up of costs based on our current operations. Our capital expenditures will be greatest in the start-up phase and then our need to invest in computer hardware and software will level off after the start-up period. Capital expenses are based on contract drafts and discussions held with vendors. We have included and referenced the hardware costs to support the estimates. Our investment in Furniture and Equipment will be greatest in the start-up period as we build our infrastructure and then decrease in the following periods.
Start-up: Our start-up phase is anticpated to comprise [X] months in line with benchmark growth curves indicated by prior start-ups and published market data. Our assumptions were derived from the attached support.

Comments regarding how the Applicant plans to Fund operations:

We have recently negotiated a line of credit with XYZ Bank (a copy of the fully executed line of credit agreement has been included with our application) and this funding will allow us to purchase necessary equipment and pay for employees and other Operating Costs during our start-up period and the first few years of operations. We expect that our business operation wi l be self funded (i.e. revenue from operations will cover all anticipated costs and capital expenditures) by the second half of our second year in operation; we also expect to become profitable with positive cash flow in year three.

General Comments regarding contingencies:

Although we expect to be cash flow positive by the end of year 2 the recently negotiated line of credit will cover our operating costs for the first 4 years of operation if necessary. We have also entered into an agreement with XYZ Co. to assume our registrants should our business model not have the ability to sustain itself in future years. Agreement with XYZ Co. has been included with our application. A full description of risks and a range of potential outcomes and impacts are included in our responses to Question 49. These responses have quantified the impacts of certain probabilites and our negotiated funding and action plans as shown are adequate to fund our our Worst Case Scenerio

Sec.	In local currency (unless noted otherwise)	Reference / Formula	Start-up Costs	Live / Operational			Comments / Notes
				Year 1	Year 2	Year 3	Provide name of local currency used.
I) Projected Cash inflows and outflows							
	A) Forecasted registration volume						
	B) Registration fee						
	C) Registration cash inflows			-	-	-	
	D) Other cash inflows						
	E) Total Cash Inflows		-	-	-	-	
	Projected Operating Cash Outflows						
	F) Labor:						
	i) Marketing Labor						
	ii) Customer Support Labor						
	iii) Technical Labor						
	G) Marketing						
	H) Facilities						
	I) General & Administrative						
	J) Interest and Taxes						
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
	i) {list type of activities being outsourced}						
	ii) {list type of activities being outsourced}						
	iii) {list type of activities being outsourced}						
	iv) {list type of activities being outsourced}						
	v) {list type of activities being outsourced}						
	vi) {list type of activities being outsourced}						
	L) Other Operating costs						
	M) Total Operating Cash Outflows		-	-	-	-	
	N) Projected Net Operating Cash flow		-	-	-	-	
IIa) Break out of Fixed and Variable Operating Cash Outflows							
	A) Total Variable Operating Costs						
	B) Total Fixed Operating Costs						
	C) Total Operating Cash Outflows		-	-	-	-	
		CHECK	-	-	-	-	
IIb) Break out of Critical Function Operating Cash Outflows							
	A) Operation of SRS						
	B) Provision of Whois						
	C) DNS Resolution for Registered Domain Names						
	D) Registry Data Escrow						
	E) Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows		-	-	-	-	
	H) 3-year Total		-				
III) Projected Capital Expenditures							
	A) Hardware						
	B) Software						
	C) Furniture & Other Equipment						
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
	i)						
	ii)						
	iii)						
	iv)						
	v)						
	vi)						
	E) Other Capital Expenditures						
	F) Total Capital Expenditures		-	-	-	-	
IV) Projected Assets & Liabilities							
	A) Cash						
	B) Accounts receivable						
	C) Other current assets						
	D) Total Current Assets		-	-	-	-	
	E) Accounts payable						
	F) Short-term Debt						
	G) Other Current Liabilities						
	H) Total Current Liabilities		-	-	-	-	
	I) Total Property, Plant & Equipment (PP&E)		-	-	-	-	
	J) 3-year Reserve			-	-	-	
	K) Other Long-term Assets						
	L) Total Long-term Assets		-	-	-	-	
	M) Total Long-term Debt						
V) Projected Cash flow (excl. 3-year Reserve)							
	A) Net operating cash flows		-	-	-	-	
	C) Capital expenditures		-	-	-	-	
	D) Change in Non Cash Current Assets		n/a	-	-	-	
	E) Change in Total Current Liabilities		-	-	-	-	
	F) Debt Adjustments		n/a	-	-	-	
	G) Other Adjustments						
	H) Projected Net Cash flow		-	-	-	-	
VI) Sources of funds							
	A) Debt:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	B) Equity:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds		-				

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

Comments regarding how the Applicant plans to Fund operations:

General Comments regarding contingencies:

Sec.		Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3		Comments / Notes
	In local currency (unless noted otherwise)			**Live / Operational**				Provide name of local currency used.
I) Projected Cash inflows and outflows								
	A) Forecasted registration volume							
	B) Registration fee							
	C) Registration cash inflows			-	-	-		
	D) Other cash inflows							
	E) Total Cash Inflows		-	-	-	-		
Projected Operating Cash Outflows								
	F) Labor:							
	i) Marketing Labor							
	ii) Customer Support Labor							
	iii) Technical Labor							
	G) Marketing							
	H) Facilities							
	I) General & Administrative							
	J) Interest and Taxes							
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):							
	i) {list type of activities being outsourced}							
	ii) {list type of activities being outsourced}							
	iii) {list type of activities being outsourced}							
	iv) {list type of activities being outsourced}							
	v) {list type of activities being outsourced}							
	vi) {list type of activities being outsourced}							
	L) Other Operating costs							
	M) Total Operating Cash Outflows		-	-	-	-		
	N) Projected Net Operating Cash flow		-	-	-	-		
IIa) Break out of Fixed and Variable Operating Cash Outflows								
	A) Total Variable Operating Costs							
	B) Total Fixed Operating Costs							
	C) Total Operating Cash Outflows		-	-	-	-		
		CHECK	-	-	-	-		
IIb) Break out of Critical Function Operating Cash Outflows								
	A) Operation of SRS							
	B) Provision of Whois							
	C) DNS Resolution for Registered Domain Names							
	D) Registry Data Escrow							
	E) Maintenance of Zone in accordance with DNSSEC							
	G) Total Critical Registry Function Cash Outflows		-	-	-	-		
	H) 3-year Total		-					
III) Projected Capital Expenditures								
	A) Hardware							
	B) Software							
	C) Furniture & Other Equipment							
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)							
	i)							
	ii)							
	iii)							
	iv)							
	v)							
	vi)							
	E) Other Capital Expenditures							
	F) Total Capital Expenditures		-	-	-	-		
IV) Projected Assets & Liabilities								
	A) Cash							
	B) Accounts receivable							
	C) Other current assets							
	D) Total Current Assets		-	-	-	-		
	E) Accounts payable							
	F) Short-term Debt							
	G) Other Current Liabilities							
	H) Total Current Liabilities		-	-	-	-		
	I) Total Property, Plant & Equipment (PP&E)		-	-	-	-		
	J) 3-year Reserve			-	-	-		
	K) Other Long-term Assets							
	L) Total Long-term Assets		-	-	-	-		
	M) Total Long-term Debt							
V) Projected Cash flow (excl. 3-year Reserve)								
	A) Net operating cash flows			-	-	-	-	
	C) Capital expenditures			-	-	-	-	
	D) Change in Non Cash Current Assets		n/a	-	-	-		
	E) Change in Total Current Liabilities			-	-	-	-	
	F) Debt Adjustments		n/a	-	-	-		
	G) Other Adjustments							
	H) Projected Net Cash flow		-	-	-	-		
VI) Sources of funds								
	A) Debt:							
	i) On-hand at time of application							
	ii) Contingent and/or committed but not yet on-hand							
	B) Equity:							
	i) On-hand at time of application							
	ii) Contingent and/or committed but not yet on-hand							
	C) Total Sources of funds		-					

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

Comments regarding how the Applicant plans to Fund operations:

General Comments regarding contingencies:

gTLD Applicant Guidebook

(v. 2012-06-04)
Module 3

4 June 2012

Module 3

Objection Procedures

This module describes two types of mechanisms that may affect an application:

I. The procedure by which ICANN's Governmental Advisory Committee may provide <u>GAC Advice on New gTLDs</u> to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.

II. The <u>dispute resolution procedure</u> triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

   This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

   All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

3.1   GAC Advice on New gTLDs

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

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns

raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

II. The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

3.2 Public Objection and Dispute Resolution Process

The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts.

A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.

As described in section 3.1 above, ICANN's Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to the grounds for objection enumerated in the public objection and dispute resolution process.

3.2.1 Grounds for Objection

A formal objection may be filed on any one of the following four grounds:

String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.

Legal Rights Objection – The applied-for gTLD string infringes the existing legal rights of the objector.

Limited Public Interest Objection – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

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

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see

3-4

http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm.

3.2.2   Standing to Object

Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round. In the case where an IDN ccTLD Fast Track request has been submitted before the public posting of gTLD applications received, and the Fast Track requestor wishes to file a string confusion objection to a gTLD application, the Fast Track requestor will be granted standing.
Legal rights	Rightsholders
Limited public interest	No limitations on who may file – however, subject to a "quick look" designed for early conclusion of frivolous and/or abusive objections
Community	Established institution associated with a clearly delineated community

3.2.2.1   String Confusion Objection

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.

- Any gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation.

In the case where an existing TLD operator successfully asserts string confusion with an applicant, the application will be rejected.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible

outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures). If an objection by one gTLD applicant to another gTLD application is unsuccessful, the applicants may both move forward in the process without being considered in direct contention with one another.

3.2.2.2   Legal Rights Objection

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

An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name[1]:

a) An international treaty between or among national governments must have established the organization; and

b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.

3.2.2.3   Limited Public Interest Objection

Anyone may file a Limited Public Interest Objection. Due to the inclusive standing base, however, objectors are subject to a "quick look" procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.

A Limited Public Interest objection would be manifestly unfounded if it did not fall within one of the categories that have been defined as the grounds for such an objection (see subsection 3.5.3).

A Limited Public Interest objection that is manifestly unfounded may also be an abuse of the right to object. An objection may be framed to fall within one of the

---

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

accepted categories for Limited Public Interest objections, but other facts may clearly show that the objection is abusive. For example, multiple objections filed by the same or related parties against a single applicant may constitute harassment of the applicant, rather than a legitimate defense of legal norms that are recognized under general principles of international law. An objection that attacks the applicant, rather than the applied-for string, could be an abuse of the right to object.[2]

The quick look is the Panel's first task, after its appointment by the DRSP and is a review on the merits of the objection. The dismissal of an objection that is manifestly unfounded and/or an abuse of the right to object would be an Expert Determination, rendered in accordance with Article 21 of the New gTLD Dispute Resolution Procedure.

In the case where the quick look review does lead to the dismissal of the objection, the proceedings that normally follow the initial submissions (including payment of the full advance on costs) will not take place, and it is currently contemplated that the filing fee paid by the applicant would be refunded, pursuant to Procedure Article 14(e).

3.2.2.4   Community Objection

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. To qualify for standing for a community objection, the objector must prove both of the following:

---

[2] The jurisprudence of the European Court of Human Rights offers specific examples of how the term "manifestly ill-founded" has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides: "The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application." The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court's website http://www.echr.coe.int.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. E.g., Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility of an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: Décision sur la recevabilité de la requête no 65831/01 présentée par Roger Garaudy contre la France (2003); Décision sur la recevabilité de la requête no 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal (2004).

The jurisprudence of the European Court of Human Rights also provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR Article 35(3). See, for example, Décision partielle sur la recevabilité de la requête no 61164/00 présentée par Gérard Duringer et autres contre la France et de la requête no 18589/02 contre la France (2003).

It is an established institution – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;

- Length of time the institution has been in existence; and

- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

It has an ongoing relationship with a clearly delineated community – Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;

- Institutional purpose related to the benefit of the associated community;

- Performance of regular activities that benefit the associated community; and

- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

3.2.3 *Dispute Resolution Service Providers*

To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.

- The International Centre for Dispute Resolution has agreed to administer disputes brought pursuant to string confusion objections.

- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed to administer disputes brought pursuant to legal rights objections.

- The International Center of Expertise of the International Chamber of Commerce has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest[3] followed by dialogue with those candidates who responded. The call for expressions of interest specified several criteria for providers, including established services, subject matter expertise, global capacity, and operational capabilities. An important aspect of the selection process was the ability to recruit panelists who will engender the respect of the parties to the dispute.

3.2.4   Options in the Event of Objection

Applicants whose applications are the subject of an objection have the following options:

The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;

The applicant can file a response to the objection and enter the dispute resolution process (refer to Section 3.2); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

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

3.2.5   Independent Objector

A formal objection to a gTLD application may also be filed by the Independent Objector (IO). The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet.

In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of Limited Public Interest and Community.

---

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

Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest.

Mandate and Scope - The IO may file objections against "highly objectionable" gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Limited Public Interest objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2).

The IO may file a Limited Public Interest objection against an application even if a Community objection has been filed, and vice versa.

The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed.

Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.

The IO may consider public comment when making an independent assessment whether an objection is warranted. The IO will have access to application comments received during the comment period.

In light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.

Selection – The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant. The Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant.

Although recommendations for IO candidates from the community are welcomed, the IO must be and remain independent and unaffiliated with any of the gTLD applicants. The various rules of ethics for judges and international arbitrators provide models for the IO to declare and maintain his/her independence.

3-10

The IO's (renewable) tenure is limited to the time necessary to carry out his/her duties in connection with a single round of gTLD applications.

Budget and Funding – The IO's budget would comprise two principal elements: (a) salaries and operating expenses, and (b) dispute resolution procedure costs – both of which should be funded from the proceeds of new gTLD applications.

As an objector in dispute resolution proceedings, the IO is required to pay filing and administrative fees, as well as advance payment of costs, just as all other objectors are required to do. Those payments will be refunded by the DRSP in cases where the IO is the prevailing party.

In addition, the IO will incur various expenses in presenting objections before DRSP panels that will not be refunded, regardless of the outcome. These expenses include the fees and expenses of outside counsel (if retained) and the costs of legal research or factual investigations.

3.3   *Filing Procedures*

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

- Objections; and

- Responses to objections.

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

Note that the rules and procedures of each DRSP specific to each objection ground must also be followed. See http://newgtlds.icann.org/en/program-status/objection-dispute-resolution.

3.3.1   *Objection Filing Procedures*

The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. Should an applicant wish to file a formal objection to another gTLD application, it would follow these same procedures.

- All objections must be filed electronically with the appropriate DRSP by the posted deadline date.

Objections will not be accepted by the DRSPs after this date.

- All objections must be filed in English.

- Each objection must be filed separately. An objector wishing to object to several applications must file a separate objection and pay the accompanying filing fees for each application that is the subject of an objection. If an objector wishes to object to an application on more than one ground, the objector must file separate objections and pay the accompanying filing fees for each objection ground.

Each objection filed by an objector must include:

- The name and contact information of the objector.

- A statement of the objector's basis for standing; that is, why the objector believes it meets the standing requirements to object.

- A description of the basis for the objection, including:

  - A statement giving the specific ground upon which the objection is being filed.

  - A detailed explanation of the validity of the objection and why it should be upheld.

- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

An objector must provide copies of all submissions to the DRSP associated with the objection proceedings to the applicant.

The DRSP will publish, and regularly update a list on its website identifying all objections as they are filed. ICANN will post on its website a notice of all objections filed once the objection filing period has closed.

3.3.2 Objection Filing Fees

At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will

3-12

dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

Funding from ICANN for objection filing fees, as well as for advance payment of costs (see subsection 3.4.7 below) is available to the At-Large Advisory Committee (ALAC). Funding for ALAC objection filing and dispute resolution fees is contingent on publication by ALAC of its approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require: bottom-up development of potential objections, discussion and approval of objections at the Regional At-Large Organization (RALO) level, and a process for consideration and approval of the objection by the At-Large Advisory Committee.

Funding from ICANN for objection filing fees, as well as for advance payment of costs, is available to individual national governments in the amount of USD 50,000 with the guarantee that a minimum of one objection per government will be fully funded by ICANN where requested. ICANN will develop a procedure for application and disbursement of funds.

Funding available from ICANN is to cover costs payable to the dispute resolution service provider and made directly to the dispute resolution service provider; it does not cover other costs such as fees for legal advice.

3.3.3 Response Filing Procedures

Upon notification that ICANN has published the list of all objections filed (refer to subsection 3.3.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.

- Each response must be filed separately. That is, an applicant responding to several objections must file a separate response and pay the accompanying filing fee to respond to each objection.

- Responses must be filed electronically.

Each response filed by an applicant must include:

- The name and contact information of the applicant.

- A point-by-point response to the claims made by the objector.

- Any copies of documents that it considers to be a basis for the response.

Responses are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

Each applicant must provide copies of all submissions to the DRSP associated with the objection proceedings to the objector.

3.3.4 Response Filing Fees

At the time an applicant files its response, it is required to pay a filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded, which will result in the objector prevailing.

3.4 Objection Processing Overview

The information below provides an overview of the process by which DRSPs administer dispute proceedings that have been initiated. For comprehensive information, please refer to the New gTLD Dispute Resolution Procedure (included as an attachment to this module).

3.4.1 Administrative Review

Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's right to submit a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for filing an objection.

3.4.2 Consolidation of Objections

Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections. The DRSP shall endeavor to decide upon

consolidation prior to issuing its notice to applicants that the response should be filed and, where appropriate, shall inform the parties of the consolidation in that notice.

An example of a circumstance in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable.

3.4.3   *Mediation*

The parties to a dispute resolution proceeding are encouraged—but not required—to participate in mediation aimed at settling the dispute. Each DRSP has experts who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel constituted to issue an expert determination in the related dispute.

There are no automatic extensions of time associated with the conduct of negotiations or mediation. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. Absent exceptional circumstances, the parties must limit their requests for extension to 30 calendar days.

The parties are free to negotiate without mediation at any time, or to engage a mutually acceptable mediator of their own accord.

3.4.4   Selection of Expert Panels

A panel will consist of appropriately qualified experts appointed to each proceeding by the designated DRSP. Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.

There will be one expert in proceedings involving a string confusion objection.

There will be one expert, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes in proceedings involving an existing legal rights objection.

There will be three experts recognized as eminent jurists of international reputation, with expertise in relevant fields as appropriate, in proceedings involving a Limited Public Interest objection.

There will be one expert in proceedings involving a community objection.

Neither the experts, the DRSP, ICANN, nor their respective employees, directors, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

3.4.5   Adjudication

The panel may decide whether the parties shall submit any written statements in addition to the filed objection and response, and may specify time limits for such submissions.

In order to achieve the goal of resolving disputes rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the panel may require a party to produce additional evidence.

Disputes will usually be resolved without an in-person hearing. The panel may decide to hold such a hearing only in extraordinary circumstances.

3.4.6   Expert Determination

The DRSPs' final expert determinations will be in writing and will include:

- A summary of the dispute and findings;

- An identification of the prevailing party; and

- The reasoning upon which the expert determination is based.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.

3.4.7 Dispute Resolution Costs

Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while Limited Public Interest and community objection proceedings will involve hourly rates charged by the panelists.

Within ten (10) calendar days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant. Each party must make its advance payment within ten (10) calendar days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DSRP will sustain the objection and no fees paid by the applicant will be refunded.

3-17

After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

3.5 Dispute Resolution Principles (Standards)

Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

3.5.1 String Confusion Objection

A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

3.5.2 Legal Rights Objection

In interpreting and giving meaning to GNSO Recommendation 3 ("Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law"), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector's registered or unregistered trademark or service mark ("mark") or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector's mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector's mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.

2. Whether the objector's acquisition and use of rights in the mark has been bona fide.

3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.

4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.

5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.

6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.

7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.

8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

In the case where a legal rights objection has been filed by an IGO, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO;

2. Historical coexistence of the IGO and the applicant's use of a similar name or acronym. Factors considered may include:

   a. Level of global recognition of both entities;

   b. Length of time the entities have been in existence;

   c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6*ter* of the Paris Convention for the Protection of Industrial Property.

3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym;

4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide; and

5. Whether the applicant's intended use of the applied-for gTLD would create a likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

3.5.3   Limited Public Interest Objection

An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)

- The International Covenant on Civil and Political Rights (ICCPR)

- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

- The International Convention on the Elimination of All Forms of Racial Discrimination

- Declaration on the Elimination of Violence against Women

- The International Covenant on Economic, Social, and Cultural Rights

- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

- Slavery Convention

- Convention on the Prevention and Punishment of the Crime of Genocide

- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a Limited Public Interest objection.

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;

- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of

discrimination that violate generally accepted legal norms recognized under principles of international law;

- Incitement to or promotion of child pornography or other sexual abuse of children; or

- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

3.5.4 Community Objection

The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and

- Community opposition to the application is substantial; and

- There is a strong association between the community invoked and the applied-for gTLD string; and

- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. Each of these tests is described in further detail below.

Community – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;

- The level of formal boundaries around the community and what persons or entities are considered to form the community;

- The length of time the community has been in existence;

- The global distribution of the community (this may not apply if the community is territorial); and

- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

Substantial Opposition – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;

- The representative nature of entities expressing opposition;

- Level of recognized stature or weight among sources of opposition;

- Distribution or diversity among sources of expressions of opposition, including:

  - Regional

  - Subsectors of community

  - Leadership of community

  - Membership of community

- Historical defense of the community in other contexts; and

- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

Targeting – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be

balanced by a panel to determine this include but are not limited to:

- Statements contained in application;

- Other public statements by the applicant;

- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

Detriment – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

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

- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;

- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;

- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;

- Dependence of the community represented by the objector on the DNS for its core activities;

- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and

- Level of certainty that alleged detrimental outcomes would occur.

3-24

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

The objector must meet all four tests in the standard for the objection to prevail.

DRAFT - New gTLD Program – Objection and Dispute Resolution

Objection filing period opens

Party with standing files objection directly with Dispute Resolution Service Provider (DRSP) for these grounds:

- *String Confusion*
- *Legal Rights*
- *Limited Public Interest; and/or*
- *Community*

Objector pays filing fee directly to DRSP

Objections specific to Limited Public Interest are subject to a "quick look," designed to identify and eliminate frivolous and/or abusive objections

No – 7 Days to Correct

Objection filed with correct DRSP?

Yes

Administrative Review of objections

Objection dismissed ←No— Objection meets procedural rules?

Yes

DRSP posts objection details on its website

Objection filing period closes

ICANN posts notice of all objections filed

DRSPs notify applicants of relevant objections

30 Days

Applicant files response and pays filing fee

Consolidation of objections, if applicable

30 Days

DRSP appoints panel

10 Days

DRSP sends estimation of costs to parties

10 Days

Advance payment of costs due

Expert Determination

45 Days

DRSP and ICANN update respective websites to reflect determination

Does applicant clear all objections?

Applicant proceeds to subsequent stage ←Yes— — No→ Applicant withdraws

gTLD Applicant Guidebook

(v. 2012-06-04)

Module 6

4 June 2012

Module 6

Top-Level Domain Application – Terms and Conditions

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.

2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.

3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4.	Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.

5.	Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval rejection or withdrawal of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6.   Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FOR A ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.

7.   Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other

materials prepared in connection with the evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8.   Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion. Applicant acknowledges that ICANN will handle personal information collected in accordance with its gTLD Program privacy statement http://newgtlds.icann.org/en/applicants/agb/program-privacy, which is incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct these background screening activities. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:

a.   Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;

b.   Applicant may be required to obtain specific government records directly and supply those records to ICANN for review;

c.   Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization;

d. Applicant may be requested to supply certain information in the original language as well as in English.

9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.

10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.

11. Applicant authorizes ICANN to:

a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;

b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.

12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.

13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and evaluation of its application to represent ICANN adverse to Applicant in the matter.

14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process, including the process for withdrawal of applications, at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to

such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

EXHIBIT 3

ICANN
(/)

Resources

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

This page is available in:
English | العربية (http://www.icann.org/resources/pages/bylaws-2012-02-25-ar) |
Deutsch (http://www.icann.org/resources/pages/bylaws-2012-02-25-de) |
Español (http://www.icann.org/resources/pages/bylaws-2012-02-25-es) |
Français (http://www.icann.org/resources/pages/bylaws-2012-02-25-fr) |
Italiano (http://www.icann.org/resources/pages/bylaws-2012-02-25-it) |
日本語 (http://www.icann.org/resources/pages/bylaws-2012-02-25-ja) |
한국어 (http://www.icann.org/resources/pages/bylaws-2012-02-25-ko) |
Português (http://www.icann.org/resources/pages/bylaws-2012-02-25-pt) |
Русский (http://www.icann.org/resources/pages/bylaws-2012-02-25-ru) |
中文 (http://www.icann.org/resources/pages/bylaws-2012-02-25-zh)

As amended 30 July 2014

TABLE OF CONTENTS

ARTICLE I: MISSION AND CORE (Council of Registrars) VALUES

Section 1. MISSION

The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN (Internet Corporation for Assigned Names and Numbers)") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN (Internet Corporation for Assigned Names and Numbers):

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are

a. Domain names (forming a system referred to as "DNS (Domain Name System)");

b. Internet protocol ("IP (Internet Protocol or Intellectual Property)") addresses and autonomous system ("AS (Autonomous System ("AS") Numbers)") numbers; and

c. Protocol (Protocol) port and parameter numbers.

2. Coordinates the operation and evolution of the DNS (Domain Name System) root name server system.

3. Coordinates policy development reasonably and appropriately related to these technical functions.

Section 2. CORE (Council of Registrars) VALUES

In performing its mission, the following core values should guide the decisions and actions of ICANN (Internet Corporation for Assigned Names and Numbers):

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.

2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN (Internet Corporation for Assigned Names and Numbers)'s activities to those matters within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission requiring or significantly benefiting from global coordination.

3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.

4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.

6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN (Internet Corporation for Assigned Names and Numbers)'s effectiveness.

11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN (Internet Corporation for Assigned Names and Numbers) body making a recommendation or decision shall exercise its judgment to determine which core 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) shall not act as a Domain Name (Domain Name) System Registry or Registrar or Internet Protocol (Protocol) Address Registry in competition with entities affected by the policies of ICANN (Internet Corporation for Assigned Names and Numbers). Nothing in this Section is intended to prevent ICANN (Internet Corporation for Assigned Names and Numbers) from taking whatever steps are necessary to protect the operational stability of the Internet in the event of financial failure of a Registry or Registrar or other emergency.

Section 3. NON-DISCRIMINATORY TREATMENT

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

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

ICANN (Internet Corporation for Assigned Names and Numbers) and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

Section 2. WEBSITE

ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain a publicly-accessible Internet World Wide Web site (the "Website"), which may include, among other things, (i) a calendar of scheduled meetings of the Board, Supporting Organizations (Supporting Organizations), and Advisory Committees (Advisory Committees); (ii) a docket of all pending policy development matters, including their schedule and current status; (iii) specific meeting notices and agendas as described below; (iv) information on ICANN (Internet Corporation for Assigned Names and Numbers)'s budget, annual audit, financial contributors and the amount of 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 (Internet Corporation for Assigned Names and Numbers) activities of interest to significant segments of the ICANN (Internet Corporation for Assigned Names and Numbers) community; (vii) comments received from the community on policies being developed and other matters; (viii) information about ICANN (Internet Corporation for Assigned Names and Numbers)'s physical meetings and public forums; and (ix) other information of interest to the ICANN (Internet Corporation for Assigned Names and Numbers) community.

Section 3. MANAGER OF PUBLIC PARTICIPATION

There shall be a staff position designated as Manager of Public Participation, or such other title as shall be determined by the President, that shall be responsible, under the direction of the President, for coordinating the various aspects of public participation in ICANN (Internet Corporation for Assigned Names and Numbers),

including the Website and various other means of communicating with and receiving input from the general community of Internet users.

Section 4. MEETING NOTICES AND AGENDAS

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

Section 5. MINUTES AND PRELIMINARY REPORTS

1. All minutes of meetings of the Board and Supporting Organizations (Supporting Organizations) (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary for posting on the Website.

2. No later than 11:59 p.m. on the second business days after the conclusion of each meeting (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office), any resolutions passed by the Board of Directors at that meeting shall be made publicly available on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the preliminary report made publicly available. The Secretary shall send notice to the Board of Directors and the Chairs of the Supporting Organizations (Supporting Organizations) (as set forth in Articles VIII - X of these Bylaws) and Advisory Committees (Advisory Committees) (as set forth in Article XI of these Bylaws) informing them that the resolutions have been posted.

3. No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website, subject to the limitations on disclosure set forth in Section 5.2 above. For any matters that the Board determines

not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.

4. No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office, then the next immediately following business day), the minutes shall be made publicly available on the Website; provided, however, that any minutes relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.

Section 6. NOTICE AND COMMENT ON POLICY ACTIONS

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

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

   b. provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments, prior to any action by the Board; and

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

2. Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in Section 6(1)(b) of this Article, prior to any final Board action.

3. After taking action on any policy subject to this Section, the Board shall publish in the meeting minutes the reasons for any action taken, the vote of each Director voting on the action, and the separate statement of any Director desiring publication of such a statement.

Section 7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN (Internet Corporation for Assigned Names and Numbers) budget, ICANN (Internet Corporation for Assigned Names and Numbers) shall facilitate the translation of final published documents into various appropriate languages.

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 1. PURPOSE

In carrying out its mission as set out in these Bylaws, ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) actions and periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article III and the Board and other selection mechanisms set forth throughout these Bylaws.

Section 2. RECONSIDERATION

1. ICANN (Internet Corporation for Assigned Names and Numbers) shall have in place a process by which any person or entity materially affected by an action of ICANN (Internet Corporation for Assigned Names and Numbers) may request review or reconsideration of that action by the Board.

2. Any person or entity may submit a request for reconsideration or review of an ICANN (Internet Corporation for Assigned Names and Numbers) action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:

   a. one or more staff actions or inactions that contradict established ICANN (Internet Corporation for Assigned Names and Numbers) policy(ies); or

   b. one or more actions or inactions of the ICANN (Internet Corporation for Assigned Names and Numbers) Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or

   c. one or more actions or inactions of the ICANN (Internet Corporation for Assigned Names and Numbers) Board that are taken as a result of the Board's reliance on false or inaccurate material information.

3. The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:

   a. evaluate requests for review or reconsideration;

   b. summarily dismiss insufficient requests;

   c. evaluate requests for urgent consideration;

   d. conduct whatever factual investigation is deemed appropriate;

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

   f. make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and

   g. make a recommendation to the Board of Directors on the merits of the request, as necessary.

4. ICANN (Internet Corporation for Assigned Names and Numbers) shall absorb the normal administrative costs of the reconsideration process. It reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the party seeking reconsideration, who shall then have the option of withdrawing the request or agreeing to bear such costs.

5. All Reconsideration Requests must be submitted to an e-mail address designated by the Board Governance Committee within fifteen days after:

    a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 15 days from the initial posting of the rationale; or

    b. for requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or

    c. for requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

6. To properly initiate a Reconsideration process, all requestors must review and follow the Reconsideration Request form posted on the ICANN (Internet Corporation for Assigned Names and Numbers) website. at http://www.icann.org/en/groups/board/governance/reconsideration (/en/groups/board/governance/reconsideration). Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.

7. Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request. Requestors may submit all documentary evidence necessary to

demonstrate why the action or inaction should be reconsidered, without limitation.

8. The Board Governance Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is the same for all of the requestors. Every requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

9. The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; (ii) it is frivolous, querulous or vexatious; or (iii) the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. The Board Governance Committee's summary dismissal of a Reconsideration Request shall be posted on the Website.

10. For all Reconsideration Requests that are not summarily dismissed, the Board Governance Committee shall promptly proceed to review and consideration.

11. The Board Governance Committee may ask the ICANN (Internet Corporation for Assigned Names and Numbers) staff for its views on the matter, which comments shall be made publicly available on the Website.

12. The Board Governance Committee may request additional information or clarifications from the requestor, and may elect to conduct a meeting with the requestor by telephone, email or, if acceptable to the party requesting reconsideration, in person. A requestor may ask for an opportunity to be heard; the Board Governance Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.

13. The Board Governance Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation. Any information collected from third parties shall be provided to the requestor.

14. The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN (Internet Corporation for Assigned Names and Numbers) staff, and by any third party.

15. For all Reconsideration Requests brought regarding staff action or inaction, the Board Governance Committee shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.

16. The Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation. The final recommendation shall be posted on ICANN (Internet Corporation for Assigned Names and Numbers)'s website.

17. The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN (Internet Corporation for Assigned Names

and Numbers)'s website. The Board's decision on the recommendation is final.

18. If the requestor believes that the Board action or inaction posed for Reconsideration is so urgent that the timing requirements of the Reconsideration process are too long, the requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (calculated at ICANN (Internet Corporation for Assigned Names and Numbers)'s headquarters in Los Angeles, California) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

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

20. The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:

    a. the number and general nature of Reconsideration Requests received, including an identification if the requests were acted upon, summarily dismissed, or remain pending;

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

    c. an explanation of any other mechanisms available to ensure that ICANN (Internet Corporation for Assigned Names and

Numbers) is accountable to persons materially affected by its decisions; and

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

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in Section 2 of this Article (/en/about/governance/bylaws#IV-2), ICANN (Internet Corporation for Assigned Names and Numbers) shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.

2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.

3. A request for independent review must be filed within thirty days of the posting of the minutes of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrates that ICANN (Internet Corporation for Assigned Names and Numbers) violated its Bylaws or Articles of Incorporation. Consolidated requests may be appropriate when the causal connection between the circumstances of the requests and the harm is the same for each of the requesting parties.

4. Requests for such independent review shall be referred to an Independent Review Process Panel ("IRP Panel"), which shall be charged with comparing contested actions of the Board to the

Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

  a. did the Board act without conflict of interest in taking its decision?;

  b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and

  c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

5. Requests for independent review shall not exceed 25 pages (double-spaced, 12-point font) of argument. ICANN (Internet Corporation for Assigned Names and Numbers)'s response shall not exceed that same length. Parties may submit documentary evidence supporting their positions without limitation. In the event that parties submit expert evidence, such evidence must be provided in writing and there will be a right of reply to the expert evidence.

6. There shall be an omnibus standing panel of between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and work from which each specific IRP Panel shall be selected. The panelists shall serve for terms that are staggered to allow for continued review of the size of the panel and the range of expertise. A Chair of the standing panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within the ICANN (Internet Corporation for Assigned Names and Numbers) structure are not eligible to serve on the standing panel. In the event that an omnibus standing panel: (i) is not in place when an IRP Panel must be convened for a given proceeding, the IRP proceeding will be considered by a one- or three-member panel comprised in accordance with the rules of the IRP Provider; or (ii) is in place but does not have the requisite diversity of skill and experience needed for a particular proceeding, the IRP Provider shall identify one or more panelists, as required, from outside the omnibus standing panel to augment the panel members for that proceeding.

7. All IRP proceedings shall be administered by an international dispute resolution provider appointed from time to time by ICANN (Internet Corporation for Assigned Names and Numbers) ("the IRP Provider"). The membership of the standing panel shall be coordinated by the IRP Provider subject to approval by ICANN (Internet Corporation for Assigned Names and Numbers).

8. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this Section 3 (/en/about/governance/bylaws#IV-3).

9. Either party may request that the IRP be considered by a one- or three-member panel; the Chair of the standing panel shall make the final determination of the size of each IRP panel, taking into account the wishes of the parties and the complexity of the issues presented.

10. The IRP Provider shall determine a procedure for assigning members from the standing panel to individual IRP panels.

11. The IRP Panel shall have the authority to:

    a. summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious;

    b. request additional written submissions from the party seeking review, the Board, the Supporting Organizations (Supporting Organizations), or from other parties;

    c. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and

    d. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP;

    e. consolidate requests for independent review if the facts and circumstances are sufficiently similar; and

    f. determine the timing for each proceeding.

12. In order to keep the costs and burdens of independent review as low as possible, the IRP Panel should conduct its proceedings by email and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP Panel may hold meetings by

telephone. In the unlikely event that a telephonic or in-person hearing is convened, the hearing shall be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance.

13. All panel members shall adhere to conflicts-of-interest policy stated in the IRP Provider's operating rules and procedures, as approved by the Board.

14. Prior to initiating a request for independent review, the complainant is urged to enter into a period of cooperative engagement with ICANN (Internet Corporation for Assigned Names and Numbers) for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. The cooperative engagement process is published on ICANN (Internet Corporation for Assigned Names and Numbers).org and is incorporated into this Section 3 of the Bylaws.

15. Upon the filing of a request for an independent review, the parties are urged to participate in a conciliation period for the purpose of narrowing the issues that are stated within the request for independent review. A conciliator will be appointed from the members of the omnibus standing panel by the Chair of that panel. The conciliator shall not be eligible to serve as one of the panelists presiding over that particular IRP. The Chair of the standing panel may deem conciliation unnecessary if cooperative engagement sufficiently narrowed the issues remaining in the independent review.

16. Cooperative engagement and conciliation are both voluntary. However, if the party requesting the independent review does not participate in good faith in the cooperative engagement and the conciliation processes, if applicable, and ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the request for independent review, the IRP Panel must award to ICANN (Internet Corporation for Assigned Names and Numbers) all reasonable fees and costs incurred by ICANN (Internet Corporation for Assigned Names and Numbers) in the proceeding, including legal fees.

17. All matters discussed during the cooperative engagement and conciliation phases are to remain confidential and not subject to discovery or as evidence for any purpose within the IRP, and are without prejudice to either party.

18. The IRP Panel should strive to issue its written declaration no later than six months after the filing of the request for independent review. The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.

19. The IRP operating procedures, and all petitions, claims, and declarations, shall be posted on ICANN (Internet Corporation for Assigned Names and Numbers)'s website when they become available.

20. The IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets.

21. Where feasible, the Board shall consider the IRP Panel declaration at the Board's next meeting. The declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value.

Section 4. PERIODIC REVIEW OF ICANN (Internet Corporation for Assigned Names and Numbers) STRUCTURE AND OPERATIONS

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

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

The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN (Internet Corporation for Assigned Names and Numbers) being reviewed by a two-thirds vote of all members of the Board.

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

ARTICLE V: OMBUDSMAN

Section 1. OFFICE OF OMBUDSMAN

1. There shall be an Office of Ombudsman, to be managed by an Ombudsman and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.

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

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

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

Section 2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration Policy set forth in Section 2 of Article IV or the Independent Review Policy set forth in Section 3 of Article IV have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN (Internet Corporation for Assigned Names and Numbers) community who believe that the ICANN (Internet Corporation for Assigned Names and Numbers) staff, Board or an ICANN (Internet Corporation for Assigned Names and Numbers) constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN (Internet Corporation for Assigned Names and Numbers) staff, the Board, or ICANN (Internet Corporation for Assigned Names and Numbers) constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

Section 3. OPERATIONS

The Office of Ombudsman shall:

1. facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN (Internet Corporation for Assigned Names and Numbers) community (excluding employees and vendors/suppliers of ICANN (Internet Corporation for Assigned Names and Numbers)) may have with specific actions or failures to act by the Board or ICANN (Internet Corporation for Assigned Names and Numbers) staff which have not otherwise become the subject of either the Reconsideration or Independent Review Policies;

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

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

4. heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN (Internet Corporation for Assigned Names and Numbers) community and online availability;

5. maintain neutrality and independence, and have no bias or personal stake in an outcome; and

6. comply with all ICANN (Internet Corporation for Assigned Names and Numbers) conflicts-of-interest and confidentiality policies.

Section 4. INTERACTION WITH ICANN (Internet Corporation for Assigned Names and Numbers) AND OUTSIDE ENTITIES

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

2. ICANN (Internet Corporation for Assigned Names and Numbers) staff and other ICANN (Internet Corporation for Assigned Names and Numbers) participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.

3. Contact with the Ombudsman shall not constitute notice to ICANN (Internet Corporation for Assigned Names and Numbers) of any particular action or cause of action.

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

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

Section 5. ANNUAL REPORT

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

ARTICLE VI: BOARD OF DIRECTORS

Section 1. COMPOSITION OF THE BOARD

The ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors ("Board") shall consist of sixteen voting members ("Directors"). In addition, four non-voting liaisons ("Liaisons") shall be designated for the purposes set forth in Section 9 of this Article. Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

Section 2. DIRECTORS AND THEIR SELECTION; ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

1. The Directors shall consist of:

EXHIBIT 4

ICANN (/)

Resources

- ▸ About ICANN (Internet Corporation for Assigned Names and Numbers) (/resources/pages/welcome-2012-02-25-en)
- ▸ Board (/resources/pages/board-of-directors-2014-03-19-en)
- ▸ Accountability (/resources/accountability)
- ▸ Governance (/resources/pages/governance-2012-02-25-en)
- ▸ Groups (/resources/pages/groups-2012-02-06-en)
- Business (/resources/pages/business)
- Civil Society (/resources/pages/civil-society-2016-05-24-en)
- ▸ Contractual Compliance (/resources/pages/compliance-2012-02-25-en)

Reconsideration and Independent Review | *ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws Article IV Accountability and Review*

The "Transparency & Accountability" webpage (/en/news/in-focus/accountability) contains an overview of ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability and transparency frameworks and mechanisms, as well as status reports on recent accountability and transparency efforts. ICANN (Internet Corporation for Assigned Names and Numbers)'s commitment to transparency and accountability is emphasized in its foundational documents, such as its Bylaws (/en/about/governance/bylaws#III), and delineated in the "Accountability and Transparency Frameworks and Principles (/en/accountability/frameworks-principles/contents-overview.htm)" adopted by ICANN (Internet Corporation for Assigned Names and Numbers)'s Board in 2008. Our commitment also is regularly reinforced in ICANN (Internet Corporation for Assigned Names and Numbers)'s strategic and operational plans (/en/about/planning) and in targeted efforts to periodically review and improve (/en/groups/reviews) ICANN (Internet Corporation for Assigned Names and Numbers)'s structures and processes.

In order to reinforce its transparency and accountability mechanisms, ICANN (Internet Corporation for Assigned Names and Numbers) has established processes for reconsideration and independent review of ICANN (Internet Corporation for Assigned Names and Numbers) actions. ICANN (Internet Corporation for Assigned Names and Numbers) has also established the Office of the Ombudsman to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN (Internet Corporation for Assigned Names and Numbers).

Ombudsman

For more information about ICANN (Internet Corporation for Assigned Names and Numbers)'s Ombudsman, please visit http://www.icann.org/ombudsman/ (/ombudsman/).

If you have a dispute you want the Ombudsman to investigate, or to contact the Ombudsman, please visit http://www.icann.org/ombudsman/contact.htm (/ombudsman/contact.htm).

Reconsideration

A suggested Reconsideration Request form, an explanatory timeline for the Reconsideration Process and Reconsideration Request documents are available here (/en/groups/board/governance/reconsideration-requests). (/en/groups/board/governance/reconsideration-requests)

ICANN (Internet Corporation for Assigned Names and Numbers)'s Board Governance Committee is responsible to receiving requests from any person or entity that has been materially affected by any ICANN (Internet Corporation for Assigned Names and Numbers) staff action or inaction if such affected person or entity believes the action contradicts established ICANN (Internet Corporation for Assigned Names and Numbers) policies, or by actions or inactions of the Board that such affected person or entity believes has been taken without consideration of material information. Note: this is a brief summary of the relevant Bylaws provisions. For more information about ICANN (Internet Corporation for Assigned Names and Numbers)'s reconsideration process, please visit http://www.icann.org/en/about/governance/bylaws#IV (/en/about/governance/bylaws#IV) and http://www.icann.org/en/groups/board/governance (/en/groups/board/governance).

Independent Review

In addition to the Office of the Ombudsman and its reconsideration process, ICANN (Internet Corporation for Assigned Names and Numbers) has also established a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation or Bylaws. For additional information about the independent review process, please refer to ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws Article IV, Section 3 (/en/about/governance/bylaws#IV-3). The Bylaws provide that requests for independent review will be referred to an Independent Review Panel ("IRP"). ICANN (Internet Corporation for Assigned Names and Numbers) has designated the International Centre for Dispute Resolution to operate the independent review process. To initiate a request for Independent Review, please complete the ICDR form which can be found here (https://www.adr.org/cs/idcplg? IdcService=GET_FILE&dDocName=ADRSTAGE2014402&RevisionSelectionMethod=LatestRele [PDF, 146 KB]. ICDR will then contact you to discuss the process in more detail. For more information on the ICDR's International Arbitration rules and procedures, click here (http://www.icdr.org/icdr/faces/icdrservices/icann/irpp). Details of the supplemental rules for the ICANN (Internet Corporation for Assigned Names and Numbers) process can be found here (https://www.adr.org/cs/idcplg? IdcService=GET_FILE&dDocName=ADRSTAGE2014403&RevisionSelectionMethod=LatestRele [DOCX, 30 KB]. IRP documents can be found here (/en/news/irp).

The Cooperative Engagement Process for requests for independent review is available here (/en/news/irp/cep-11apr13-en.pdf) [PDF, 49 KB].

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

Answers to recurring questions regarding the IRP are located here (/en/help/irp/irp-
questions-19jun10-en.htm).

You Tube
(http://www.youtube.com/icannnews)
Twitter
(https://www.twitter.com/icann)
LinkedIn
(https://www.linkedin.com/company/icann)
Flickr
(http://www.flickr.com/photos/icann)
Facebook
(http://www.facebook.com/icannorg)
RSS Feeds (/en/news/rss)
Community Wiki
(https://community.icann.org)

ICANN Blog (/news/blog)

Who We Are

Get Started (/get-
started)

Learning
(/en/about/learning)

Participate
(/en/about/participate)

Groups
(https://www.icann.org/resources/pages/groups-
2012-02-06-en)

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

President's Corner
(/presidents-corner)

Staff
(/en/about/staff)

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

Newsletter
(/en/news/newsletter)

Development and
Public
Responsibility
(https://www.icann.org/development-
and-public-
responsibility)

Contact Us

Offices
(https://forms.icann.org/en/contact)

Global Support
(/resources/pages/customer-
support-2015-06-22-
en)

Security Team
(/about/staff/security)

PGP Keys
(/en/contact/pgp-
keys)

Certificate Authority
(/contact/certificate-
authority)

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

Specific Reviews
(https://forms.icann.org/en/about/aoc-
review/contact)?
Organizational
Reviews
(http://forms.icann.org/en/groups/reviews/contact)

Request a Speaker
(http://forms.icann.org/en/contact/speakers)

For Journalists
(/en/news/press)

Accountability &
Transparency

Accountability
Mechanisms
(/en/news/in-
focus/accountability/mechanisms)

Independent
Review Process
(/resources/pages/irp-
2012-02-25-en)

Request for
Reconsideration
(/groups/board/governance/reconsideration)

Ombudsman
(/help/ombudsman)

Governance

Documents
(/en/about/governance)

Agreements
(/en/about/agreements)

Specific Reviews
(/resources/reviews/aoc)

Annual Report
(/about/annual-
report)

Financials
(/en/about/financials)

Document
Disclosure
(/en/about/transparency)

Planning
(/en/about/planning)

KPI Dashboard
(/progress)

RFPs
(/en/news/rfps)

Litigation
(/en/news/litigation)

Correspondence
(/en/news/correspondence)

Help

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

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

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

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

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

EXHIBIT 5

AFRICAN UNION COMMISSION
Chairperson

BC/Y/727/08.09   Addis Ababa, 27 August 2009

Dear Ms. Bekele,

Sub: Endorsement of the DotAfrica (.africa) Initiative

African Union Authority in its capacity as a continental organization would like to express support for the "dotafrica" initiative, through which your organization is applying for delegation of a regional identifier top level domain – '.africa' from the Internet Corporation for Assigned Names and Numbers (ICANN) and then make it available to the Pan-African community. Dot Africa ".africa" expects to reinvest surpluses in socio-technological advancement initiatives relevant and to operate a viable not-for-profit initiative that is a technically advanced, TLD registry for the Pan-Africa and African community under the sponsorship of DotConnectAfrica organization.
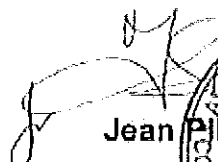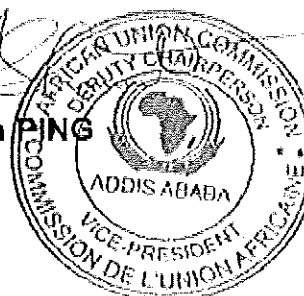
This will mean that the African continent will follow upon the experience of the European Union and their '.eu' domain, and the Asian continent with their '.asia' domain.

The African Union Authority considers introducing the ".africa" domain will be a valuable attribute for entities, professionals and corporations active in Africa, empowering those stakeholders who see value in a regional online identity.

In this regard, should your initiative require it, the African Union Authority is willing to offer assistance in the coordination of your initiative with African Ministers and Governments.

Based on the above, the African Union Authority expresses its endorsement of the DotAfrica ".africa" initiative wishing you success in all the endeavors.

With best regards.

                                                           Jean PING

Sophia Bekele
Executive Director
The DotAfrica (.africa) project
DotConnectAfrica.org
www.dotconnectafrica.org
Fax (925) 935-1589, USA
Fax: (251-11) 662-59-09, Addis Ababa

EXHIBIT 6 - Pg 0552

P.O.Box 3243 - Addis Ababa - Ethiopia
Tel.: (251) 11 551 4554 / 552 5870 Fax: (251) 11 551 3036

EXHIBIT 6

AFRICAN UNION COMMISSION
Deputy Chairperson

ᴀᴄᴘ/ᴏᴜᴛ . 223 . 10

16th April 2010

Dear Madam,

Referring to my letter **BC/Y/727/08.09** sent to you on the 27th of August 2009 related to the above subject, I would like to inform you that following consultations with relevant stakeholders, the African Union Commission has reconsidered its approach in implementing the subject Internet Domain Name (DotAfrica) and no longer endorses individual initiatives in this matter related to continental resource.

In coordination with the Member States and with relevant international organization such as ICANN, the Commission will go through open process that certainly will involve the private sector.

Please accept, Ms. Bekele, the assurances of my best consideration.

Erastus J.O. Mwencha
Deputy Chairperson
African Union Commission

To:
Sophia Bekele
United States of America
Fax: (925) 935 1589,
           (251 11) 662 5909

Copy:
Internet Corporation for Assigned Names and Numbers (ICANN)
Marina del Rey, CA, USA
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601
United States of America
Fax: +1.310.823.8649

EXHIBIT 7 - Pg 0553

P.O.Box 3243 - Addis Ababa - Ethiopia

EXHIBIT 7

UNITED NATIONS
ECONOMIC COMMISSION FOR AFRICA

ABDOULIE JANNEH
Executive Secretary

Date: 8 August 2008

Dear Ms. Bekele,

I write to express my support and that of the Economic Commission for Africa (ECA) for the "dotafrica" initiative through which your organization is applying to the Internet Corporation for Assigned Names and Numbers (ICANN) for the delegation of the regional identifier top level domain – **"africa"** which will then be made available to the pan-African community.

This is a worthwhile initiative that will contribute substantially to helping Africa bridge the digital divide. It will certainly help the continent to derive similar benefits from the successful experience of the European Union which has the ".eu" domain and that of Asia with its "asia" domain.

Introducing the "africa" domain will certainly be a valuable attribute for individuals, corporations, professionals and entities active in the continent. It will also empower stakeholders in Africa's progress who would know the value of having a regional online identity.

I look forward with anticipation to the successful implementation of the "dotafrica" initiative.

Yours sincerely,
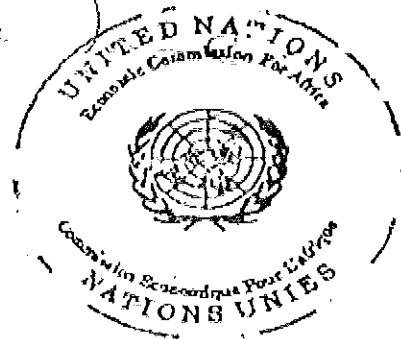
Ms. Sophia Bekele
Executive Director
The Dot.Africa Project Initiative
www.dotconnectafrica.org

EXHIBIT 8 - Pg 0554

P.O. Box 3001, Addis Ababa, Ethiopia Tel: (+ 251-11) 551-72 00/ 551-12 31 (direct) · Fax: (+ 251-11) 551- 44 16/ 551-28 14 (direct)

EXHIBIT 8

Date: 21 September 2015
Ref: OES/15/09/0157

Dear Dr. Ibrahim

Re: Request for Support to Dot Africa Project

I am writing in connection with the request made to the Executive Secretary, Dr. Lopes for his support to the African Union's (AU") efforts in getting the regional Identifier top level domain "dotAfrica" delegated to ZA Central Registry ("ZACR"), the entity we understand is authorized by the AU to apply for and administer the DotAfrica top level domain.

I understand from your letter that, in addition to ZACR, another competing entity, DotConnectAfrica ("DCA") has submitted an application to obtain the same delegation as ZACR, and that DCA is purporting to use a letter of support obtained from ECA in 2008 as an endorsement from ECA for its application.

We also note that in September 2011, ECA wrote to you in response to a letter you sent regarding the setting up of the structure and modalities for the implementation of the DotAfrica project and in that letter, ECA reaffirmed its continued commitment and support to the AU in the management of Internet-based resources in Africa.

As you are aware, one of ICANN's requirement for the application for delegation for geographic Top Level Domain ("gTLD") as detailed in ICANN's 2012 Applicant Guidebook, is a minimum of 60% support from *relevant governments or public authorities*, with no more than one government objection from any country from the region.

ECA as a United Nations entity is neither a government nor a public authority and therefore is not qualified to issue a letter of support for a prospective applicant in support of their application. In addition, ECA does not have a mandate to represent the views or convey the support or otherwise of African governments in matters relating to application for delegation of the gTLD.

Dr. Elham M.A. Ibrahim
Commissioner
Infrastructure and Energy
African Union
Addis Ababa

In this regard, the August 2008 letter referenced above is merely an expression of a view in relation to the entity's initiatives and efforts regarding internet governance, including efforts to obtain gTLD for Africa. It is ECA's position that the August 2008 letter to Ms Bekele cannot be properly considered as a "letter of support or endorsement" within the context of ICANN's requirements and cannot be used as such.

I hope this clarifies ECA's position on the mater. Please feel free to contact me if you need any further clarification on tel: Contact Information Redacted

Yours sincerely,

Sandra Baffoe-Bonnie
Secretary of the Commission and Legal Advisor

Cc: Ms Sophia Bekele, DotConnectAfrica

EXHIBIT 9

8 March 2012

Elham M.A. Ibrahim
Commissioner, Infrastructure and Energy Commission
African Union Commission
P. O. Box 3241
Addis Ababa
Ethiopia

Re: Communiqué of 21 October 2011 from ICT Ministers attending the African Union Commission Round-Table in Dakar

Your Excellency,
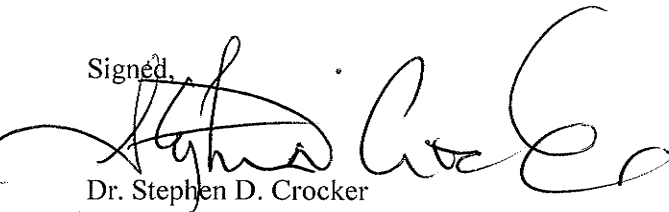
Thank you for the commitments to ICANN, including the expression of support of the African Union Commission for ICANN's work and the multi-stakeholder model, expressed in the 21 October 2011 Communiqué of the African ICT Ministerial Round-Table on the 42nd Meeting of ICANN, Dakar, Senegal.

The meeting of the African ICT Ministers in preparation for the ICANN meeting in Dakar serves as a model for regional engagement in ICANN. Your communiqué and presentation to our Board were instrumental in encouraging progress on a number of areas of mutual benefit and interest to our organizations. We look forward to continuing the productive communications arising out of the Round-Table.

You will recall that the ICANN Board recognized the work of the African ICT Ministers through a resolution at the Dakar meeting [ICANN Resolution 2011.10.28.35]. As resolved, ICANN now provides you with a response to each of the 12 requests presented within the Communiqué. Please contact us if you require additional information. We remain available for further feedback and any questions you may have.

We welcome this opportunity for enhanced engagement and look forward to continued dialogue on the work of ICANN and related Internet governance matters.

Signed,

Dr. Stephen D. Crocker
Chairman of ICANN Board

cc: Moustapha Guirassy,
    Minister of Communication Telecommunications and ICT, Republic of Senegal

    Rod Beckstrom,
    President and Chief Executive Officer, ICANN

Washington, DC	1101 New York Avenue NW, Suite 930	Washington, DC 20005	USA	T +1 202 570 7240	F +1 202 789 0104
Brussels	6 Rond Point Schuman, Bt. 5	B-1040 Brussels	BELGIUM	T +32 2 234 7870	F +32 2 234 7848
Marina del Rey	4676 Admiralty Way, Suite 330	Marina del Rey, CA 90292	USA	T +1 310 823 9358	F +1 310 823 8649
Sydney	Level 2, 48 Hunter Street	Sydney NSW 2000	AUSTRALIA	T +61 2 8236 7900	F +61 2 8236 7913

http://icann.org

Response to Requests in the Communiqué of 21 October 2011 from ICT Ministers at the African Union Commission Round-Table in Dakar

Request 1: *Include (.Africa, .Afrique, .Afrikia .افريقيا), and its representation in any other language on the Reserved Names List in order to enjoy the level of special legislative protection, so to be managed and operated by the structure that is selected and identified by the African Union.*

Response to Request 1:

ICANN understands and acknowledges the strong interest expressed by the African Union and a number of its member states requesting special treatment for variations of a top-level domain name string representing Africa. ICANN is not able to take actions that would go outside of the community-established and documented guidelines of the program to provide the special treatment you have requested. ICANN does wish to explain, however, that protections exist that will allow the African Union and its member states to play a prominent role in determining the outcome of any application for these top-level domain name strings.

The requirements and procedures ICANN will follow in the evaluation of geographical names are described in the gTLD Applicant Guidebook in Module 2, sections 2.2.1.4 *et seq.* All applied-for gTLD strings will be reviewed according to the requirements of those sections, regardless of whether the application indicates it is for a geographic name. A broad set of protections is available for geographical names. For example, applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names.[1]

A string listed as a UNESCO region[2]; or appearing on the United Nations' "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" list[3] is considered a geographic name. "Africa" – at least in the official languages of the United Nations – qualifies under both of these criteria.

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

Over the course of the six years of development of the New gTLD Program, ICANN – along with the international ICANN community – have developed additional procedures that will allow the African Union and others the opportunity to view all requested strings and consider whether there is grounds for objection to any of the strings.

For example, the New gTLD Program allows ICANN's Governmental Advisory Committee, comprised of representatives of over 120 governments, to inform ICANN that there are concerns with an application via a "GAC Early Warning" notice. There are also four formal objection processes that can be initiated by the public, each administered by a well-known international dispute resolution service provider. Among these is a Community Objection process, for cases where there exists substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

---

[1] The African Union's request asks that the identified strings be placed on a reserved name list. It is important to consider that placement on a reserved list would result in no entity – not even an entity supported by the AU – being allowed to apply for a string

[2] See http://www.unesco.org/new/en/unesco/worldwide/.

[3] See http://unstats.un.org/unsd/methods/m49/m49regin.htm.

In short, while ICANN is not able to offer the specific relief requested in the Communiqué, the robust protections built into the New gTLD Program afford the African Union (and its individual member states), through the Governmental Advisory Committee, the opportunity to raise concerns that an applicant is seen as potentially sensitive or problematic, or provide direct advice to the Board. In addition, the African Union (and its individual member states) can avail itself of any of the appropriate objection processes mentioned above in the event an application is received for any string – even those beyond representations of .Africa – that may raise concern.

Request 2. *Provide more fellowship to support government and other stakeholders from least developed countries in Africa to increase their participation in the various meetings of GAC and ICANN*

Response to Request 2

The ICANN Fellowship program seeks to create a broadening base of knowledgeable constituents and build capacity within the ICANN community of volunteers by reaching out to the less developed regions of the world. Since the inception of the fellowship program in June 2007, ICANN has identified 66 fellowship recipients from Africa. At each of ICANN's three public meetings per year, ICANN strives to have fellows representing each of its five geographic regions.

Participation in the program encourages individuals to apply their expertise and explore areas of interest across the broad scope of the work of the ICANN community. The program also seeks to enhance the diversity of voices and experiences that are brought to bear upon the work of ICANN, seeking input from all geographic regions. Many former participants of the program go on to become representatives or advisors to the Governmental Advisory Committee, and members of the Supporting Organizations and additional Advisory Committees.

Recently, ICANN has also significantly increased the level of travel support provided to members of the Governmental Advisory Committee. ICANN has committed to provide travel support for up to 20 individuals per ICANN public meeting, and the GAC then determines who among its members will fill those 20 spaces. This recent advancement in funding allows for increased participation of GAC members who may not otherwise have funding sufficient to allow for meeting participation. In addition, in the past couple of years, ICANN has made great strides in its remote participation tools, including providing streamed translation of meetings, to encourage participation of community members wherever they happen to be.

ICANN continually reviews its support programs with an aim toward enabling ever-increasing participation. We are pleased to count participants from least developed countries in Africa among those who benefit from these programs. Their participation enriches and strengthens the work of the ICANN community.

Request 3. *Support and implement the opening of an ICANN Africa Office like in other regions, to be closer to African stakeholders to provide direct advice on Africa's participation to ICANN and outreach, and also to facilitate ICANN's mission.*

Response to Request 3:

ICANN is an organization of fewer than 150 employees coordinating the work of an international multi-stakeholder community. Consistent with the practice of Internet organizations working within a dynamic and innovative field, however, ICANN is perhaps the foremost example of a seamless, cross-border collaboration among the various constituents of the Internet community. ICANN also recognizes the importance of establishing closer relations with regional communities.

In pursuit of this goal, ICANN has begun appointing regional Vice Presidents throughout the world and is in the process of identifying candidates for the position of ICANN Vice President, Africa, to be based in Africa. The regional Vice Presidents have as their mission to strengthen relationships with civil society, the private sector, and (in coordination with representatives of the Governmental Advisory Committee at ICANN) senior levels of government.

3

ICANN is already ably represented by regional relationship managers, who are part of the Global and Strategic Partnerships team, and these regional relationship managers will work closely with the regional Vice Presidents. Each member of these regional teams already engages in rigorous levels of outreach, travel and communications, and ICANN is committed to further extending and deepening multi-stakeholder engagement in all regions. ICANN currently has a regional relationship manager for Africa who travels continually throughout the region and maintains a base of operations in Niamey, Niger.

ICANN's number of physical offices is limited, but growing. More crucial to the current work of ICANN, however, is maintaining and growing the geographic distribution and global coordination among its staff, the diverse global composition of its Board of Directors and the work of the diffuse community. ICANN's representation in Africa will continue to increase through staffing and engagement efforts, and the establishment of a physical office in the African region will be considered in the course of ICANN's regular review of its overall strategic plan and internationalization strategy.

Request 4. *Support the integration of an ethics charter for board and staff at ICANN to prevent conflict of interests not addressed at the moment. This should be done as soon as possible and as independently as possible from the organization itself.*

Response to Request 4:

ICANN maintains a strong policy regarding the identification and handling of Board member conflicts of interest, as well as a Code of Conduct setting out the ethical standards to which Board members are required to adhere. In addition to the strong existing protections, on 8 December 2011, the ICANN Board voluntarily adopted heightened conflict of interest rules regarding Board consideration of new gTLD applications. These rules preclude directors from taking positions with new gTLD applicants within 12 months after a director voted to approve the application, as well as restricting access to materials for applications that may relate to applicants with whom a director or liaison has an existing relationship. Prior to the June 2011 approval of the New gTLD Program, ICANN's President and CEO noted that the era of New gTLDs requires ICANN to be even more vigilant in addressing conflict of interest issues.

Additional work is underway towards strengthening and continual improvement of conflicts and ethics practices. This work includes: (1) review of Conflicts of Interest Policy and Code of Conduct by one of ICANN's main outside counsel, to identify proposed revisions; (2) a review of ICANN's Conflicts of Interest Policy, Code of Conduct and other governance documents by new counsel who are expert in governance issues; and (3) compiling a panel of international ethics experts to recommend enhancements to ICANN's ethical culture after a review of standards from similar organizations from around the world.[4]

All ICANN Board and staff members are bound by a conflicts of interest policy. In addition, all are subject to restrictions regarding contact with potential new gTLD applicants. They are prohibited from accepting any gifts, meals or entertainment from potential New gTLD applicants.

The Board, staff and executive leadership of ICANN are committed to continued improvement and the establishment of world-class best practices in these areas.

Request 5. *Support ICANN's efforts to ensure that all ICANN documents, meetings and training sessions are open and conducted in all the UN languages, especially in French, given that it is the official language of many African countries.*

---

[4] This work was described in detail during the Dakar Meeting and is reflected in the Rationale for Resolutions 2011.10.28.29 and 2011.10.28.30, reflecting the ICANN's commitment to this work.

Response to Request 5:

ICANN has long aspired to be an organization that is capable of communicating comfortably in a variety of languages and to encourage dialogue amongst the diverse participants in ICANN's global multi-stakeholder process. While English will remain the internal operating language of ICANN for business consultations and legal purposes, ICANN is continually expanding the availability of translation and interpretation services.

In 2008, ICANN adopted translation principles that set out commitments for the production of timely and accurate translations to encourage real dialogue, the translation of core strategic and business documentation, and providing transcriptions for major sessions at ICANN meetings to assist those who do not have English as a first language, among other items. ICANN is now translating hundreds of documents a year to facilitate community discussion. French, as one of the six UN languages, is one of the most frequently requested languages. At its public meetings, ICANN provides real-time interpretation services for many of the sessions, to allow for contemporaneous participation across differing language skills. ICANN has also started providing real-time interpretation services for GAC meetings held at the ICANN Public Meetings, to facilitate participation and discussion among GAC members.

To meet the recommendations of the Accountability and Transparency Review Team, ICANN is now working to finalize a Translation Policy that will soon be available for public comment, which will provide further commitment on the scope of translation of materials. Your request for French translations will be considered as that policy is formulated. Further, in 2011 ICANN began providing translations of all Board resolutions and minutes, as well as the ICANN Bylaws, to keep the broad ICANN community apprised of the actions of the organization.

ICANN is placing a priority on multi-lingualism within its staff, to broaden the ability of staff to communicate with the ICANN community in their native languages. Among the newer, multilingual members of the ICANN executive team, the Chief Financial Officer and the Chief Operating Officer are native speakers of French and Arabic, respectively.

Request 6. *Strengthen the internationalization of ICANN by introducing the principle of geographical rotation in line with other international bodies in their management (Board of Directors and Management).*

Response to Request 6:

ICANN's Bylaws, at Article VI, Section 2.2, in fact require the consideration of geographic diversity in the appointment of members of the ICANN Board, as well as the appointment of leadership within ICANN's Supporting Organizations and Advisory Committees. Within the ICANN Board, the Nominating Committee is charged with assuring that no more than five of the voting members are from any single geographic area, as well as assuring that the Board is comprised of voting members representing all geographic regions.

ICANN has been determined and successful in broadening the geographic diversity and language skills among the staff, including the executive team. Although the laws under which ICANN operates preclude hiring on the basis of national origin, there are in place strict requirements that all newly engaged personnel possess international experience and are proficient in multiple languages. Current senior executives come from a wide variety of countries, including Mexico, the People's Republic of China, Lebanon, and France. A currently open Vice President for Africa position, when filled, will likely further complement this diversity.

Request 7. *Support the US Government draft "statement of work" in the recent Notice of Inquiry On the IANA contract, and also ICANN's own bylaws. To the greatest degree possible, decisions about ccTLDs (including what strings are utilised, who operates the registry and what policies the registry should follow besides those set out by ICANN) should be made by the responsible public authority and the local Internet community concerned and not by the IANA contractor.*

Response to Request 7

ICANN agrees that it is important to respect national sovereignty, the legitimate interests of governments, the local Internet communities, and the primacy of national laws. ICANN continues to execute administration of ccTLD root zone management and delegation requests based on RFC 1591[5], "Domain Name System Structure and Delegation", ICP-1[6], and the International Organization for Standardization (ISO) Standard 3166-1 for two letter country codes. Reliance on those standards means that delegation and root zone management requests by ccTLDs are evaluated based upon local Internet community support, in-country oversight of the ccTLD, and independent standards.

With regard to Internationalized Domain names (IDNs), delegation requests for IDN ccTLDs may be considered after successful completion of the Fast Track Implementation Plan, which was designed in consultation with GAC and ccNSO members to allow ICANN to be responsive to the needs of the world-wide Internet community and allow for the swift and secure introduction of ccTLDs in native scripts. Evaluations are based upon community support for the new TLD and also upon the findings of an independent technical panel.

The ICANN community is currently engaged in a review of the policies and procedures related to the delegation and re-delegation of ccTLDs. Following the publication of the Final Report from the Delegation and Re-delegation Working Group[7], a new "Framework of Interpretation Working Group," was recently created. It is comprised of members of the Governmental Advisory Committee (GAC) and ccTLD operators. Its stated objective is "to develop and propose a "Framework of Interpretation" for the delegation and re-delegation of ccTLDs.[8]

Request 8. *Impart an early warning period to all applicants whether a proposed string would be considered controversial or to raise sensitivities, including; geographical, cultural and community names. This will provide opportunity to governments to review potential new gTLD strings and to advise applicants whether their proposed strings would be considered controversial or would raise national sensitivities.*

Response to Request 8:

The *Applicant Guidebook* incorporates a "GAC Early Warning" period that will operate concurrently with the 60-day comment period after the posting of the information on applied-for strings. Using the Early Warning system, the Governmental Advisory Committee may issue a notice concerning an application, which will provide an indication that the application is seen as potentially sensitive or problematic by one or more governments.

To initiate the GAC Early Warning notice, one or more governments may provide notice to the GAC that an application might be problematic. That notice is sufficient for the GAC to provide an Early Warning Notice. The GAC Early Warning notice may then be sent from the GAC to the Board, and the applicant will be notified. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments. Applicants may withdraw their application, or may elect to continue with the application (which may include meeting with representatives from the relevant government(s) to address the concerns. More details on the GAC Early Warning process are available in Module 1, section 1.1.2.4 of the Applicant Guidebook.

---

[5] RFC stands for Request For Comments. These documents are produced by the Internet Engineering Task Force (IETF) containing technical and policy specifications about the Internet. RFC 1591 describes the DNS system structure and the delegation of top-level domains within that structure. The text of RFC 1591 is available at http://www.ietf.org/rfc/rfc1591.txt.

[6] ICANN published ICP-1 (Internet Coordination Policy) in May 1999 to summarize current practices in administering RFC 1591. ICP-1 is available at http://www.icann.org/en/resources/cctlds/delegation.

[7] *See* http://ccnso.icann.org/workinggroups/drdwg.htm.

[8] *See* http://ccnso.icann.org/workinggroups/foiwg.htm

In addition to the GAC Early Warning system, the GAC can provide formal GAC Advice to the Board on any individual application. The Early Warning and GAC Advice systems are outcomes of the consultation between the GAC and the ICANN Board on the New gTLD Program. This is in addition to the objection processes described in the Response to Request 1.

Request 9. *Support Africa to have root servers in countries in order to minimize the connectivity exchanges and for better utilization of the available bandwidth.*

Response to Request 9:

ICANN works together with eleven other organizations to operate the infrastructure supporting the Root Server System. The twelve organizations have distributed root servers widely around the Internet and they collaborate on operational matters. An increasing number of root servers are based in Africa. Information on their locations is available publicly.[9]

The specific Root Server operated by ICANN is known as L-Root. ICANN launched a pilot program to provide local instances of L-root server infrastructure for geographically remote parts of the Internet protecting the local DNS environment against failures in external network connectivity. The design of the pilot is to deploy root server infrastructure within Internet Service Provider networks or at Internet exchange points supported by exchange point route servers. Some of the locations where L-root nodes have been deployed are Nairobi, Cairo, Johannesburg and Cape Town. An L-root node was deployed most recently in Dakar, Senegal. The project has been pursued with the active participation of local organizations.

ICANN is actively exploring opportunities to expand the number of L-root deployments in a number of locations, including in locations on the African Continent that meet the requirements profile.

Request 10. *Adopt the final report of "Joint Applicant Support" Working Group and also urge to proceed to the establishment of the related implementation plan to be ready for the upcoming application round.*

Response to Request 10:

On 8 December 2011, the ICANN Board considered the final report of the Joint Applicant Working Group and approved an Applicant Support Program. The Applicant Support Program is available to applicants in this first round, which opened on 12 January 2012. The Applicant Support Program will allow meaningful assistance to be given to qualifying applicants, particularly those from developing economies.

One part of the Applicant Support Program is embodied in the New gTLD Financial Assistance Handbook, which was released on January 11, 2012, and details the criteria for applying for financial assistance. Under this program, there are multiple types of assistance available: (1) a reduction in application fee to $47,000, reduced from $185,000; (2) allowing an applicant to pay the $185,000 according to a payment plan, instead of requiring full payment at the time of application; (3) non-financial support such as translation services, and (4) a directory that matches potential donors with applications requiring assistance. In accordance with the criteria developed by the Joint Applicant Support Working Group, those who qualify for financial support will have to meet demonstrated thresholds, including that the proposed TLD will operate in the public interest, as well as demonstrating financial need and the financial capability to operate a registry. Operation in developing economies is one of the criteria that gain an applicant priority in demonstrating eligibility for applicant support. The evaluation of Financial Assistance applications will be performed by an independent Support Application Review Panel (SARP) that is being comprised.

ICANN has committed $2 million to a seed fund for applicant support, and is evaluating how additional funding could be contributed to expand the size of this fund.

---

[9] More information on the operations and locations of root servers can be found at http://www.root-servers.org/.

Another part of the Applicant Support Program intended to reduce costs for potential applicants is the Applicant Support Directory, an online workspace created to connect potential applicants who wish to establish a new public interest gTLD registry in their community with organizations who wish to offer either financial or non-financial assistance.

Request 11. *Make the best use of the available resources for Outreach and Education toward the expected African new gTLD applicants by proposing innovative and efficient programs for all African regions.*

Response to Request 11

While ICANN does not specifically target applicants with its outreach efforts, ICANN has been using innovative methods throughout its campaign to raise awareness of new generic top-level domains, and the potential benefits and challenges of the New gTLD Program.

ICANN has placed a strong focus on both social and traditional media outreach. Given Africa's size, as well as its cultural and language diversity, it is sometimes a challenge to accurately determine message penetration. Through the use of social media sites such as Twitter, ICANN has seen tremendous growth in followers across the African continent. For example, the number of ICANN followers on Twitter has jumped seven-fold in Kenya alone, with new followers also seen in Morocco, Senegal, Cote d'Ivoire, Ghana, Nigeria, South Africa, Zimbabwe, Mozambique, Tanzania and Uganda. ICANN also has engaged with the South Africa-based *Highway Africa News Agency* - a partnership between Rhodes University and the *South African Broadcasting Corporation* (SABC), which has reached across Africa to deliver new gTLD information. Online advertising throughout Africa has surpassed expected returns. For example, more than 230,000 digital ads have been displayed across the continent on Google search pages with a "click through rate" more than double Google's average.

ICANN's October meeting in Dakar produced a high level of interest among the media. More than 40 journalists from Africa's news outlets participated in the main press conference, and that interest has continued. *Agence-FrancePresse*, a major news source for French-speaking Africa, has run numerous new gTLD-related stories. In addition, ICANN's engagement with newly-emerging African news agency *PanaPress*, with over five million registered users, has resulted in syndicated stories across the continent. One particular focus of the stories has been of the resources available to support new gTLD applicants from developing nations.

Request 12. *Speed up the process of resolving and finding resolutions to the outstanding substantive issues on the last version of the Draft Applicant guidebook before the launch of the new gTLD application process.*

Response to Request 12:

ICANN has crafted the New gTLD Program with deliberation, intent upon taking into account the views of the broad ICANN community. Drafts of new positions are published and publicly discussed to ensure full vetting. The New gTLD Program has been refined through ten independent expert working groups, 59 explanatory memoranda and independent reports, thousands of comments in no fewer than 47 extended public comment periods, and 1400 pages of comment summary and analysis. All comments were listened to and taken into account across eight versions of the *Applicant Guidebook*. Work proceeds with vigor but not undue haste.

On 11 January 2012, ICANN published a New gTLD Applicant Guidebook that incorporated operational clarifications in response to questions that have been received. The posting of the Applicant Guidebook was accompanied by a chart setting out the summary of changes between the 9 September 2011 and 11 January 2012 versions of the book.[10] . The newest version incorporates updates to reflect the work approved by the ICANN Board, such as the Applicant Support Program, a clarification of the Early Warning system, further information

---

[10] The summary of Guidebook updates is available at
http://newgtlds.icann.org/en/applicants/agb/summary-changes-applicant-guidebook-11jan12-en.pdf

on the processing of applications if substantially more than 500 are received in the application round, an affirmative statement that ICANN is committed to opening subsequent application rounds, and more.

All of the overarching substantive issues raised earlier in the New gTLD Program development process were resolved prior to the Board's 20 June 2011 approval of the launch of the New gTLD Program. As seen above, there were specific operational items that required further attention. In addition, ICANN is working according to a project plan for the implementation of the rights protection mechanisms that were designed through the consensus-based work to form the New gTLD Program. Those design decisions are complete. Because the protection mechanisms must be operational by early 2013, service providers are now being recruited and the specific rules by which they operate are being written.

ICANN's work is not done with the opening of the 12 January 2012 application window. ICANN has committed to review the impacts of the rollout of the New gTLD Program in accordance with the Affirmation of Commitments, as well as undertaking a post-delegation economic study on the results of the first set of new gTLDs, and a post-launch study on the effectiveness of the new trademark protections and any effects on root zone operations. These reviews may result in additional changes within future application rounds.

08 March 2012

EXHIBIT 10

ICANN

Geographic Name Panel Clarifying Questions

Application ID: 1-1165-42560
String: AFRICA
Applicant: DotConnectAfrica Trust

Clarifying Question 1:

Question 21b of the AGB states, "If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities." Section 2.2.1.4.3 (*Documentation Requirements*) of the AGB states that each letter of support or non-objection for a Geographic Name applicant must meet the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

Your application for .AFRICA includes a Letter of Support from the United Nations Economic Commission for Africa, dated 8 August 2009, without subject. The letter is signed by Abdoulie Janneh, Executive Secretary for the United Nations Economic Commission for Africa. However, the letter does not meet criteria 4 above.

Please provide an updated letter of support from the Executive Secretary or a duly authorised signatory from the United Nations Economic Commission for Africa spokesperson, that:

4. Demonstrates 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

The Letter of support is due to ICANN by deadline as communicated from ICANN.

ICANN

Geographic Name Panel Clarifying Questions

Application ID: 1-1165-42560
String: AFRICA
Applicant: DotConnectAfrica Trust

Clarifying Question:

Question 21b of the AGB states, "If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities." Section 2.2.1.4.3 (*Documentation Requirements*) of the AGB states that each letter of support or non-objection for a Geographic Name applicant must meet the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

Your application for .AFRICA includes a Letter of Support from the Embassy to the United States of America from South Africa, dated 23 February 2009, without subject. The letter is signed by Wellle Nhlapo, Ambassador to the United States from South Africa. However, the letter does not meet criteria 4 above.

The Geographic Names Panel was unable to make a determination as to whether a country's embassy is a relevant government or public authority, and therefore whether this letter meets the requirement in section 21b of the Applicant Guide Book (AGB):

"If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities."

Please provide an updated letter of support from the Embassy of South Africa, or a duly authorised signatory from an appropriate and relevant authority in South Africa, that:

4. Demonstrates 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

The letter should also confirm that the signatory is a relevant government or public entity with the authority to communicate support / non-objection of the government of South Africa.

The Letter of support is due to ICANN by deadline as communicated from ICANN.

ICANN

Geographic Name Panel Clarifying Questions

Application ID: 1-1165-42560
String: AFRICA
Applicant: DotConnectAfrica Trust

Clarifying Question:

Question 21b of the AGB states, "If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities." Section 2.2.1.4.3 (*Documentation Requirements*) of the AGB states that each letter of support or non-objection for a Geographic Name applicant must meet the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

Your application for .AFRICA includes a Letter of Support from the Embassy to the United States of America from the Kingdom of Lesotho, dated 29 December 2008, without subject. The letter is signed by David Moholomi Rantekoa, Ambassador to the United States from the Kingdom of Lesotho. However, the letter does not meet criteria 4 above.

The Geographic Names Panel was unable to make a determination as to whether a country's embassy is a relevant government or public authority, and therefore whether this letter meets the requirement in section 21b of the Applicant Guide Book (AGB):

"If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities."

Please provide an updated letter of support from the Embassy of the Kingdom of Lesotho, or a duly authorised signatory from an appropriate and relevant authority in the Kingdom of Lesotho, that:

4. Demonstrates 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

The letter should also confirm that the signatory is a relevant government or public entity with the authority to communicate support / non-objection of the Kingdom of Lesotho.

The Letter of support is due to ICANN by deadline as communicated from ICANN.

ICANN

Geographic Name Panel Clarifying Questions

Application ID: 1-1165-42560
String: AFRICA
Applicant: DotConnectAfrica Trust

Clarifying Question:

Question 21b of the AGB states, "If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities." Section 2.2.1.4.3 (*Documentation Requirements*) of the AGB states that each letter of support or non-objection for a Geographic Name applicant must meet the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

Your application for .AFRICA includes a Letter of Support from the Federal Democratic Republic of ~~Ethopia~~Ethiopia, Ministry of Transport and Communications, dated 5 February 2009, subject, "Endorsement of the DotAfrica (.africa) Initiative". The letter is signed by Deriba Kuma, Minister for Transport and Communications, Federal Democratic Republic of ~~Ethopia~~Ethiopia. However, the letter does not meet criteria 4 above.

Please provide an updated letter of support from the Minister for Transport and Communications, Federal Democratic Republic of ~~Ethopia~~Ethiopia or a duly authorised signatory from the Ministry of Transport and Communications spokesperson, that:

4. Demonstrates 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.

The Letter of support is due to ICANN by deadline as communicated from ICANN.

ICANN

Geographic Name Panel Clarifying Questions

Application ID: 1-1165-42560
String: AFRICA
Applicant: DotConnectAfrica Trust

Clarifying Question:

Question 21b of the AGB states, "If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities." Section 2.2.1.4.3 (*Documentation Requirements*) of the AGB states that each letter of support or non-objection for a Geographic Name applicant must meet the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

Your application for .AFRICA includes Letter of Support from the African Union Commission, dated 27 August 2009, subject, "Endorsement of the DotAfrica (.africa) Initiative". The letter is signed by Jean Ping, Chairperson, African Union Commission. However, the letter does not meet criteria 4 above.

Please provide an updated letter of support from the Chairperson or a duly authorised signatory from the African Union Commission spokesperson, that:

4. Demonstrates 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

The Letter of support is due to ICANN by deadline as communicated from ICANN.

EXHIBIT 11

New gTLD Program

Initial Evaluation Report

Report Date: 13 October 2015

Update: This report has been updated as of the date above.

Application ID:	1-1165-42560
Applied-for String:	AFRICA
Priority Number:	1005
Applicant Name:	DotConnectAfrica Trust

Overall Initial Evaluation Summary

Initial Evaluation Result	Eligible for Extended Evaluation
Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application and the responses to Clarification Question(s), the Evaluation Panel(s) determined that there was not sufficient information to award a passing score. Your application is eligible for Extended Evaluation as defined in Section 2.3 of the Applicant Guidebook.	

Background Screening Summary

Background Screening	Eligible
Based on review performed to-date, the application is eligible to proceed to the next step in the Program. ICANN reserves the right to perform additional background screening and research, to seek additional information from the applicant, and to reassess and change eligibility up until the execution of the Registry Agreement.	

Panel Summary

String Similarity	Pass - Contention
The String Similarity Panel has determined that your applied-for string is visually similar to another applied-for gTLD string, creating a probability of user confusion. Based on this finding and per Sections 2.2.1.1 and 2.2.1.2 of the Applicant Guidebook, your application was placed in a string contention set.	

DNS Stability	Pass
The DNS Stability Panel has determined that your application is consistent with the requirements in Section 2.2.1.3 of the Applicant Guidebook.	

Geographic Names	Geographic Name - Eligible for Extended Evaluation
The Geographic Names Panel has determined that your application falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4. However, the required documentation of support or non-objection was either not provided or did not meet the criteria described in Section 2.2.1.4.3 of the Applicant Guidebook. As per Section 2.3.1 of the Applicant Guidebook, your application is eligible for Extended Evaluation.	

Registry Services	Pass
The Registry Services Panel has determined that the proposed registry services do not require further review.	

Technical & Operational Capability	Pass
The Technical & Operational Capability Panel determined that:	

Your application meets the Technical & Operational Capability criteria specified in the Applicant Guidebook.

Question	Score
24: SRS	1
25: EPP	1
26: Whois	1
27: Registration Life Cycle	1
28: Abuse Prevention and Mitigation	1
29: Rights Protection Mechanism	1
30: Security Policy	1
31: Technical Overview of Registry	1
32: Architecture	2

33: Database Capabilities	2
34: Geographic Diversity	2
35: DNS Service	1
36: IPv6 Reachability	1
37: Data Backup Policies & Procedures	1
38: Data Escrow	1
39: Registry Continuity	2
40: Registry Transition	1
41: Failover Testing	1
42: Monitoring and Fault Escalation	2
43: DNSSEC	1
44: IDNs (Optional)	1
Total	26
Minimum Required Total Score to Pass*	22

No zero score allowed except on optional Q44

Financial Capability	Pass

The Financial Capability Panel determined that:

Your application meets the Financial Capability criteria specified in the Applicant Guidebook.

Question	Score
45: Financial Statements	1
46: Projections Template	1
47: Costs and Capital Expenditures	2
48: Funding and Revenue	1
49: Contingency Planning	2
50: Funding Critical Registry Functions	3
Total	10
Minimum Required Total Score to Pass**	8

**No zero score allowed on any question*

Disclaimer: Please note that these Initial Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. All applications are subjected to due diligence at contracting time, which may include an additional review of the Continued Operations Instrument for conformance to Specification 8 of the Registry Agreement with ICANN. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

EXHIBIT 12

Extended Evaluation Clarifying Questions

Priority Number: 1005
Application ID: 1-1165-42560
String: AFRICA
Applicant: DotConnectAfrica Trust

Clarifying Question 5:

Question 21b of the AGB states, "If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities." Section 2.2.1.4.3 (*Documentation Requirements*) of the AGB states that each letter of support or non-objection for a Geographic Name applicant must meet the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

Your application for .AFRICA includes Letter of Support from the African Union Commission, dated 27 August 2009, subject, "Endorsement of the DotAfrica (.africa) Initiative". The letter is signed by Jean Ping, Chairperson, African Union Commission. However, the letter does not meet criteria 4 above.

Please provide an updated letter of support from the Chairperson or a duly authorised signatory from the African Union Commission spokesperson, that:

4. Demonstrates 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

The Letter of support is due to ICANN by deadline as communicated from ICANN.

Extended Evaluation Clarifying Questions

Priority Number: 1005
Application ID: 1-1165-42560
String: AFRICA
Applicant: DotConnectAfrica Trust

Clarifying Question 4:

Question 21b of the AGB states, "If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities." Section 2.2.1.4.3 (*Documentation Requirements*) of the AGB states that each letter of support or non-objection for a Geographic Name applicant must meet the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

Your application for .AFRICA includes a Letter of Support from the Federal Democratic Republic of Ethiopia, Ministry of Transport and Communications, dated 5 February 2009, subject, "Endorsement of the DotAfrica (.africa) Initiative". The letter is signed by Deriba Kuma, Minister for Transport and Communications, Federal Democratic Republic of Ethiopia. However, the letter does not meet criteria 4 above.

Please provide an updated letter of support from the Minister for Transport and Communications, Federal Democratic Republic of Ethiopia or a duly authorised signatory from the Ministry of Transport and Communications spokesperson, that:

4. Demonstrates 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.

The Letter of support is due to ICANN by deadline as communicated from ICANN.

ICANN **Domains**

Extended Evaluation Clarifying Questions

Priority Number: 1005
Application ID: 1-1165-42560
String: AFRICA
Applicant: DotConnectAfrica Trust

Clarifying Question 1:

Question 21b of the AGB states, "If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities." Section 2.2.1.4.3 (*Documentation Requirements*) of the AGB states that each letter of support or non-objection for a Geographic Name applicant must meet the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

Your application for .AFRICA includes a Letter of Support from the United Nations Economic Commission for Africa, dated 8 August 2009, without subject. The letter is signed by Abdoulie Janneh, Executive Secretary for the United Nations Economic Commission for Africa. However, the letter does not meet criteria 4 above.

Please provide an updated letter of support from the Executive Secretary or a duly authorised signatory from the United Nations Economic Commission for Africa spokesperson, that:

4. Demonstrates 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

The Letter of support is due to ICANN by deadline as communicated from ICANN.

Extended Evaluation Clarifying Questions

Priority Number: 1005
Application ID: 1-1165-42560
String: AFRICA
Applicant: DotConnectAfrica Trust

Clarifying Question 3:

Question 21b of the AGB states, "If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities." Section 2.2.1.4.3 (*Documentation Requirements*) of the AGB states that each letter of support or non-objection for a Geographic Name applicant must meet the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

Your application for .AFRICA includes a Letter of Support from the Embassy to the United States of America from the Kingdom of Lesotho, dated 29 December 2008, without subject. The letter is signed by David Moholomi Rantekoa, Ambassador to the United States from the Kingdom of Lesotho. However, the letter does not meet criteria 4 above.

The Geographic Names Panel was unable to make a determination as to whether a country's embassy is a relevant government or public authority, and therefore whether this letter meets the requirement in section 21b of the Applicant Guide Book (AGB):

"If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities."

Please provide an updated letter of support from the Embassy of the Kingdom of Lesotho, or a duly authorised signatory from an appropriate and relevant authority in the Kingdom of Lesotho, that:

4. Demonstrates 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

The letter should also confirm that the signatory is a relevant government or public entity with the authority to communicate support / non-objection of the Kingdom of Lesotho.

The Letter of support is due to ICANN by deadline as communicated from ICANN.

Extended Evaluation Clarifying Questions

Priority Number: 1005
Application ID: 1-1165-42560
String: AFRICA
Applicant: DotConnectAfrica Trust

Clarifying Question 2:

Question Question 21b of the AGB states, "If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities." Section 2.2.1.4.3 (*Documentation Requirements*) of the AGB states that each letter of support or non-objection for a Geographic Name applicant must meet the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

Your application for .AFRICA includes a Letter of Support from the Embassy to the United States of America from South Africa, dated 23 February 2009, without subject. The letter is signed by Wellle Nhlapo, Ambassador to the United States from South Africa. However, the letter does not meet criteria 4 above.

The Geographic Names Panel was unable to make a determination as to whether a country's embassy is a relevant government or public authority, and therefore whether this letter meets the requirement in section 21b of the Applicant Guide Book (AGB):

"If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities."

Please provide an updated letter of support from the Embassy of South Africa, or a duly authorised signatory from an appropriate and relevant authority in South Africa, that:

4. Demonstrates 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.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

The letter should also confirm that the signatory is a relevant government or public entity with the authority to communicate support / non-objection of the government of South Africa.

The Letter of support is due to ICANN by deadline as communicated from ICANN.

EXHIBIT 13

New gTLD Program
Extended Evaluation Report
Report Date: 17 February 2016

Application ID:	1-1165-42560
Applied-for String:	AFRICA
Priority Number:	1005
Applicant Name:	Dot Connect Africa Trust

Overall Extended Evaluation Summary

Extended Evaluation Result	Ineligible for Further Review
Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including any responses to Clarification Question(s), the Evaluation Panel(s) determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application is ineligible for further review under the New gTLD Program.	

Panel Summary

Geographic Names	Geographic Name - Ineligible for Further Review
The Geographic Names Panel has determined that your application falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4. However, the required documentation of support or non-objection was either not provided or did not meet the criteria described in Section 2.2.1.4.3 of the Applicant Guidebook. Your application is ineligible for further review.	

Disclaimer: Please note that these Extended Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. All applications are subjected to due diligence at contracting time, which may include an additional review of the Continued Operations Instrument for conformance to Specification 8 of the Registry Agreement with ICANN. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

EXHIBIT 14

From:	Mark McFadden Contact Information Redacted
Sent:	Friday, March 15, 2013 5:56 PM
To:	Larisa B. Gurnick
Cc:	Emily Taylor
Subject:	.AFRICA
Attachments:	Expression of Interest for the Dot Africa -ENG-3.pdf; Notes on the African Union.docx; 2013 03 14 - GEONAM - Evaluation Worksheet - AFRICA.2.xls
Importance:	High

Larissa:

Our panel has reconsidered the additional letters of support for .africa as ICANN has requested. The files attached to this message should help ICANN's management team make progress on the Geographic Names issues related to both applications for the .africa gTLD.

Our panel attaches a spreadsheet which contains the additional analysis according to the Guidebook which was requested by ICANN. It sets out the documents provided by the applicants in date order. From this, our panel observes that there are letters from the African Union supporting both .AFRICA applications. Two dating back to 2008-9 appear to support the DotAfrica Project application; the two more recent letters refer to the African Union's own application.

We have prepared a short note on the African Union itself, and this contains an analysis of the two declarations of ICT Ministers that were provided. These instruct the executive (Commission) to pursue the DotAfrica project, and in our independent opinion, provide suitable evidence of support from relevant governments or public authorities.

In brief, the African Union is closely modeled on the European Union. It has the power to bind member states, and has an executive arm, the Commission. It has 53 member states. In the independent opinion of the Geographic Names panel, we believe that it is a relevant public authority in the guidebook's terms.

The attached "expression of Internet" document refers to additional statements (explored in the note on the African Union) which would be helpful - but not necessary - to see.

In summary, we make the following recommendations to ICANN: the Geographic Names panel should be directed to take into account declarations made by ICT Ministers of the African Union, contrary to explicit previous guidance by ICANN; also, ICANN should work with the Geographic Names panel to re-fashion separate CQs for each of the applicants with the intent to discover whether the African Union Declarations support both .africa applications, or clarify which of the two applications the African Union now intends to support.

We stand ready to take immediate action in regards to further work on .africa.

mark

EXPRESSION OF INTEREST FOR THE OPERATION OF THE DOTAFRICA

In their Olivier Tambo Declaration adopted at their extraordinary Conference held in Johannesburg, South Africa, 2-5 November 2009, the African Union Ministers in charge of Communication and Information Technologies (CITMC) acknowledge the necessity to *"Establish DotAfrica as a continental Top-Level Domain for use by organizations, businesses and individuals with guidance from African Internet agencies"*.

And in their Abuja 2010 Declaration adopted at their Third Ordinary Conference (CITMC-3) held in Abuja, Nigeria, from 6 – 7 August 2010, the Ministers requested the African Union Commission (AUC) to *"Set up the structure and modalities for the Implementation of the DotAfrica project."*

This decision followed the acknowledgement of the benefit of the DotAfrica domain name to Africa, by the African Union Heads of State and Governments (HoSG) Summit held in February 2010 in Addis Ababa.

DotAfrica (.Africa) is that specific Internet namespace for Africa and which is likely to be endorsed for operation during the next round of new Gtlds which ICANN will be launching soon.

DotAfrica will be adding value to the namespace as a recognizable phrase which focuses on the African identity. DotAfrica will serve a community which spans over a large portion of region, therefore providing registrants with accrued possibilities for establishing their Internet presence. It is expected that the Africa small and medium size enterprises will greatly benefit from DotAfrica, as they thrive beyond their local markets to invade the regional and continental marketplace. The Internet will therefore become a platform for growth of the Africa business.

The introduction of the DotAfrica will create an attractive regional home for the Pan-African Internet community; this will be the first sponsored registry to be operating from Africa and therefore serving the specific needs of its communities.

Within this background, the African Union Commission is seeking the services of interested entities to operate the DotAfrica gtld.

Interested firms or consortium should submit the following documents along with signed and sealed Letter of Expression of Interest:
   i.   Detailed company profile indicating verifiable previous experiences within the last three years,
   ii.   Copies of registration certificates and business licenses,
   iii.   Audited Financial Statement for the past three years

Communication and Enquiry
Additional information could be obtained from
M. Moctar YEDALY,
Head of Information Society Division
African Union Commission, Addis Ababa, Ethiopia
Tel: +251-11-4665058; Fax: 11-552 5855/+251-11-4665081
E-mail: Contact Information Redacted

Or

Hussain Usman, Procurement Unit,
Email: Contact Information Redacted

Submission of Expression of Interest
One original and three copies of EOIs (in either English or French Language) must be received in one sealed envelope not later than **Friday, 3rd of June 2011 at 1530hours local time.** Late bid would be rejected and return unopened.

The address for submission is: **The Chairperson of Tender Board; African Union Commission; Roosevelt Street, Building C, 2nd Floor, Room 327, P. O. Box 3243, Addis Ababa, Ethiopia Tel: +251 11-551-7700; Fax: +251 11-551-0430**

Information on the outer envelope should include: on the top left side, boldly written; **Expression of Interest for the Operation of the Dotafrica.**
In the middle of the envelope should be the address.
At the bottom right corner; write **'Do not open, except in the presence of Evaluation Committee'**

All EOIs received would be evaluated based on the company's experience in similar assignment; valid registration certificates and annual turnover

Bidding Document would be sent to short listed companies that met our technical requirements for the final stage of the selection process.

Notes on the African Union

It has 53 members. The only country in the continent of Africa which is not a member is Morocco. It left because of disagreement over Western Sahara issues.

The Constitution of the African Union (dated 11 July 2000) can be found at http://www.africa-union.org/root/au/aboutau/constitutive_act_en.htm#Article7

Its objectives include greater unity and solidarity between African countries, promotion of peace, security and stability, providing sustainable development at the economic, social and cultural levels as well as *integration of African economies*, coordination and harmonisation of policies between Regional Economic Communities.

African countries have the right to request intervention from the Union to restore peace and security.

The organs of the Union include:

The **Assembly of the Union** – takes decisions by consensus or two-thirds majority on a vote.

Its powers include "determine the common policies of the Union"; "receive, consider and *take decisions* on reports and recommendations from the other organs of the Union"; "monitor implementation of policies and decisions of the Union as well as *ensure compliance by all Member States.*"

The Assembly may impose sanctions on Member States.

The African Union's constitution also provides for the establishment of a Pan-African Parliament, Court of Justice, and central banks.

The **Commission** is the executive wing of the African Union, whose structure, functions and regulations are determined by the Assembly.

___

Observations –

The AU is closely modelled on the EU. Its constitution provides for binding determinations and decisions to be made by the Assembly. The withdrawal of Morocco is significant, because it indicates that Member States do not feel that continued participation in the AU is compatible with ignoring or opposing its decisions.

There are two Declarations relevant to the .AFRICA gTLD application(s).

2009 – Oliver Tambo

2010 – Abuja Declaration

Both are declarations of African Union Ministers in Charge of Communication and Information Technologies – the relevant portfolio for domain name policy.

The 2009 Declaration commits to working together to promote the use of ccTLDs as critical national resources, and ensure that the technical and administrative operations are at international standards to foster trust and use of African Domain Names. It also recommends to the AU Assembly to direct Ministers of Finance to work in close cooperation with ICT Ministers to *identify innovative*

funding mechanisms to enable Member States to contribute to the African Union Communication and Information Technologies Fund.

NB the Expression of Interest for the Operation of Dot Africa states that the Oliver Tambo Declaration refers to DotAfrica. I have been unable to find the quoted phrase in the copy I have, and (while this is not necessary given the 2010 declaration) it would be helpful if the applicants could provide further documentation containing the quoted phrase if possible.

The 2010 Declaration requests the AU Commission to "set up the structure and modalities for the implementation of the DotAfrica project." This is a clear instruction by ICT Ministers from the African Region to its executive wing.

NB The Expression of Interest also mentions that the African Union Heads of State and Governments in their Summit (Addis Ababa 2010) acknowledged the benefit of DotAfrica. I was unable to locate this in the Addis Ababa decisions document. Again, while this is not not necessary given the 2010 Declaration, it would be helpful to see the documentation supporting this statement.

DATE	Application	LETTER OF SUPPORT FROM	JOINT ADDRESSEE	Q1: Letters signed?	Q2: Relevant authorities?	Q3: Support or non-objection?	Q4: Understanding of the string?	Q5: Understanding of intended use?	Q6: Understanding of gTLD app. process?	Q7: Registry agreement with ICANN	Q8: Compliance with consensus policies	Q9: Government body exists?	Q10: Signatory held role on app. date?	Q11: Government body relevant?	Q12: Documentation authentic?	Q13: Payment of fees	Q14: UNESCO region/Composition – ist	Q15: 60% support?	Q16: No of objections	Q17: Sufficient documentation?	Q18: Documentation valid?	Status of Evaluation	Note
8-Aug-08	AFRICA	UNECA	Ms. Sophia Bekele, Dot Africa Project Initiative	Y	Y	Y	†	Y	Y	N	N	N	Y	Y	Y		Y						Calls the string dotafrica and africa. The string has been amended to AFRICA therefore I have marked this as Y. UNECA is made up of 54 member states, and its mandate includes ICT issues for the region.
27-Aug-08	AFRICA	African Union	Ms. Sophia Bekele, Dot Africa Project Initiative	Y	Y	Y	†	Y	Y	N	N	N	Y	Y	Y		Y						There are 53 member states of the African Union. The Commission is the secretariat of the African Union. One of the powers of the Assembly is stated as "monitor the implementation of policies and decisions of the Union as well ensure compliance by all Member States," suggesting a power to bind the member states on relevant decisions.
Nov-00	AFRICA	Oliver Tambo Declaration	SEE SEPARATE NOTE																				
Aug-10	AFRICA	Abuja Declaration	SEE SEPARATE NOTE																				
16-Sep-11	AFRICA	UNECA	Commissioner, African Union	Y	Y	†	Y	N	N	N	Y	Y	Y		N							UNECA referred to in Abuja Declaration to assist Commission in implementation of cyber legislation harmonisation
4-Apr-12	AFRICA	African Union	UniForm SA/ZACR	Y	Y	†	Y	N	N	N	Y	Y	Y				Y					Refers to terms and conditions (not seen) setting out the agreement between the parties.

EXHIBIT 15

New gTLD Application Submitted to ICANN by: ZA Central Registry NPC trading as Registry.Africa

Application Downloaded On: 17 Feb 2014

String: africa

Application ID: 1-1243-89583

Applicant Information

1. Full legal name
ZA Central Registry NPC trading as Registry.Africa

2. Address of the principal place of business
Contact Information Redacted

3. Phone number
Contact Information Redacted

4. Fax number
Contact Information Redacted

5. If applicable, website or URL
http://www.AfricaInOneSpace.org

Primary Contact

6(a). Name
Neil Dundas

6(b). Title
Director

6(c). Address

6(d). Phone Number

6(e). Fax Number

6(f). Email Address

Secondary Contact

7(a). Name
Simla Budhu

7(b). Title
Manager - Legal & Policy

7(c). Address

7(d). Phone Number

7(e). Fax Number

7(f). Email Address

Proof of Legal Establishment

8(a). Legal form of the Applicant
Not for Profit Company (NPC)

8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).
Initially incorporated as a Section 21 Company (Not for Gain), under the Companies Act of 1973, with the Registrar of Companies (Companies and Intellectual Property Registry Office - CIPRO) In terms of the new Companies Act of 2008, has been reclassified as a Not for Profit Company, registered with the South African Companies and Intellectual Property Commission (CIPC)

8(c). Attach evidence of the applicant's establishment.
Attachments are not displayed on this form.

9(a). If applying company is publicly traded, provide the exchange and symbol.

9(b). If the applying entity is a subsidiary, provide the parent company.
Not applicable

9(c). If the applying entity is a joint venture, list all joint venture partners.

Applicant Background

11(a). Name(s) and position(s) of all directors

Name	Position
BROWNE, Calvin Scott	Director
DUNDAS, Neil Duncan	Director
ELKINS, Mark James	Director
KRAMER, Theodorus	Director
WALLACE, Fiona Jean	Director

11(b). Name(s) and position(s) of all officers and partners

Name	Position
BUDHU, Simla Rathilal	Legal & Policy Manager
ELS, Lizette	Administration Manager
MAASDORP, Sedrick Marco	Human Resoruces Manager

11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares

11(d). For an applying entity that does not have directors, officers, partners, or shareholders: Name(s) and position(s) of all individuals having legal or executive responsibility

Name	Position
EL BASHIR, Mohamed	Chairperson: dotAfrica Steering Committee

Applied-for gTLD string

13. Provide the applied-for gTLD string. If an IDN, provide the U-label.

africa

14A. If applying for an IDN, provide the A-label (beginning with "xn--").

14B. If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.

14C1. If an IDN, provide the language of the label (in English).

14C2. If an IDN, provide the language of the label (as referenced by ISO-639-1).

14D1. If an IDN, provide the script of the label (in English).

14D2. If an IDN, provide the script of the label (as referenced by ISO 15924).

14E. If an IDN, list all code points contained in the U-label according to Unicode form.

15A. If an IDN, upload IDN tables for the proposed registry. An IDN table must include:

1. the applied-for gTLD string relevant to the tables,
2. the script or language designator (as defined in BCP 47),
3. table version number,
4. effective date (DD Month YYYY), and
5. contact name, email address, and phone number.
   Submission of IDN tables in a standards-based format is encouraged.

15B. Describe the process used for development of the IDN tables submitted, including consultations and sources used.

15C. List any variants to the applied-for gTLD string according to the relevant IDN tables.

16. Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.

There are no known issues, specific operational or rendering problems with the applied for string. It is a Latin alphabet based string that conforms to the specifications laid out in RFC 1035.

As with all new TLDs there is the potential for legacy applications to fail to recognize the new TLD string. Some older applications may have hardcoded lists of "valid" TLDs or, worse case, assume anything that is not ".com", ".net" or ".org" to be invalid. There are existing initiatives, including The Public Suffix List operated by the Mozilla Foundation, which the Applicant will work with to help educate the broader Internet Community.

17. OPTIONAL.
Provide a representation of the label according to the International Phonetic Alphabet
(http://www.langsci.ucl.ac.uk/ipa/).

18A. Describe the mission/purpose of your proposed gTLD.

Introduction: Mission, Vision and Purpose:

ZA Central Registry NPC is a non-profit company incorporated in South Africa and trading as the .ZA Central Registry ("ZACR"). The African Union Commission (AUC) has, on behalf of its member states, officially appointed ZA Central Registry NPC to apply for and launch the dotAfrica TLD.

In this application and any supporting documentation relating thereto, the Applicant may be referred to as ZA Central Registry NPC, UniForum SA, Registry.Africa, the ZA Central Registry and/or simply ZACR. Although it is the intention of the Applicant to conduct its business under the Registry.Africa banner in the event that its application is successful, the evaluating team should, for purposes of this application, consider any reference to ZA Central Registry, UniForum SA, Registry.Africa, ZA Central Registry and/or ZACR as interchangeable and synonymous with the Applicant.

The ZACR and its partners in Africa, representing governments, ccTLD administrators, the technical and user communities, share a collective vision of establishing and running a successful, African-based registry operation for the benefit and pride of Africa.

Our primary objective and mission can therefore be summarised as follows: "To establish a world class domain name registry operation for the dotAfrica Top Level Domain (TLD) by engaging

and utilising African technology, know-how and funding; for the benefit and pride of Africans; in partnership with African governments and other ICT stakeholder groups".

Our mission is to establish the dotAfrica TLD as a proud identifier of Africa's online identity, fairly reflecting the continent's rich cultural, social and economic diversity and potential. In essence we will strive to develop and position the dotAfrica TLD as the preferred option for individuals and businesses either based in Africa or with strong associations with the continent and its people.

The dotAfrica TLD represents a unique opportunity for Africa to develop and enhance its domain name and Internet eco-systems and communities by collaborating with each other to:
- identify, engage and develop African-based specialist skills and resources;
- share knowledge and develop DNS thought-leadership; and
- implement world class registry standards and contribute towards their continued development.

18B. How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

By Africa, for Africa:

The dotAfrica TLD is a collaborative, public-private, African initiative, supported by African governments through the African Union and administered through the expertise and resources of the private sector. Shortly after its appointment in terms of the African Union RFP process, the Applicant, in consultation with Internet community representatives from all over Africa, at a meeting held in Johannesburg, established a Steering Committee to exercise moral and ethical oversight over the dotAfrica project.

Representatives of the broader African Internet community are currently participating in the project through the SteerCom, which comprises African Internet experts, country code managers, registrars and others volunteers. For a list of the SteerCom members refer to www.AfricaInOneSpace.org.

The SteerCom is engaged under formal Terms of Reference, which include, amongst others, a mandate to identify the criteria and processes for the incorporation of a new non-profit organisation, namely the dotAfrica Foundation. The SteerCom is therefore the precursor to the dotAfrica Foundation, which will work closely with the Applicant in assuming the moral and ethical oversight of the dotAfrica TLD and the development of policy issues. The SteerCom will be dissolved once the Foundation is incorporated and established.

Benefitting the African and Global Internet Communities:

Reinvestment into Africa:

Funds generated through the administration of the dotAfrica TLD will benefit Africans and the African continent through various skills development and capacity-building initiatives relating to the local domain name and Internet sectors. By investing in the development and enhancement of critical Internet infrastructure and resources, end-users will receive more efficient and reliable services, which will have a follow-on enabling effect on socio-economic growth and investment in the region.

Upon delegation of the dotAfrica TLD the Applicant will establish a Development Fund, which will comprise surplus operational funds generated through the administration of the dotAfrica gTLD. This Fund will be transferred to and administered by the dotAfrica Foundation, to be applied to development projects and initiatives in Africa. These include:

(A) The Development of African ccTLDs:
ccTLDs provide important Internet infrastructure that promote and support local economic growth, education and communication. The Development Fund must support the role of existing organisations such as AfTLD and strengthen and develop new African ccTLDs. Primary objectives of this development initiative are to:

(i) make available and/or share technical resources and know-how, developed and maintained in Africa;

(ii) develop and harmonise African ccTLD strategy and policy to make it more attractive and accessible to local and international markets;
(iii) harness and optimise the business potential that ccTLDs present, and to develop domestic strategies and partnerships to facilitate the dissemination of benefits down the domain name value chain; and

(iv) establish collaborative centres of excellence throughout Africa through which new technical skills and thought leadership can thrive and develop.

(B) The Development of the African Registrar Market:
Of the over 900 ICANN-accredited registrars in the world, more than 500 are based in the United States, whilst Africa has only 5. Of these only 4 are operational. Africa is clearly lagging behind its international counterparts and a solution must be found from within Africa.

The Development Fund must support and facilitate the expansion of the African Registrar market. Some of the broad objectives of this development initiative are to:
(i) promote awareness of (and engage with) the registrar model as a mechanism for domestic and regional enterprise and skills development;

(ii) develop and implement industry best practices and consumer (registrant) protection mechanisms;

(iii) develop and provide shared, cost-effective resources and services;

(iv) collectively address associated business challenges, including billing and banking issues;

(v) provide a mechanism for registrars to enter the market and to nurture their businesses into becoming globally competitive and viable; and

(vi) harness the business potential of a competitive and vibrant registrar market for the benefit of African registrants and ccTLDs.

(C) The Development of African Online Content:
The dotAfrica project is a fantastic opportunity to drive content development focusing specifically on Africa. In order to kick-start this process and achieve some level of critical mass, the Applicant will reserve certain high-search value names and then utilise these, either on its own or through strategic partnerships with content providers, to develop online content and services. The Development Fund must support and facilitate the origination, development and maintenance of African-related online content and services.

Some of the broad objectives of this development initiative are to:

(i) Encourage existing African content and service providers to associate their content with the dotAfrica TLD in order to better engage with this user community. This is specifically relevant to

African online content and service providers who utilise gTLDs instead of African ccTLDs. Potential targets for this initiative include African governments and agencies, large multi-national and parastatal organisations.
(ii) Develop strategic partnerships and associations with existing, well-established international online content and related services providers, to encourage and assist them to develop and customise their products and services specifically for the African market. Potential targets for this initiative include social media platforms, search engines providers, and leisure and business service providers.
(iii) Establish partnerships and associations with African service providers and businesses with the potential and capacity to develop sound business models for developing and driving online content and services; and assist them by making available high-search value names, start-up funding, technical support and mentoring, etcetera.

(D) The Support of Socio-Economic Development Projects and Initiatives:

The Applicant, through its administration of the successful CO.ZA domain name space in South Africa over the past 16 years, has already demonstrated its ability to establish and maintain a highly successful and sustainable social development initiative through its 'CoZa Cares' division. By 2011, this division, in collaboration with its strategic partners, had channelled over ZAR40mill (USD5,5M) towards the establishment of ICT infrastructure in over 250 schools, in 7 South African provinces.

The Development Fund must support and facilitate various African socio-economic development initiatives and projects relating to the ICT sector. Supporting ICT skills development and capacity-building initiatives, from primary school to tertiary level, is critical to develop the African thought leaders of tomorrow.

The broad objectives of this development initiative are to:

(i) facilitate the coordination of various ICT-related social-economic development initiatives in Africa, in order for the various participants to learn and benefit from each others' experiences and, where possible, to pool resources and expertise in order to address developmental challenges faced by Africa more effectively; and
(ii) identify and support worthy ICT-development projects and initiatives throughout Africa in order to ensure their sustainability.

Although the above development initiatives and projects undertaken by the dotAfrica Project partners are almost exclusively focused on the African community, we believe that there is a compelling benefit for the rest of the world. Africa comprises nearly 1 billion people, based in 54 countries with a wide diversity of language and culture. A successful dotAfrica TLD, supported by an empowered and vibrant African community, presents significant business, social and leisure opportunities for the world. Success in Africa means success for the world.

In addition to the development projects and initiatives administered through the dotAfrica Foundation, the Applicant will endeavour, as part of its registry operations, to establish a Centre of Excellence, in terms of which African specialist skills and expertise, relating to the DNS environment, will be identified and developed. Specialist DNS expertise is a critical success factor in order to benefit the dotAfrica registry operation and African ccTLDs. The development of African DNS thought leadership and technical innovation is needed in order to sustain the empowerment of African ccTLDs.

Building a Global Brand with a Focus on Africa:

Africa, the Cradle of Humankind:
"Africa is the world's second-largest and second-most-populous continent, after Asia. Africa, particularly central Eastern Africa, is widely regarded within the scientific community to be the origin of humans and the Hominidae clade , as evidenced by the discovery of the earliest hominids and their ancestors, as well as later ones that have been dated to around seven million years ago." (wikipedia)

Africa, the Economic Opportunity:
"The economies of the fastest growing African nations experienced growth significantly above the global average rates. Many international agencies are gaining increasing interest in investing emerging African economies, especially as Africa continues to maintain high economic growth despite the current global economic recession. The rate of return on investment in Africa is

currently the highest in the developing world."

Differentiation of dotAfrica from other new gTLDs:
There will be many arguments raised by registries in differentiating their new gTLDs from others. As a geographic indicator, the dotAfrica TLD, which is unique in essence, will automatically assume the reputation and goodwill of the region it represents. Africa represents a unique part of the world, with unique people, challenges and prospects. dotAfrica, therefore presents an opportunity to engage with the region and its people, thereby potentially unlocking the economic and social potential of a vast and diverse continent.

Whilst there are 54 ccTLDs that could potentially serve the needs of the African Internet community, not a single one of these is ideally positioned to provide a collective identity to the continent as a whole. With many of these ccTLDs in turmoil or unable to provide reliable services, dotAfrica will offer a secure, stable, and open TLD that will be recognized in Africa as well around the world.

Marketing, Communication and Public Relations:
The marketing of the dotAfrica domain name brand will occur in terms of a defined strategy to create competitive advantages to governments, businesses and individuals within Africa and abroad. The entire African continent has unique needs, cultures, and political realities, market requirements and socio-economic conditions, which are influenced by internal and external forces. These variables need to be taken into account in our marketing and communication strategy with our various stakeholders.

Multiple media tools must be used in the dotAfrica marketing strategy. Radio remains a major source of information throughout Africa, but mobile penetration must also be used to dotAfrica's advantage. Broadband penetration outside of a very small number of countries has been limited, but Internet access via mobile telephone is on the rise. Digital and pay-for-service television access is on the rise. The vast target market needs to be segmented, in order to develop key messaging for each market sector. Each dotAfrica registration will help fund the dotAfrica Foundation that has the core mandate to promote digital inclusion, social development, and technical development of the Internet in the region.

A dotAfrica domain name is the perfect platform for global branding, marketing, and visibility with a focus on customers and markets in Africa which can help increase tourism, build and enhance international business relationships with Africa, and boost economic benefits. The marketing and communication campaign for dotAfrica is already using a number of communication platforms to create awareness and communicate with the various stakeholders, including: Facebook & Twitter and; dotAfrica website (africainonespace.org); and dotAfrica mailing lists. Traditional media such as newspapers, and radio and modern digital media have been used to spread the dotAfrica message. An African multi-stakeholder committee comprising of diverse skills has been established to focus on activities and strategy required for a successful PR campaign.

Registry Operations:
From a technical/operational perspective the dotAfrica TLD registry will operate on the Extensible Provisioning Protocol platform, which is an internationally accepted standard for registry functions across the world and which has the flexibility to incorporate extensions such as DNSSEC and extensions pertaining to domain specific policy requirements. The dotAfrica registry platform is wholly developed, maintained and hosted in Africa.

The applicant has a highly experienced team of experts dedicated to the on going development, maintenance, administration and training of the core registry services. The dotAfrica registry platform, which has been developed, implemented and maintained on the back of over 17 years registry experience by the Applicant, also provides WHOIS services, Secure EPP Message Handling, DNS and DNSSEC services. A key point of the registry system is the flexible Policy Integration and configuration independent of the core development team.

As part of the global DNS environment, the dotAfrica registry platform also integrates with specialist 3rd party DNS related systems and services, which when viewed collectively, provides a mature comprehensive, well-balanced world-class registry solution for dotAfrica. External systems and services compliant with industry best practises and ICANN requirements include: Data Escrow services; Anycast and Unicast services; and Off-site Hot Standby Failover Hosting.

We envisage that the investment by the Applicant into the development of the African ccTLD and Registrar communities will encourage the adoption and implementation of unified standards and

policies across the Africa region. This should in turn facilitate the growth of a competitive and sustainable registry/registrar market and cost savings and efficiencies for registries that collaborate on the implementation of shared services and systems.

Preliminary steps have already been taken to create awareness and engage with the African registrar and registry communities on the subject of the proposed dotAfrica registry system. A wiki site which highlights the Applicant's EPP functionality and provides a walkthrough for current and potential registrars has been created at http://registry.net.za

Apart from providing a platform for growth of the cctLD and registrar communities, the dotAfrica registry solution allows registrars access to a number of key services including an automated Registrar Accreditation Process, reporting and tracking, a Registry Notification Portal, and a secure flexible interface for retrieving financial statements and invoices. This allows for the registration and maintenance of domain names by registrars and results in ease of domain registration for registrants.

More importantly it provides a registry platform that promotes simple, accessible, secure, accurate and abuse free domain registration by registrars and ultimately the end user. The dotAfrica TLD registry function will be managed in a way that is service driven, secure and stable.

Registration Policy:
The dotAfrica registration policy will be established, implemented and maintained through a multi-stakeholder Policy Committee established by the Applicant in partnership with the Steering Committee or the Foundation. The registration policy will set out the technical and administrative procedures and criteria used by the registry with regards to domain name registrations or requests for such registrations, cancellations, transfers, suspensions and revocations. The policy will be informed and guided by those developed through the ICANN multi-stakeholder process.

Although a comprehensive final registration policy must still be approved, the broad parameters of the registration policy will include:

(i) following the Sunrise and Land Rush periods, registrations will be delegated on a "first-come-first-served" basis;

(ii) registrations will be open to anyone;

(iii) access to the registry will be available only through an ICANN-Accredited Registrar who has executed a suitable accreditation agreement with the registry;

(iv) registration periods will range from 1 – 10 years.

Similar criteria will apply to the establishment, implementation and maintenance of a privacy policy for the dotAfrica TLD that is based on international best practices as well as local and international standards. The registry will strive to protect the rights and privacy of all individuals or companies associated with dotAfrica TLD names.

Financial Aspects:
The Applicant, over 17 years of administering the successful CO.ZA domain in South Africa, has demonstrated an ability and capacity to manage and administer its financial affairs in a professional and transparent manner. The Applicant has maintained highly competitive fees charged to registrars within reasonable international parameters. Simultaneously it has generated reasonable surplus funds, not only to provide a suitable operating buffer for the efficient and effective operation of the registry, but also to fund social development initiatives and projects.

The Applicant will, under the scrutiny and oversight of the SteerCom or Foundation, apply similar financial disciplines and procedure to the administration of the dotAfrica TLD. As outlined above, the operating revenues generated through the administration of the dotAfrica TLD will be accounted for in accordance with internationally-accepted accounting practices. All surplus funds will be channelled into a Development Fund to be administered by the dotAfrica Foundation.

Although the financial parameters and policies must still be finalised and approved by the Policy Committee, the following are of importance concerning the application and launch of the dotAfrica TLD. The Applicant has made available up to US$1,300,000 to apply for and launch the dotAfrica TLD. The above funds have been committed to a dedicated dotAfrica bank account that will be used

exclusively for the dotAfrica project.

The Applicant has provided a Continual Performance Guarantee to ICANN of US$140,000 with ABSA Bank, a subsidiary of Barclays Plc to secure the provision of critical registry services for the dotAfrica TLD for up to 6 years. Initial registration fees are estimated to be in the region of US$18 per year. Due to its considerable investment into its technical registry capacity for .ZA, including the procurement and development of technical skills and resources, the Applicant is able to leverage this against the provision of critical registry services for dotAfrica in the event that the TLD is commercially unsustainable in its own right.

18C. 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?

Rights Protection:
-       Reserved Name Lists (Pre-Sunrise)
-       Sunrise
-       Post Delegation Dispute Resolution

The ZACR is committed to protecting the rights of governments, registrars, end users and the greater Internet community against fraudulent, deceptive and unfair business practices that may arise within the dotAfrica TLD. Abusive practices will be minimized through the following initiatives:

(A) Pre-Sunrise:
A pre-sunrise process will take place prior to the full-scale implementation of the Sunrise and Land-rush Policy applicable to the dotAfrica TLD. This is significant as it will provide African governments and government organisations, such as the African Union Commission (AUC), a window of opportunity to compile and submit a list of names that must be reserved or blocked from registration. These names may touch on sensitive territorial or political issues; hold special meaning in Africa (such as country names, city names, cultural sites or groups); or are simply offensive in Africa.

The Pre-Sunrise process will be done in coordination with the AUC on the terms and conditions agreed to between the AUC and the ZACR in their agreement signed on 1 March 2012 and will also be subject to all reservations prescribed by ICANN (included but not limited to reservations regarding the label 'example', two character labels, tagged domain names, prescribed registry operation names, country and territory names, etc.) as well as the GAC principles regarding new TLDS.

Names placed on the Reserve Lists will only be available to pre-defined Applicants who will be expected to apply for the names within a period of time prescribed by the dotAfrica Policy Committee.

(B) Sunrise:
A phase-based Sunrise procedure, with associated auction processes, will be implemented to allow established brands and trademark holders to register their corresponding domains within the dotAfrica TLD. Although the Policy Committee must still approve a final Sunrise Policy, a draft policy has already been developed and is currently under review. This policy caters for two Sunrise periods, namely:
-       Sunrise 1, which provides priority for eligible owners of trademarks registered in Africa to obtain corresponding domains names.
-       Sunrise 2, which allows eligible owners of trademarks to obtain corresponding domains names.

The ZACR will appoint an independent entity or entities to provide certain rights protection services which may include inter alia verification, validation, and dispute resolution services related to the eligibility of trademarks. In this regard the ZACR will endeavour to engage the services of African providers and institutions and has in the past worked closely with the South African Institute of Intellectual Property Law (www.SAIIPL.org.za) concerning the establishment and implementation of alternate dispute resolution mechanisms in ZA.

The final Sunrise Policy will also provide further details and clarity on Sunrise Eligibility Requirements (SERs) and a dedicated dispute resolution policy and mechanism for this phase.

(C) Land Rush
Just as in the Sunrise period, Land Rush will be implemented over several phases and will be administered through the Applicant's Registrar Web Portal. Although the Policy Committee must still approve a final Land Rush Policy, a draft policy has already been developed and is currently under review. This policy caters for three Land Rush phases, namely:
-        The first phase is the "Introductory Land Rush Period" and will see premium domain names made available for purchase for certain periods at time at a certain minimum prices which will decrease as the periods progress. Where there is more than one party interested in the same domain name, that domain name will be referred to auction.
-        The second phase is the "Initiation Land Rush Period". This period will last for an estimated 14 days and will also be administered through the Registrar Web Portal. A minimum fee (roughly $300 - $500) will apply to registrations during this period. Multiple applications for the same domain name during this period will also be resolved using an auction process. Undisputed applications will be allocated at the end of the period.
-        Depending on the decision made by the Policy Committee, the ZACR may elect to implement a "Limited Availability Operational Phase", following on from the Initiation Land Rush period. This mechanism, which will endure for a limited time (0-14 days) will be to place any newly requested domain name (application) in a reserved queue for a short period. If any additional applications for the same domain name are received during this period then the domain will enter a Land Rush auction for a maximum predetermined period. At the end of the period the bids will be collected and the winner determined. This process, or a process similar to this, may also be introduced by the ZACR on an adhoc basis to mitigate the effects of multiple applications for the same name following domain release as well as spontaneous applications due to international events or announcements

(D) All Rights Protection Mechanisms prescribed by ICANN will be implemented. In particular, the Uniform Rapid Suspension System (URS) will be adopted. Initially, Examiners accredited by ICANN appointed Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will be requested to make findings in URS applications, but the Registry hopes to arrange for the appointment of a board of suitably qualified Examiners particularly in Africa to make findings in these matters.

In the case where a Post Delegation Dispute Resolution Procedure (PDDRP) is initiated following allegations that the Registry profited from a bad faith registration, the Registry undertakes to participate in the procedure and be bound by the determination made. This will be specifically included in the agreement with prospective applicants for domain names in this TLD. Providers accredited by ICANN as Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will initially be requested to stand as Providers in PDDRP applications, but the Registry hopes to arrange for the appointment of a board of suitably qualified Examiners particularly in Africa to make findings in these matters.

Provision will also be made to file initial complaints that the Registry has not complied with registry restrictions through a Whois Data Problem Report System (WDPRS) through InterNIC.net at a nominal, non-refundable fee. If a complainant is not satisfied that the Registry has complied with its requirements, the matter may be escalated using the RRDRP.

In the case of Registry Restrictions Dispute Resolutions Procedures (RRDRP), the Registry undertakes to participate in the procedure and be bound by the determination made. This will be specifically included in the agreement with prospective applicants for domain names in this TLD. Providers accredited by ICANN as Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will initially be requested to stand as Providers in RRDRP applications, but the Registry hopes to arrange for the appointment of a board of suitably qualified Examiners particularly in Africa to make findings in these matters.

A dedicated online advisory / complaints portal will be created and end-users will have access to email, telephone and fax contact details of an appointed Complaints Officer who will attend to complaints directly or escalate them to the relevant divisions within the registry for resolution. A comprehensive Complaints Handling Policy, that sets out inter alia the scope and ambit of complaints that will be dealt with; the process that must be followed to deal with domain related complaints; and the course of action that the registry may take to deal with complaints depending on their nature, will also be drafted in consultation with the dotAfrica Policy Committee.

(E) The Policy Committee (PC), which is a multi-stakeholder consultative mechanism, will play a determining role in defining policy and determining pricing mechanisms within the dotAfrica TLD. The scope and mandate of the PC will include the review and authorisation of various pricing models, including multi-year (1 – 10 years) pricing, bulk discounts and prices changes. The PC will consider the input and comments of the Registry Operator, the Foundation, Registrars, the broader Internet community and other factors concerning the affordability and competitiveness of the TLD in determining policy, prices and/or or price changes.

The PC will, after due consideration and where circumstances reasonably allow, first publish a proposed policy or price update schedule for public comment on the Registry's website and will also circulate this to the Registrar mailing lists. The proposed update schedule will also include a description of the implementation roadmap for these changes to come into effect and prescribe a deadline for further comments and objections to be submitted for consideration.

Upon final review, taking into account the input provided and objections raised during the public inspection period, the PC will provide a final policy to the Registry Operator for implementation in the manner prescribed. The Registry Provider will then publish the policy on its website and duly inform all accredited Registrars and ICANN of the policy change. The Registry Operator will then ensure that the policy is implemented as published.

PARAGRAPH ON IMPLEMENTATION OF IDN WITHIN THE DOTAFRICA gTLD REGISTRY FUNCTION

Some of Africa's languages are non-Latin scripts for example Arabic and Amharic and also many African languages are written with extended Latin scrip. Africa has diverse cultural, religious and language groups so the impetus to facilitate IDN integration within the dotAfrica gTLD framework clearly exists. The ZACR has the technical knowledge and the specialized skills needed to add IDN capability within the dotAfrica gTLD registry function but believes that it would be premature to implement IDN integration without fully understanding the technical, legal and policy ramifications that this may have in Africa and elsewhere.

Whilst the implementation of IDN is not a new phenomenon internationally, its implementation in the African context will definitely be new. Associated to this is the fact that the African internet/domain name community has to be developed in terms of the beneficiation model described earlier in this submission so that it matures in terms of infrastructure, policies and human potential to a stage where the incorporation of IDN becomes axiomatic. Given the diversity and uniqueness of the management model of the dotAfrica gTLD domain name registry and the sensitivities surrounding language issues, the ZACR believes that it would be wise to reserve this issue for future research, discussion, debate and policy development under the guidance of a Policy Oversight Committee.

The ZACR intends to engage with those registries that have implemented IDN capability within its registry function to learn from their experience. More especially the ZACR plans to engage/consult with the broader African internet community, involving representatives from governments, registries, registrars as well as other experts and end users to investigate and resolve the challenges that IDN integration may present to Africa.

19. Is the application for a community-based TLD?

No

20A. Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.

20B. Explain the applicant's relationship to the community identified in 20(a).

20C. Provide a description of the community-based purpose of the applied-for gTLD.

20D. Explain the relationship between the applied- for gTLD string and the community identified in 20(a).

20E. 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.

20F. Attach any written endorsements for the application from established institutions representative of the community identified in 20(a). An applicant may submit written endorsements by multiple institutions, if relevant to the community.

21A. Is the application for a geographic name?

Yes

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.

The ZACR is aware of the GAC adviceon this issue and will take it into consideration in their management of second level domain name registrations and further confirms that it will comply with Specification 5 of the Registry Agreement.

Specification 5 of the New gTLD Registry Agreement initially reserves at the 2nd and all other levels within the TLD:
- Country and territory names contained on the ISO 3166-1 list
- UN Group of Experts on Geographical Names, Technical Reference Manual for the Standardisation of Geographical Names, Part II Names of Countries of the World, and
- The list of UN member states in 6 official UN languages prepared by the Working Group on Country Names of the UN Conference on the Standardization of Geographical Names

In accordance with the provisos contained in Specification 5, such names may be released if the Registry Operator reaches agreement with the applicable government and/or the Registry Operator proposes release of the reserved name(s) subject to review by GAC and approved by ICANN.

The Registry will work cooperatively with ICANN to ensure that the 2nd and subsequent levels of the proposed TLD comply with expressed public policies and goals and in particular the following:

1. It is worth noting, as documented by ICANN, that rights of governments or public authorities in relation to the rights of the sovereign state or territory which they represent cannot be limited or made conditional by any procedures that ICANN introduces to new gTLDs. The ZACR will follow the GAC public process relating to geographic names

2. The ZACR will use existing recognised international lists as prescribed by ICANN. The lists will be reserved at the second level at no cost to the governments of the dotAfrica TLD. It will be the prerogative of the relevant governments to adopt
procedures that allow for applicants to register names from any of teh reserve lists.

3. The AUC shall within three months into force of the agreement with the ZACR, allow member states to submit to the AUC and other member states a limited list of broadly recognised names with regard to geographical and/or geopolitical concepts which affect their political or territorial organisation that may either:
- not be registered or
- be registered only under a second level domain according to the public policy rules

4. The African Union Commission (AUC) will furnish the list of notified names to which such criteria apply, and the AUC shall also publish the list at the same time as it notifies the ZACR

5. Where a member state or the AUC within 30 days of publication raises an objection to an item included in the notified list, the ZACR will take measures to remedy the situation

6. Before starting the registration operations, the ZACR will adopt the initial registration policy for the dotAfrica TLD in consultation with the AUC and other interested parties. The ZACR will implement in the registration policy the public policy rules pursuant to the agreement between the AUC and the ZACR taking into account the exception lists and the GAC process as prescribed in the principles regarding new gTLDs.

7. It should be noted that the AUC shall retain all rights relating to the dotAfrica TLD, including in particular, intellectual property and other rights to the registry databases required to ensure the implementation of the agreement between the AUC and the ZACR, and the right to re-designate the registry function.

---

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:

- A. Receipt of data from registrars concerning registration of domain names and name servers.
- B. Dissemination of TLD zone files.
- C. Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web- based Whois, RESTful Whois service).
- D. Internationalized Domain Names, where offered.
- E. DNS Security Extensions (DNSSEC). The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.

Additional proposed registry services that are unique to the registry must also be described.

1   Synopsis

This chapter provides a description of the registry services provided by the ZA Central Registry including domain provisioning services, domain and contact publishing services, zone publishing services, and services for inter-

EXHIBIT 16

COMMUNIQUE
dotAfrica gTLD

The African Union Commission (AUC) has been entrusted by its member states to carry out the process of applying to the Internet Corporation for Assigned Names and Numbers (ICANN) for the dotAfrica gTLD in terms of the New Generic Top Level Domain (gTLD) programme. dotAfrica is set to be a distinctive pan-African identification for regional online operations when it is opened up for registration.

The AU Commission, through its Information Society division (ISD), embarked on identifying the best open and transparent approach, which led to the formation of the dotAfrica Taskforce comprising respected African experts.

The Task Force and the assigned consultants provided the needed support to the AU Commission to launch the dotAfrica tender process to select a competent Registry Operator. Accordingly, the AU Commission selected UniForum SA (the ZA Central Registry Operator or ZACR), to administer and operate dotAfrica gTLD on behalf of the African community. The endorsement of the ZACR is the only formal endorsement provided by the African Union and its member's states with regard to dotAfrica.

The endorsement follows the evaluation of proposals submitted in December 2011, which attracted local and international registries interested in managing dotAfrica gTLD. The evaluation was conducted by a team of experts selected by the African Union.

Shortly after its appointment, the ZACR, in consultation with Internet Community representatives from all over Africa, at a meeting held in Johannesburg, established a Steering Committee to exercise moral and ethical oversight over the dotAfrica project. Representatives of the broader African Internet community are currently participating in the project through the Steering Committee and which comprises African Internet experts, Country Code managers, Registrars and others volunteering for a better Internet for Africa.

On the margins of the ICANN-43 meeting in San Jose, Costa Rica, March 2012, the AU Commission and ZACR have also formally concluded the dotAfrica Agreement to regulate the relation between the AUC and the ZACR for the application and operation of dotAfrica, which is to be administered in a inclusive and professional manner and in accordance with the project proposal submitted by ZACR during the tender process.

dotAfrica will be among the new generic Top Level Domains (gTLDs) that are likely to be approved by ICANN in 2013, and as such the African and global communities are eagerly anticipating the official launch of the dotAfrica gTLD,

The AU's officially endorsed Registry Operator (ZACR), together with the Steering Committee members, continues to receive African support and encouragement from all corners of the continent and from a wide range of stakeholder groups. The ZACR is currently finalising the detailed ICANN application process and is relying on its extensive experience and established resources as an African Registry Operator to complete this important task.

The deadline for the close of applications is 12 April 2012.
For more information please visit
www.AfricaInOneSpace.org   www.facebook.com/africandomain   www.twitter.com/africandomain

About UniForum SA (ZACR)

UniForum SA, trading as the ZA Central Registry, was established as a non-profit organisation in 1988 by a group of end users, developers, and vendors who cooperated to form a professional association that would promote and exchange information on open systems.

It was assigned the responsibility of administering the CO.ZA domain name space in 1995 because it was seen as not only having the technical skills and resources to do so, but also committed to neutrality and unity of purpose.

At startup, the co.za zone contained in the region of 400 entries. Today, with over 750000 domains, amounting to over 95 % of the total registrations in the .ZA ccTLD, co.za ranks as a medium to large zone and within the top 30 registries world-wide in terms of size.

Over the years UniForum SA has played active role in the African Internet industry including, but not limited to, the following:

- Establishing the alternate dispute resolution process for adjudicating domain name related disputes in the co.za domain.
- Translating the CO.ZA registry web site into all 11 official languages of South Africa as far back as 2001.
- Cooperating with a range of other industry bodies to drive the growth of the South African Internet, joining the South African Internet Service Providers Association (ISPA) in 1996 and having since worked with them on a range of web and social responsibility projects.
- Sponsoring and participating in the ISPA "Train the Teachers" initiative.
- Addressing and sponsoring learner education, educator development and the provision of IT infrastructure and curriculum development through the Mindset Computer Science Curriculum project, COZA Cares School of the Month project and ISPA Teacher Training initiatives.
- Participating in important debates, including contributing towards legislative and regulatory aspects that may effect the Internet.
- Providing regular DNS training to the South African Internet community at large.
- Transitioning the CO.ZA system into a world class EPP registry.
- Collaborating with South African Domain Name Authority (ZADNA) in transitioning into the ZA Central Registry in order to administer all open second level domains including. org.za, .net.za, and .web.za.

In summary, UniForum SA has served as a non-profit organisation that exists for the good of the South African and African Internet. We are proud to have remained loyal to the basic premise that surplus funds raised beyond covering operating expenses are ploughed back into the greater Internet community.

Although our role and the way forward might be changing, our principles and ideals have remained constant for more than 17 years and will endure into the future.

For more information:
www.registry.net.za
http://www.uniforum.org.za/cares/coza_cares.html

EXHIBIT 17
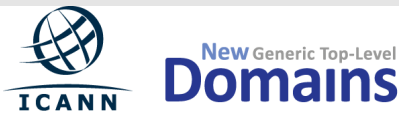
FREQUENTLY ASKED QUESTIONS

1.1 What is the new gTLD Program?

The new gTLD program is an initiative that will enable the introduction of new gTLDs (including both ASCII and IDN) into the domain name space.

1.2 Why are new gTLDs being introduced?

One of ICANN's key commitments is to promote competition in the domain name market while ensuring Internet security and stability. New generic Top-Level Domains (gTLDs) help achieve that commitment by paving the way for increased consumer choice by facilitating competition among registry service providers. Soon entrepreneurs, businesses, governments and communities around the world will be able to apply to operate a Top-Level Domain registry of their own choosing.

1.3 Will the introduction of new gTLDs change how the Internet operates?

The increase in number of gTLDs into the root is not expected to affect the way the Internet operates, but it will, for example, potentially change the way people find information on the Internet or how businesses plan and structure their online presence.

1.4 How many new gTLDs are expected?

There is no way of knowing the exact number of applications ICANN will receive nor how many of these applications will qualify and become gTLD registries. Market speculations have varied widely. The process to evaluate applications is being constructed to economically accommodate a wide range.

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

No. Nowadays, organizations and individuals around the world can register second-level and, in some cases, third-level domain names. (In a URL such as maps.google.com, "google" is a second-level name and "maps" is a third-level domain.) They simply need to find an accredited registrar, comply with the registrant terms and conditions and pay registration and renewal fees. The application for a new gTLD is a much more complex process. An applicant for a new gTLD is, in fact, applying to create and operate a registry business supporting the Internet's domain name system. This involves a number of significant responsibilities, as the operator of a new gTLD is running a piece of visible Internet infrastructure.

1.6 How and when can I see which gTLD strings are being applied for and who is behind the application?

Approximately 2 weeks after the application submission period closes, ICANN will post the public portions of all applications received, including applied-for strings, applicant names, application type, mission/purpose of proposed gTLD, and other public application data.

1.7 Is ICANN initiating the New gTLD Program to make money?

ICANN is a not-for-profit organization and this is a not-for-profit initiative. The program is designed to be self-funding. It is possible ICANN will over-collect or even under-collect for this first round of applications. If the fee collection exceeds ICANN's expenses, the community will be consulted as to how that excess should be used. For detailed information on the New gTLD Program budget, please refer to the New gTLD Budget Explanatory Memorandum (http://www.icann.org/en/topics/new-gtlds/explanatory-memo-new-gtld-program-budget-22oct10-en.pdf).

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

No, ICANN does not accept reservations or pre-registrations of new gTLDs. ICANN also does not endorse any third parties to do so.

1.9 Can I pre-register a second-level domain name?

Be wary of anyone who claims to be able to reserve your place in line for a second-level registration for one of these new gTLDs. Not only can no one predict which TLDs will be available, but the new TLD operator may choose not to sell second-level registrations.

1.10 Can I reserve my trademark as a gTLD?

No, ICANN does not accept reservations or pre-registrations based on trademarks. But registries will be required to operate sunrise or intellectual property claims services for the protection of trademarks. See section 5.4.1 of the _Applicant Guidebook_ (/applicants/agb) for details.

1.11 Is the upcoming application process going to be the same as for the previous new gTLD rounds in 2000 and 2003-4?

The application process will not be the same. The GNSO recommendations are intended to create a standing policy to guide the opening of a gTLD application round as well as the continuing procedures. Although this new implementation may share some similarities to the previous rounds, they are not identical.

1.12 If someone applies for a TLD that is a brand name or a trademark that does not belong to them, will the brand or trademark owners be notified by ICANN?

At this time, ICANN is not contemplating a notification system. ICANN is conducting global public outreach to educate the community on what their responsibilities are, as well as what the formal objection mechanism and timeline is, before the program launches. ICANN will publish the list of all applications received after the application submission period closes, and will continue to publicize the objection process and deadlines.

1.13 Does this application process cover new ccTLDs also?

No. Information on procedures for establishing ccTLDs is available at http://www.iana.org/cctld/cctld-establishment-procedures-19mar03.htm (http://www.iana.org/cctld/cctld-establishment-procedures-19mar03.htm). However, anyone, including ccTLD operators, may apply to operate a new gTLD.

1.14 Where can I find more information about the Program?

Visit the New gTLD website at http://icann.org/newgtlds (http://www.icann.org/en/topics/new-gtld-program.htm).

1.15 Will there be a publicly available web site where the new gTLD application information will be made available?

Yes. Approximately 2 weeks after the close of the application window, ICANN will post the public portions of all applications on its website.

Application & Evaluation Process

2.1 Who can apply for a new gTLD?

Any established public or private organization that meets eligibility requirements anywhere in the world can apply to create and operate a new gTLD Registry. Applicants will need to demonstrate the operational, technical and financial capability to run a registry and comply with additional specific requirements.

2.2 How do I apply for a new gTLD?

Any established public or private organization anywhere in the world can apply to create and operate a new generic Top-Level Domain (gTLD) registry. Applicants will need to demonstrate the operational, technical and financial capability to run a registry and comply with additional specific requirements. Please refer to the _Applicant Guidebook_ (/applicants/agb) for detail information on the application process, including the application questions in Module 2, attachment 2.

Please note that applying for a new gTLD is not the same as buying a domain name. An applicant for a new gTLD is, in fact, applying to create and operate a registry business supporting the Internet's domain name system. This involves a number of significant responsibilities, as the operator of a new gTLD is running a piece of visible Internet infrastructure.

The application window is expected to open on 12 January 2012 and close on 12 April 2012.

The evaluation fee is US$185,000. Applicants will be required to pay a US$5,000 deposit fee per requested application slot when registering. The deposit will be credited against the evaluation fee. Other fees may apply depending on the specific application path. See the section 1.5 of the _Applicant Guidebook_ (/applicants/agb) for details about the methods of payment, additional fees and refund schedules.

When the application round opens, candidates will apply via an online application system called TAS – **T**LD **A**pplication **S**ystem.

2.3 Can I apply for more than one gTLD?

Yes. Each gTLD applied-for string requires its own application.

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

ICANN has a set of specific technical rules that apply to all proposed gTLD strings. For example, an application for a string composed entirely of numbers will be rejected. If an applicant chooses an IDN gTLD, additional technical requirements apply. There is also a list of reserved gTLD names that are unavailable for general use. Furthermore, applicants for a gTLD that is a geographic name must meet additional requirements. All the specific restrictions are outlined in section 2.2.1 of the _Applicant Guidebook_ (/applicants/agb).

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

ICANN expects all new gTLDs to be operational. One of the reasons ICANN is opening the top-level space is to allow for competition and innovation in the marketplace. The application process requires applicants to provide a detailed plan for the launch and operation of the proposed gTLD. gTLDs are expected to be delegated within one year of signing a registry agreement with ICANN.

2.6 What will happen during the application window and how long will it last?

The application window is expected to open on 12 January 2012 and close on 12 April 2012. Applicants will use a dedicated web-based application interface named TLD Application System (TAS) to apply, where they will answer questions and upload supporting documents. TAS will only be available when the application window opens.

2.7 How long will the evaluation process take?

First let's define the "evaluation process" as starting at the point when the application window closes. There are several stages that an application may pass through prior to a final determination being rendered. Those stages are Administrative Check, Initial Evaluation, Extended Evaluation, String Contention, Dispute Resolution and Pre-delegation. The shortest path for a successful application is to pass Administrative Check (lasting 2 months), Initial Evaluation (lasting 5 months) and then move to Pre-delegation (lasting approximately 2 months) without any Objections filed or String Contention concerns. In this case the evaluation process could take as little as 9 months to complete. On the other hand if an application does not pass Initial Evaluation and elects Extended Evaluation and/or is in the Dispute Resolution or String Contention stages then the evaluation process could take up to 20 months to complete (or longer in the event that unforeseen circumstances arise). Please refer to Section 1.1.3 of the _Applicant Guidebook_ (/applicants/agb) for detailed information on timing estimates.

2.8 How will gTLD applications be assessed?

Independent, third-party, expert panels will evaluate applications against criteria and requirements outlined in the _Applicant Guidebook._ _(/applicants/agb)_

2.9 What happens if there are multiple applications for the same string?

It is not feasible for two or more identical top-level strings to exist in the Internet's domain name system. Each domain name must be unique. If there are two or more applications for the same string, the _String Contention_ procedures would come into effect. The same would apply in cases where two or more strings are considered to be confusingly similar. The processes proposed by ICANN to deal with the identical and/or similar strings are described in detail in the _Applicant Guidebook (/applicants/agb)_. Applicants always have the opportunity to resolve contention by a mutually agreeable settlement amongst themselves.

2.10 If I want to apply for two similar or related TLDs, for example, ".thing" and ".thething" would that be two applications or one? And if two, do I have to pay $185,000 for each?

If an applicant applies for .thing and .thething, those would be considered two separate applications. (Applicants should note carefully that the application process is currently designed to not allow two strings that are "confusingly similar" to each other to both be delegated into the DNS – please refer to the full text of the _Applicant Guidebook (/applicants/agb)_ for details.) If both applications were approved, they would result in two separate TLDs. Each application will be treated individually and there is no discount on application fees based upon the filing of multiple applications.

2.11 Can a New gTLD name contain numbers or dashes?

The ASCII label for a new gTLD name must consist entirely of letters (alphabetic characters a-z).

2.12 Can a New gTLD name be 2 letters?

Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country-codes based on the ISO 3166-1 standard.

2.13 Can I apply for country name under the New gTLD Program?

Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program.

2.14 What happens after a new gTLD application is approved?

Once an application is deemed to satisfy the criteria outlined in the _Applicant Guidebook (/applicants/agb)_ and passes all evaluation and selection processes, including objection processes and final approval, the applicant is required to execute a registry agreement with ICANN and pass technical pre-delegation tests before the new gTLD can be delegated to the root zone. Refer to Module 5 of the _Applicant Guidebook (/applicants/agb)_ for information on the transition to delegation processes.

2.15 What happens if more applications are received than expected?

If the volume of applications exceeds expectations, applications will be processed in batches. The first batch will be limited to 500 applications and subsequent batches will be limited to 400 to account for capacity limitations due to managing extended evaluation, string contention, and other processes associated with each previous batch.

2.16 How long will I have to wait for my TLD to go into the root?

Depending on what batch you are assigned to, it will then follow the timeline outlined in section 1.1.3 of the _Applicant Guidebook (/applicants/agb)_.

2.17 If I apply for .thing, would the translation of the term thing in other languages also be protected in the new gTLD?

Each applied-for gTLD string requires its own application. ".thing" would be one application. A translation of ".thing" in Arabic characters, for example, would be another application.

2.18 Is an excel file of the financial projection templates available?

The excel file of the financial projection template can be downloaded by clicking here (http://www.icann.org/en/topics/new-gtlds/fin-proj-template-30may11-en.xlsx).

2.19 Will ICANN consider reducing the ratings of financial institutions for the continued operations instrument given recent financial market conditions?

ICANN will review our credit ratings requirement in light of prevailing market conditions.

2.20 Can economic enterprises qualify as communities in the sense of the community priority evaluation criteria?

There is no provision in the Applicant Guidebook for an application to "qualify" as a community. The designation of an application as community-based is entirely at the discretion of the applicant.

A community priority evaluation may occur as a result of string contention. Where an applicant goes through community priority evaluation, according to the criteria in Module 4 of the *Applicant Guidebook (/applicants/agb)*, an application meeting the threshold score of 14 will be awarded priority in the contention set.

2.21 Do ".brand" applications have to comply with all requirements in the Applicant Guidebook (http://www.icann.org/en/topics/new-gtlds/rfp-clean-19sep11-en.pdf)?

The Applicant Guidebook (http://www.icann.org/en/topics/new-gtlds/rfp-clean-19sep11-en.pdf) specifies only 2 types of applications, standard and community. ".brand" is not an application type provided for in the Applicant Guidebook (http://www.icann.org/en/topics/new-gtlds/rfp-clean-19sep11-en.pdf). All applicants must comply with requirements specified in the Applicant Guidebook (http://www.icann.org/en/topics/new-gtlds/rfp-clean-19sep11-en.pdf).

TLD Applicant System (TAS)

3.1 Will there be a TAS demo prior to the opening of the application window?

Yes. A TAS interactive demonstration is being made available in advance of the application window. Check www.icann.org/newgtlds for updates and to see whether it is available. The demonstration will allow users to click through the various TAS screens but will not allow data entry.

3.2 When will I have access to TAS?

TAS will be available when the application window opens, which is currently expected to be on 12 January 2012, and not before. You can access TAS only after registering.

3.3 How will I access TAS?

A link to TAS will be provided on the ICANN website at www.icann.org/newgtlds (http://www.icann.org/newgtlds) when the application window opens, which is expected to be on 12 January 2012.

3.4 What formats will TAS allow for the input of text?

TAS supports Unicode or plain text. Hyperlinks or stylized, formatted text, drawings or diagrams, cannot be included in line with text. Supporting visuals will be allowed as attachments.

3.5 Will there be a fill-able table in TAS for the financial projections?

No. ICANN will make available a downloadable template in TAS for the completion of the financial projections. Applicants will then be able to upload the completed template back into TAS.

3.6 How will I embed or attach graphics to my application?

Graphics, images, tables, diagrams may be uploaded as attachments. ICANN strongly recommends that applicants label all graphics, images, tables, diagrams and attachments appropriately and reference them in their responses.

3.7 Is there a limit in the number of characters/words for each response?

Yes. Every response is limited to a certain number of characters based on guidance provided in the Applicant Guidebook. One page approximately equates to 4,000 characters (including spaces). Character limitation are by question, not by application. Applicants cannot transfer unused characters from one response to another. Applicants may not use attachments to extend their text response.

3.8 Will I be timed-out or logged-off while completing an application?

For security purposes, TAS is programmed to detect inactivity and will automatically log off users after a defined period of time. Please note that any data that have not been saved when the system logs a user off will be lost. A user who is actively working in the system should not be kicked off.

3.9 Will TAS allow bullets, dashes, numberings?

TAS supports Unicode or plain text only. Applicants may use hyphens and numbers as plain text only.

3.10 Can I provide hyperlinks to online information as references, answers, or appendices?

No. ICANN will not accept hyperlinks to online information as part of the response unless specifically requested or called for in the question. The entire application should be self-contained. Evaluation panels will only consider information provided within the allotted space in TAS for a particular question (plus attachments for those questions where ICANN explicitly asks for them) as the applicant's response.

Objection & Dispute Resolution

4.1 How can I object to an application?

Approximately 2 weeks after the close of the application window, ICANN will post the public portions of all applications that have been received on our website. At this time, the formal objection period will begin and will last for approximately 7 months. Formal objections using pre-established Dispute Resolution Procedures (DRP) may be filed on any of the following grounds:

- String confusion
- Legal rights
- Community
- Limited public interest

In all but exceptional circumstances, objections will be administered by independent Dispute Resolution Service Providers (DRSP), rather than by ICANN. Refer to Module 3 of the _Applicant Guidebook (/applicants/agb)_ for more information on objection procedures.

4.2 How much does it cost to file an objection?

At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant Dispute Resolution Provider (DRSP). If the filing fee is not paid, the DRSP will dismiss the objection without prejudice. After the hearing has taken place and the panel makes its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

For details, see Sections 1.5.2 of the *Applicant Guidebook* (/applicants/agb).

There will also be costs involved in preparing an objection, which should be taken into account.

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

You can file an objection with the DRSP selected to administer "legal rights" objections. Details about these procedures, such as who has standing, where and how objections are filed, and how much objections will cost can be found in Module 3 of the Applicant Guidebook and the related New gTLD Dispute Resolution Procedure. You must pay close attention to the objection deadlines that are publically available on ICANN's website.

4.4 What are the estimated costs associated with registering a trademark with the proposed Trademark Clearinghouse?

The costs are not currently known. We expect to request proposals from service providers of which cost will be a key component in determining the appropriate provider.

4.5 Will ICANN prevent the registration of objectionable or racist extensions?

Consistent with the policy advice on new gTLDs, all applied-for strings could be subject to an objection-based process based on Limited Public Interest grounds. This process will be conducted by the qualified DRSP utilizing standards drawing on provisions in a number of international treaties. In addition to Limited Public Interest objection, the GAC may also submit to ICANN a formal GAC advice on any application. The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

Fees & Timelines

5.1 When can I apply for a new gTLD?

The application window is expected to open on 12 January 2012.

5.2 How much is the evaluation fee?

The evaluation fee is estimated at US$185,000. Applicants will be required to pay a US$5,000 deposit fee per requested application slot when registering. The US$5,000 will be credited against the evaluation fee. Other fees may apply depending on the specific application path. See the section 1.5 of the *Applicant Guidebook* (/applicants/agb) for details about the methods of payment, additional fees and refund schedules.

5.3 Are there any additional costs I should be aware of in applying for a new gTLD?

Yes. Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable, and should expect to account for their own business start-up costs. See Section 1.5.2 of the *Applicant Guidebook* (/applicants/agb).

5.4 Will ICANN offer refunds?

Yes, refunds will apply in specific circumstances. Details about refund conditions are specified in section 1.5.1 of the *Applicant Guidebook.* (/applicants/agb)

5.5 If I withdraw my application, will I get a refund?

In certain cases, refunds of a portion of the evaluation fee may be available for applications that are withdrawn before the evaluation process is complete. An applicant may request a refund at any time until it has executed a registry agreement with ICANN. The amount of refund will depend on the point in the process at which the withdrawal is requested. Please refer to section 1.5.1 of the *Applicant Guidebook* (/applicants/agb) for a schedule of refunds.

5.6 If my application does not get approved, will I be refunded the $185,000 application fee?

A full refund of the application fee is not available. Any applicant that has not been successful has the option of withdrawing its application at the end of Initial Evaluation or Extended Evaluation for a partial refund. Please refer to section 1.5.1 of the *Applicant Guidebook* for a schedule of refunds.

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

Yes. Once an application has successfully passed all the evaluation steps, the applicant is required to sign a New gTLD Agreement (also called Registry Agreement) with ICANN. Under the agreement, there are two fees: (a) a fixed fee of US$6,250 per calendar quarter; (b) and a transaction fee of US$0.25. The latter does not apply until and unless more than 50,000 transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period. Please refer to section 6.1 of the New gTLD Agreement in the *Applicant Guidebook* (/applicants/agb).

5.8 One of my clients would like me to handle all of the contracts on their behalf. Do any scenarios exist in which a party may execute a Registry Contract on behalf of a Registry Operator?

No. ICANN will only enter into an agreement with the applicant. There's no provision for Party X to enter a registry agreement with ICANN designating Party Y as the registry operator.

Applicant Guidebook

6.1 What is the "Applicant Guidebook"?

The *Applicant Guidebook* (/applicants/agb) provides a step-by-step procedure for new gTLD applicants. It specifies what documents and information are required to apply; the financial and legal commitments; and what to expect during the application and evaluation periods. The *Applicant Guidebook* (/applicants/agb) can be found at http://icann.org/newgtlds (http://www.icann.org/en/topics/new-gtlds/rfp-clean-30may11-en.pdf) [PDF, 4.81 MB]

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

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

6.3 I understand that ICANN will only make available the Applicant Guidebook in English (official version), Spanish, French, Chinese, Russian, and Arabic. Will ICANN allow other independent parties to translate the Applicant Guidebook into a language outside of the 6 UN languages mentioned?

Yes, the Applicant Guidebook may be translated from the official English version into multiple languages under the following conditions:

- Provide attribution to the source (ICANN's English version of the Applicant Guidebook)
- Use the materials in context; and

- Do not use the materials in a way that implies ICANN sponsorship or approval of your work. This includes not reproducing the ICANN logo separate from where it may appear within the materials.

In addition, the following disclaimer must appear in a prominent position on the translated version, in the same language as the translated document: "This document is an unofficial translation not produced by or endorsed by ICANN and is for information only. The original and authoritative text (in English) may be found at: [link to the most recent English version of the Applicant Guidebook on the ICANN website].

gTLD History & Policy Development

7.1 How are new gTLDs created?

The decision to establish the New gTLD Program followed a detailed and lengthy consultation process with all constituencies of the global Internet community. Representatives from a wide variety of stakeholders—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinates global Internet policy at ICANN—completed its policy development work on new gTLDs and approved a set of recommendations. Contributing to this policy work were ICANN's Governmental Advisory Committee (GAC), At-Large Advisory Committee (ALAC), Country Code Names Supporting Organization (ccNSO) and Security and Stability Advisory Committee (SSAC). The ICANN Board of Directors adopted the policy in June 2008. A thorough brief to the policy process can be found at http://gnso.icann.org/issues/new-gtlds/ (http://gnso.icann.org/issues/new-gtlds/).

There are eight gTLDs that predate the formal establishment of ICANN as an organization. These are: **.com .edu .gov .int .mil .net .org .arpa.** ICANN held two previous application rounds, one in 2000 and another in 2003-4, where several proposals were submitted and evaluated. The gTLDs approved during the 2000 round are: **.aero .biz .coop .info .museum .name .pro.** The gTLDs approved during the 2004 round are **.asia .cat .jobs .mobi .tel .travel** You can find additional information about these previous application rounds at http://www.icann.org/tlds/app-index.htm (http://www.icann.org/en/tlds/app-index.htm) (2000) and http://www.icann.org/tlds/stld-apps-19mar04/ (http://www.icann.org/en/tlds/stld-apps-19mar04/) (2003-4). Applications received during these rounds were evaluated against previously-published criteria, and those applicants who were successful went on to sign TLD Registry Agreements (http://www.icann.org/en/registries/agreements.htm) with ICANN.

7.2 How did the new gTLD policy development process work?

The Generic Names Supporting Organization (GNSO) is responsible for creating policy applicable to gTLDs. The GNSO policy development process on new gTLDs was aimed at creating a standing policy to guide the ongoing introduction of new gTLDs. The GNSO Policy Development Process (PDP) is formally defined in the ICANN Bylaws (see http://www.icann.org/general/bylaws.htm#AnnexA (http://www.icann.org/en/general/bylaws.htm#AnnexA)). The GNSO's final report on the introduction of New gTLDs can be found here (Part A (http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm), Part B (http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-partb-01aug07.htm)).

7.3 How are the GNSO's policy recommendations being implemented?

ICANN staff reviewed the 19 GNSO recommendations for the introduction of new gTLDs and developed a set of steps to put each of them into practice, while also being cognizant of the guiding principles and implementation guidelines. One of the main outputs of this implementation work is the (http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf)*Applicant Guidebook* (/applicants/agb) *[PDF, 3.1 MB],* which can be thought of as a roadmap for potential gTLD applicants.

Domain Name Basics

8.1 What is a domain name?

Every computer that accesses the Internet has a unique identifying address which is a string of numbers called an "IP address" (IP stands for "Internet Protocol"). As IP addresses are often difficult to remember, these numbers are transposed into characters or letters (the

"domain name") and are what a user types in when searching for websites or sending an email.

8.2 What is the Domain Name System (DNS)?

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

8.3 What is a top-level domain (TLD)?

Every domain name around the world ends with a top-level domain (TLD); these are the 2 or more letters that come after the dot. There are currently two types of TLDs: generic top-level domain (gTLDs) such as .com, .mobi, and .info, and country code top-level domains (ccTLDs) such as .uk, .br, and .cn. A gTLD or a ccTLD is managed by a registry operator, an organization that maintains the registry database, including the nameserver information for names registered in the TLD.

8.4 What are second-level and third-level domain names?

The portion of the domain name that precedes the top-level domain is called the second-level domain name (for example, the "icann" in "icann.org"). There are also third-level domain names that appear before the second-level domain name and again are separated by a dot (for example, events.icann.org). Third-level domain names are also called sub-domains and are often used to categorize special sections of a website.

8.5 What is a gTLD?

gTLD stands for generic Top-Level Domain. (what Internet users see as an Internet extension such as .COM, .ORG, or .INFO) and they are part of the structure of the Internet's domain name system. The gTLDs are also sometimes called labels, strings, or extensions.

8.6 What is a ccTLD?

ccTLD stands for country-code Top-Level Domain and are two-letter, top-level domains that identify a country or territory. There are approximately 250 ccTLDs, for example: .ca for Canada, .jp for Japan, and .eu for the European Union. A listing of existing ccTLDs is available at http://www.iana.org/domains/root/db/ (http://www.iana.org/domains/root/db/).

8.7 What is an IDN?

IDN stands for Internationalized Domain Name. IDNs are domain names represented by local language characters, or letter equivalents. These domain names could contain characters with diacritical marks (accents) as required by many European languages, or characters from non-Latin scripts (for example, Arabic or Chinese). IDNs make the domain name label as it is displayed and viewed by the end user different from that transmitted in the DNS. To avoid confusion the following terminology is used: **The A-label** is what is transmitted in the DNS protocol and this is the ASCII-compatible (ACE) form of an IDNA string; for example "xn--11b5bs1di". **The U-label** is what should be displayed to the user and is the representation of the Internationalized Domain Name (IDN) in Unicode.

Miscellaneous

9.1 What is the process for submitting questions about new gTLDs?

ICANN encourages community inquiries on the gTLD process. Questions may be sent to newgtld@icann.org (mailto:newgtld@icann.org). This FAQ will also be updated periodically based on questions received. Please also check the New gTLD site (/) at http://newgtlds.icann.org (/) and **Twitter** (http://twitter.com/#!/newgtldsicann) to find out about the latest developments.

9.2 If I apply for a TLD for my exclusive use and will only issue domain registration for internal use, must I use an ICANN accredited registrar?

Yes. Registry operators must use only ICANN accredited registrars in registering domain names. If a registry operator wishes to issue domain names, it must become an ICANN accredited registrar in order to do so.

9.3 If I want to register a gTLD solely for my own use, for example, solely for use by my company, partners, consultants, shareholders, auditors, etc., can I limit the issuance of second level domains to those individuals? Can I refuse to accept applications for second level domains from members of the public in general?

Yes. The applicant is responsible for setting the business model and policy for how they will use their gTLD, so long as the registry is in compliance with the terms of the registry agreement.

9.4 If I want to register a gTLD solely to promote my own brand and undertake my own marketing plans, can I refuse applications for second level domains from my competitors? Can I also refuse applications for second level domains from individuals who appear to be cybersquatters or scammers?

Yes. The applicant is responsible for setting the business model and policy for how they will use their gTLD, so long as the registry is in compliance with the terms of the registry agreement.

9.5 After delegation, if the applicant's business plan for the new gTLD were to change from the mission/purpose originally stated on question #18, would the now-gTLD operator be penalized?

One of the reasons ICANN is opening the top-level space is to allow for competition and innovation in the marketplace. ICANN recognizes that business models may evolve as the market matures. ICANN will only hold TLD operators responsible for complying with the terms of the registry agreement.

9.6 Will applications be categorized as "sponsored" or "unsponsored" in this New gTLD application round?

No, applications will not be categorized as "sponsored" or "unsponsored" in this new gTLD application round. ICANN carried out 2 previous new gTLD application rounds. Sponsored and unsponsored TLDs were part of these 2 previous programs. These distinctions are not relevant to the New gTLD program. Under the New gTLD program, a community-based designation can be made on any application. Please refer to section 1.2.3 of the Applicant Guidebook for more information on community-based designation.

The information presented here about the application and evaluation process is the most up-to-date available. However, it is a high-level summary and is subject to change. For exact details about the program please review the actual text of the *Applicant Guidebook.* *(/applicants/agb)*

EXHIBIT 18

From:	Mark McFadden Contact Information Redacted
Sent:	Thursday, October 25, 2012 9:31 AM
To:	Larisa Gurnick
Cc:	Ann H. Yamashita; Russ Weinstein
Subject:	RE: .africa
Attachments:	IN CONFIDENCE - GEONAM - Preliminary Evaluation Worksheet .africa.xls

Importance: High

Larisa,

Here is a preliminary matrix that documents the problem with .africa. Note that we were advised by Kurt to cease working on .dotafrica until the executive team had made a decision about how to proceed.

There are 44 letters of support for .africa. Of these, 4 are from either the UN or the AUC and ICANN has already advised us that these will not count toward the 60% regional rule in the AGB. As you can see in the matrix, under the previous reading of the criteria in the AGB many of these letters will result in CQ's. The problem is that the governments supporting .africa were given a template letter that fails many of the tests of the AGB – and they used that template in writing their letter of support.

There are only six letters of support for the former .dotAfrica. However, one of the letters is from the AU and there is clear intent that this "represents" the member states of the AU. In a note on the endorsement the applicant writes the following:

"The applied-for DotAfrica gTLD string is not for a country our territory. However, the guidebook expressly stipulates that the geographical regions are defined by UNESCO, and Africa is clearly stated as one of the UNESCO regions (see http://www.unesco.org/new/en/unesco/worldwide/); that is, a name listed as a UNESCO region or appearing on the "Composition of macro geographic(continental) or regions, geographic subregions, and selected economic and other groupings" list, and as such is a geographic name that requires government support. On the basis of this, we understand that DotAfrica is a geographic TLD and is not a Community-based TLD.

In recognition of the centrality of this requirement, we had undertaken early efforts to obtain an unequivocal endorsement for our DotAfrica proposal from the relevant United Nations body for Africa which is the **regional economic grouping**, namely the United Nations Economic Commission for Africa (UNECA). (Please see attached document signed by the Executive-Secretary of UNECA and United-Nations Under-Secretary-General, H.E. Abdoulie Janneh)
DCA had worked closely with UNECA leaders and presented the DotAfrica initiative for their endorsement and support.

The UNECA is a public diplomatic authority that was founded in 1958 and preceded the establishment of the Organization of African Unity (OAU) that was formed in 1963; and is similar to other UN regional economic groupings covering different regions of the globe such as the UN Economic Commission for Europe (ECE), the UN Economic Commission for Asia (UN-ASIA), and the UN Economic Commission for Latin America (UNECLA)."

Quite obviously, if the 60% rule is taken seriously, then the former .dotafrica applications has no chance as a geographic name application unless ICANN directs us to view the letter from the AU as a letter from a treaty organization which represents the wishes of all of its members.

mark

From: Larisa Gurnick [mailto:larisa.gurnick@icann.org]
Sent: Thursday, October 25, 2012 5:07 PM
To: Mark McFadden
Cc: Ann H. Yamashita; Russ Weinstein
Subject: .africa
Importance: High

Mark,

I just learned from Ann that there is a meeting taking place today at the executive level to discuss .africa. We need your matrix for this meeting. Can you also please let us know how many letters of support there are for .africa and .dotafrica – I believe that this was the original intention of the matrix that you were putting together. Please copy all when you send your response.

Thank you,

Larisa B. Gurnick
Consultant
Internet Corporation for Assigned Names and Numbers (ICANN)
larisa.gurnick@icann.org
Redacted

TLD/Primary firm	Application	Applicant	IDN?	TLD	Q1: Letters signed?	Q2: Private authority?	Q3: Support or reconsideration?	Q4: Understanding of the string?	Q5: Understanding of intended use?	Q6: Understanding of gTLD app process?	Q7: Registry agreement with ICANN	Q8: Compliance with consensus policies	Q9: Government body recent?	Q10: Signatory held role on app. date?	Q11: Government body redress?	Q12: Documentation authentic?	Q13: Payment of fees	Q16: UNESCO region/Correction... 1st	Q15: 60% support?	Q16: No of objections	Q17: Sufficient documentation?	Q18: Documentation valid?	Status of evaluation	Notes
		UniForum SA (NPC) trading as Registry.Africa																						Unesco Region requires support of 60% of national governments
	1-1243-89583	http://www.AfricaInOne5pace.org	N	.africa																				UNESCO stats state 54 countries, required support of 60% is 33 countries.
Central African Republic																								
Kenya					Y	Y	Y	Y	N	N	N	N	Y	?	Y	?					N	Y		REFERS TO DOT AFRICA
Mauritius					Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y						Y	Y		refers TO DOT AFRICA BUT QUALIFIES Reg applicant - OK
Tanzania					Y	Y	Y	Y	N	N	N	N	Y	?	Y						N	Y		SIGNED BY PERRMANENT SECRETARY
Algeria					Y	Y	Y	Y	Y	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
AUC Abouja																								Not applicable
AUC Oliver Tambo																								Not applicable
AUC ZACR																								Confirms SA/ZACR as official applicant for' dot africa'
Benin					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Burkina Faso					Y	Y	Y	Y	N	N	N	N·	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Burundi					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Cameroon					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Cape Verdi					Y	Y	Y	Y	N	N	N	N	Y	?	Y						N	Y		REFERS TO DOT AFRICA
Chad					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Comors					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Congo					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Djibouti					Y	Y	Y	Y	N	N	N	N	Y	?	Y						N	Y		REFERS TO DOT AFRICA
DRC					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Egypt					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		
Gabon					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Ghana					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Guinea					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Ivory Coast					Y	Y	Y	Y	-N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Kenya					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Liberia					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						Y	Y		REFERS TO DOT AFRICA
Mali					Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y						Y	Y		REFERS TO DOT AFRICA
Mauritania					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Mauritius					N	N	Y	N	N	N	N	N	Y	N	N						N	Y		REFERS TO DOT AFRICA
Morocco					Y	Y	Y	Y	N	N	N	N	Y	N	Y						N	Y		REFERS TO DOT AFRICA
Mozambique					Y	Y	Y	Y	Y	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Niger					Y	Y	Y	Y	N	N	N	N	Y	?	Y						N	Y		REFERS TO DOT AFRICA
Nigeria					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Senegal						Y																		No English version
Sierra Leone					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
South Africa					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Sudan					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Swaziland					Y	Y	Y	N	N	N	N	N	Y	?	Y						N	Y		REFERS TO DOT AFRICA -SUPPORT LETTER NOT WRITTEN TO ICANN
Tanzania					Y	Y	Y	Y	N	N	N	N	Y	?	Y						N	Y		REFERS TO DOT AFRICA - SIGNED BY PERMANENT SECRETARY
Togo					Y	Y	Y	Y	N	N	N	N	Y	?	Y						N	Y		REFERS TO DOT AFRICA, UNABLE TO VALIDATE SIGNEE
Tunisia					Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
Uganda					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA
UNECA					Y	N	Y	Y	N	N	N	N	Y	?	N						N	Y		REFERS TO DOT AFRICA economic commission - not valid
Zambia					Y	Y	Y	Y	N	N	N	N	Y	Y	Y						N	Y		REFERS TO DOT AFRICA IN HEADING

EXHIBIT 19

From:	Trang Nguyen
Sent:	Tuesday, June 25, 2013 11:37 AM
To:	Mark McFadden
Cc:	Cheri Bolen
Subject:	AU template letter for Uniforum
Attachments:	AU template letter.docx
Signed By:	Contact Information Redacted

Hi Mark,

Per our conversation this morning, attached is the letter that I drafted based on the template in the AGB. We will forward the official letter from the AUC as soon as we receive it. The goal is to have results for this application published on 12 July 2013.

Warm regards,

Trang

1

[This letter should be provided on official letterhead]

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA USA
90094-2536

Attention: New gTLD Evaluation Process

Subject: Letter for support for .Africa

This letter is to confirm that the African Union Commission fully supports the application for .Africa submitted to ICANN by UniForum SA (NPC) trading as Registry.Africa in the New gTLD Program. As the Commissioner I confirm that I have the authority of the African Union Commission to be writing to you on this matter. The African Union Commission is the Secretariat of the Union entrusted with executive functions. The structure represents the Union and protects its interest under the auspices of the Assembly of Heads of State and Government as well as the Executive Committee. The African Union Commission is made up of Portfolios. They are: Peace and Security; Political Affairs; Trade and Industry; Infrastructure and Energy; Social Affairs; Rural Economy and Agriculture; Human Resource, Science and Technology; and Economic Affairs.

The primary objective of the gTLD is summarised as follows: "To establish a world class domain name registry operation for the .Africa Top Level Domain (TLD) by engaging and utilising African technology, know-how and funding; for the benefit and pride of Africans; in partnership with African governments and other ICT stakeholder groups".

Our mission is to establish the .Africa TLD as a proud identifier of Africa's online identity, fairly reflecting the continent's rich cultural, social and economic diversity and potential. In essence we will strive to develop and position the .Africa TLD as the preferred option for individuals and businesses either based in Africa or with strong associations with the continent and its people.

The .Africa TLD represents a unique opportunity for Africa to develop and enhance its domain name and Internet eco-systems and communities by collaborating with each other to:

- identify, engage and develop African-based specialist skills and resources;
- share knowledge and develop DNS thought-leadership; and
- implement world class registry standards and contribute towards their continued development.

The African Union Commission has worked closely with the applicant in the development of this proposal.

The African Union Commission supports this application, and in doing so, understands that in the event that the application is successful, UniForum SA (NPC) trading as Registry.Africa 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.

The African Union Commission further understands that, in the event of a dispute between the African Union Commission and the applicant, ICANN will comply with a legally binding order from a court in the jurisdiction of the African Union Commission.

The African Union Commission 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, to contact my office in the first instance.

Thank you for the opportunity to support this application.

Yours sincerely,

[signature/seal from the African Union Commission signatory]

EXHIBIT 20

From:	Trang Nguyen
Sent:	Friday, July 05, 2013 8:04 AM
To:	Mark McFadden
Subject:	Re: .AFRICA
Signed By:	trang.nguyen@icann.org

Hi Mark,

I wanted to check in with you to see if the verification letter went out. Also, can I have the name and contact info for your back-up who will be performing the review of this application while you are on vacation?

Thank you,

Trang

From: Mark McFadden <MarkMcFadden@icc-uk.com>
Date: Thursday, July 4, 2013 7:10 AM
To: Trang Nguyen <trang.nguyen@icann.org>
Subject: RE: .AFRICA

Hello:

I've sent out the UniForum letter to the evaluators and requested a meeting on Monday or Tuesday of next week. I'm also attempting to get the verification letter out the door in the next 24 hours. Not as sure about that because I'll be travelling all day on Friday. Also, I've seen the press on the .dotafrica application. So far, so good, I think. The ball is now in Sophia's court - if she wants to invoke Independent Review, then good luck to her.

Redacted

mark

Mark McFadden
Internet Names, Addresses and Numbers
InterConnect Communications
Consulting in Communications Regulation and Strategy
Redacted
e: markmcfadden@icc-uk.com
w: http://www.icc-uk.com

From: Trang Nguyen [trang.nguyen@icann.org]
Sent: Wednesday, July 03, 2013 1:21 PM
To: Mark McFadden
Subject: .AFRICA

Hi Mark,

A couple of developments today that I wanted to inform you:

1. 1-1243-89583: the applicant responded. The revised support letter is saved on the external shared drive for your review. Given that this came a couple of days later than we expected, can you let me know if the review and verification communication can go out this Friday?

2. 1-1165-42560: we updated the status of this application to "Not Approved" per the the NGPC's resolution. The IE result for this application is "Incomplete." As of this point, we ask that you do not upload any results into TAS for this application.

Redacted

Thanks, Mark!

Trang

This e-mail has been scanned for all viruses by Star Internet. However, InterConnect makes no warranty that this email is virus-free.

EXHIBIT 21

15 June 2014

Dr. Elham M.A. Ibrahim
Commissioner, Infrastructure and Energy
African Union
P.O. Box 3243
Addis Ababa, Ethiopia

Dear Commissioner Ibrahim:

Thank you for your letter of 2 June 2014 regarding the .AFRICA TLD and for the opportunity to address some of your concerns. We deeply appreciate the African Union Commission's support in ICANN's African Strategy work and look forward to continuing to work together in expanding ICANN's multistakeholder processes into the African region.

We understand the concerns that you've raised in connection to proceeding towards the delegation of the .AFRICA TLD as applied for by the ZA Central Registry and the import of this launch to your constituents. As discussed in your letter, ICANN's evaluation of ZACR's application for the .AFRICA TLD resulted in ICANN and ZACR entering into a registry agreement for ZACR's operation of the .AFRICA TLD.

I sincerely appreciate your acknowledgement of ICANN's Bylaws and the accountability procedures afforded through the Bylaws, including the Independent Review Process (IRP) that has been invoked by the competing applicant for the .AFRICA TLD. Even when challenges are not well taken (such as the way that we view the .AFRICA IRP), it is essential for all stakeholders – including those just joining ICANN from the developing world – to see ICANN's commitment to upholding its accountability processes. Unfortunately, at times this requires delays such as those faced by ZACR and the AUC in seeing the launch of the .AFRICA TLD.

As expressed in your letter, ICANN is also frustrated with the time required for a final determination in the .AFRICA IRP to be issued. The IRP is envisioned as an expedited process, with even the Bylaws suggesting that an IRP reach conclusion within six months of filing. ICANN has, at every opportunity, encouraged the panel overseeing the .AFRICA IRP to proceed with expediency and requested the prompt consideration of matters before the .AFRICA IRP panel when appropriate, and will continue to do so.

Los Angeles   12025 Waterfront Drive, Suite 300   Los Angeles, CA 90094   USA   T +1 310 301 5800   F +1 310 823-8649
Offices: Beijing   •   Brussels   •   Istanbul   •   Montevideo   •   Singapore   •   Washington

http://icann.org

Upon the issuance of the Panel's declaration in the .AFRICA IRP, ICANN must complete its obligations under the Bylaws and allow for Board consideration of the declaration. If ICANN were to immediately proceed with delegation of the .AFRICA TLD with ZACR without waiting for Board action, that could result in a violation of the Bylaws that would provide further opportunity for challenge – and further resulting delay. It is only through careful adherence to ICANN's processes that we will mitigate against the opportunities for further challenge that you identify in your letter. I can assure you that ICANN does not wish for any delay with proceeding with the .AFRICA TLD beyond that which is necessitated by the interim stay that ICANN is currently respecting regarding further actions on the ZACR Registry Agreement.

You have my commitment that our Global Domains Division team and all other necessary teams at ICANN will work expeditiously with ZACR to bring the .AFRICA TLD to delegation and launch, just as soon as it is appropriate for that work to proceed. I am excited to see the opportunities that the launch of the .AFRICA TLD will bring to the constituents of AUC, and we look forward to working with you in the future.

Warm regards,

Fadi Chehadé
President & CEO

EXHIBIT 22

| Ref.: | CIE/L/02/360.15.15 |
| Date: | 29 September 2015 |

Attention: Geographic Names Panel (GNP)
ICANN, New gTLD Application Program
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA
newgtld@icann.org

Subject: Clarification of the position of the African Union Commission (AUC) and the United Nations Economic Commission for Africa (UNECA) on the matter concerning the application of the dotAFRICA (.AFRICA) Top Level Domain and how this relates to support from relevant governments in terms of the new gTLD Applicant Guidebook.

Dear Sirs,

The African Heads of States, through the Oliver Tambo Declaration of 5th November 2009, expressed the need to prioritise the delegation of a new continental geographic Top Level Domain Name, dotAFRICA (.Africa).

In addition, African ICT Ministers issued a directive to the African Union Commission (AUC), contained in the Third Ordinary Session Abuja Declaration 2010, to 'set up the structures and modalities for the implementation of the DotAfrica (.AFRICA) Project'.

In order to fulfil this mandate by African governments, the AUC in an open and transparent process, on 12 May 2011, called for all interested parties to submit 'Expression(s) of Interest' (EOI) to manage the .Africa TLD. This process was then followed by a call for proposals (RFP), which culminated in the appointment of UniForum SA (now referred to as the ZA Central Registry 'ZACR') as the successful applicant to carry the endorsement and support of the AUC during the new gTLD process to apply for the dotAFRICA (.Africa) TLD.

To be clear, the application submitted by ZA Central Registry (ZACR) trading as Registry. Africa [1-1243-89583] is the only application officially endorsed and supported by the AUC and hence African member states. The AUC officially endorsed the ZACR application in our letter dated 4 April 2012, which was followed by our letter of support dated 2 July 2013.

We have also written to ICANN on numerous occasions confirming our official position on this matter. Our position has also regularly been communicated to our colleagues within the Government Advisory Committee (CAG), which ultimately resulted in 17 (seventeen) Early Warning notices and Consensus GAC Advice being issued against a competing application submitted by DotConnectAfrica Trust (DCA) [application ID: 1-1165-42560].

As you are aware, according to the Applicant Guidebook, the process of submitting applications to ICANN for geographic TLDs requires written support from over 60% of the relevant governments and/or governmental authorities. The purpose of this letter is to clarify the issue of government support for the dotAFRICA (.Africa) TLD application in terms of ICANN new gTLD application process. This is particularly relevant in your evaluation of the DCA application and whether it meets the minimum requirements for government support.

1. Any reliance by DCA in its application [application ID: 1-1165-42560], proclaiming support or endorsement by the AUC, must be dismissed. The AUC does not support the DCA application and, if any such support was initially provided, it has subsequently been withdrawn with the full knowledge of DCA even prior to the commencement of ICANN's new gTLD application process. My office stands ready to engage with the GNP to clarify and affirm this position if this is required.

2. Any reliance by DCA in its application [application ID: 1-1165-42560], proclaiming support or endorsement by the United Nations Economic Commission for Africa (UNECA), must be dismissed. The UNECA, by its own acknowledgement, does not have the mandate or authority to represent the support of African governments on this matter. Please refer to the attached letter from the UNECA, signed by Ms. Sandra Baffoe-Bonnie (Secretary of the Commission and Legal Advisor) confirming this position.

3. Any reliance by DCA in its application [application ID: 1-1165-42560], proclaiming support or endorsement from any individual African member state, must be treated with utmost caution and sensitivity. Member states are signatories to the Oliver Tambo Declaration and the ICTs Ministers Abuja Declaration and as such they support the position of the AUC on this matter as outlined above. We urge the GNP to carefully test the veracity and relevance of any such letter of support from an African member state before placing reliance thereon. My office stands ready to assist the GNP to clarify and affirm the validity and relevance of any such letter with the applicable member state.

4. To further amplify the position of African member states, as represented by the AUC, on the matter of the dotAFRICA (.Africa) TLD, I attach the latest Declaration issued by African ICT Ministers in Addis Ababa during September 2015.

Please accept, Dear Sirs, the assurance of my highest consideration.

Dr. Elham M.A. IBRAHIM (Mrs)
Commissioner for
Infrastructure and Energy

United Nations
Economic Commission for Africa

Dear Dr. Ibrahim

Re: Request for Support to Dot Africa Project

I am writing in connection with the request made to the Executive Secretary, Dr. Lopes for his support to the African Union's (AU") efforts in getting the regional identifier top level domain "dotAfrica" delegated to ZA Central Registry ("ZACR"), the entity we understand is authorized by the AU to apply for and administer the DotAfrica top level domain.

I understand from your letter that in addition to ZACR, another competing entity, DotConnectAfrica ("DCA") has submitted an application to obtain the same delegation as ZACR, and that DCA is purporting to use a letter of support obtained from ECA in 2008 as an endorsement from ECA for its application.

We also note that in September 2011, ECA wrote to you in response to a letter you sent regarding the setting up of the structure and modalities for the implementation of the DotAfrica project and in that letter, ECA reaffirmed its continued commitment and support to the AU in the management of Internet-based resources in Africa.

As you are aware, one of ICANN's requirement for the application for delegation for geographic Top Level Domain ("gTLD") as detailed in ICANN's 2012 Applicant Guidebook, is a minimum of 60% support from *relevant governments or public authorities*, with no more than one government objection from any country from the region.

ECA as United Nations entity is neither a government nor a public authority and therefore is not qualified to issue a letter of support for a prospective applicant in support of their application. In addition, ECA does not have a mandate to represent the views or convey the support or otherwise of African governments in matters relating to application for delegation of the gTLD.

Dr. Elham M.A. Ibrahim
Commissioner
Infrastructure and Energy
African Union
Addis Ababa

In this regard, the August 2008 letter referenced above is merely expressions of a view in relation to the entity's initiatives and efforts regarding internet governance, including efforts to obtain gTLD for Africa. It is ECA's position that the August 2008 letter to Ms Bekele cannot be properly considered as a "letter of support or endorsement" within the context of ICANN's requirements and cannot be used as such.

I hope this clarifies ECA's position on the mater. Please feel free to contact me if you need any further clarification on tel: 0115443378 or sbaffoe-bonnie@uneca.org

Yours sincerely,

Sandra Baffoe-Bonnie
Secretary of the Commission and Legal Advisor

Cc: Ms Sophia Bekele, DotConnectAfrica

FIRST ORDINARY SESSION OF THE AFRICAN UNION
SPECIALIZED TECHNICAL COMMITTEE ON
COMMUNICATION AND INFORMATION TECHNOLOGIES (STC-CICT)
ADDIS ABABA, ETHIOPIA,
31 AUGUST – 4 SEPTEMBER 2015

AU/STC-CICT-1/MIN/Decl.(I)Rev 1

2015 ADDIS ABABA DECLARATION
STC - CICT 1

2015 ADDIS ABABA DECLARATION
STC CICT 1

PREAMBLE

We, the Ministers in charge of Communication and Information and Communication Technology (CICT) and Postal Services meeting in our First Ordinary Session of the Specialized Technical Committee on Communication and Information &Communication Technologies **(STC-CICT-1)** in Addis Ababa, Federal Democratic Republic of Ethiopia, from 3 to 4 September 2015;

Guided by the Constitutive Act of the African Union (AU);

Recalling the Assembly Decisions Assembly/AU/Dec.227 (XII) and Assembly/AU/Dec.365 (XIVI) adopted in January 2009 and July 2011 respectively on the configuration of the Specialized Technical Committees (STCs) and the modalities for their operationalization;

Bearing in mind the Declaration Assembly/AU/Decl.1 (XIV) adopted by the 14th Ordinary Session of the Assembly of the African Union on Information and Communication Technologies in Africa, Challenges and Prospects for Development, held in Addis Ababa, Ethiopia, in February 2010;

Considering the Assembly Declaration, Assembly/AU/Decl.2 (XVIII) adopted by the 18th Ordinary Session of the Assembly of the African Union held in Addis Ababa, Ethiopia, in January 2012, on the Programme for Infrastructure Development in Africa (PIDA);

Recalling the decision Assembly /AU/Dec.508 (XXII) of the African Union held in January 2014, Addis Ababa, Ethiopia, endorsing the SMART Africa Manifesto and its implementing framework;

Recalling the Decision Assembly /AU/Dec. 533 of the XX III Assembly of the African Union held in June 2014, in Malabo, Equatorial Guinea, which requested the creation of an African Technical Committee for the Information and Media Society to guide Member States in their transition towards the full digital broadcasting;

Recalling the decision Assembly/AU/Dec.558 (XXIV), Assembly of the African Union held in January 2015 in Addis Ababa, Ethiopia on the creation of an African Center for Information Technologies;

Considering the decision Assembly /AU/Dec.563 (XXIV) of the African Union Assembly held in January 2015 in Addis Ababa, Ethiopia, welcoming the One Africa Network Initiative and recommending Member States to adopt and roll out this initiative;

Considering the decision of the 5th Session of the Assembly of Heads of State and Government held in July 2005, in Sirte, Libya on the establishment of a Pan-African Radio and Television Channel - Doc. EX.CL/205 (VII);

Considering the Decision of the Executive Council on the AU Conference Of Ministers Of Information and Communication towards the Establishment of the Pan African Radio and TV Channels - EX.CL/ Dec.296 (IX) - Doc. Ex. CL / 266 (IX), Banjul, Gambia June 2006;

Recalling the Decision of the Executive Council (EX.CL/Dec.505 (XV), Sirte, Libya July 2009 on the set up of a Pan African Media Observatory;

Noting that the current situation of the Communication and ICT subsectors in Africa still face many challenges despite the very significant gains in some areas and in particular segments of the African Media landscape, Telecoms/ICT and postal services;

Reaffirming that Communication and ICT are key to Africa's development and economic competitiveness and in the attainment of the African Union Vision and the goals of the Agenda 2063;

Further noting that Communication and ICT including cyber security and the issues of Internet Governance represent an opportunity to develop an Information Society and enhance right means to catch up with the rest of the developed world in several areas of the human and socio-economic development in Africa ;

Considering that Africa should have its own voice to speak to the world, tell its own story from its own perception and in its own words;

Welcoming the configuration and operationalization of the Specialized Technical Committee on Communication and ICT (STC-CICT);

Taking note of the Report of the Experts' Session held in Addis Ababa, Ethiopia from 31st August to 2 September 2015;

Having elected the following bureau of the STC-CICT:

WEST AFRICA	
Mali	Chair of the Bureau
EAST AFRICA	
Tanzania	1st Vice Chair of the Bureau
CENTRAL AFRICA	
Gabon	2nd Vice Chair of the Bureau
NORTHERN AFRICA	
Algeria	3rd Vice Chair of the Bureau
SOUTHERN AFRICA	
South Africa	Rapporteur of the Bureau

HEREBY COMMIT OURSELVES TO:

1.   **CONTINUE** to promote the implementation of previous Decisions and Declarations adopted by the Assembly of the African Union, the Executive Council and the African Union Conference of Ministers in charge of Communication and Information & Communication Technologies, particularly those relating to the:

- Establishment of Pan African Radio and Television Channels;
- AU Communication and advocacy Strategy 2014-2017;
- AU Branding Campaign;
- Agenda 2063 and its Communication Strategy;
- African media development initiatives (Pan African Media Observatory, Pan African Media Network and Pan African Media Portal);
- Safety and Protection of African Journalists;
- Pan African Platform on Access to Information (APAI);
- Program for Infrastructure Development in Africa (PIDA);
- Implementation of Dot Africa;
- African Internet Exchange Point (AXIS);
- Harmonization of Policies and Regulation;
- Action Plan for the Development of the Postal Sector in Africa notably the addressing and the postcodes system, the connectivity and electrification of Post offices in rural areas, and the financial inclusion of the low-income population;
- Pan African e-Network for Tele medicine and Tele education (PAeN);
- SMART Africa Manifesto;
- One Africa Network Initiative;

2.   **WORK** together towards adopting a common position and harmonized policies on the use common scarce resources such as orbital slots, spectrum, Domain Name Systems;

3.   **COMMIT** to collaborate with relevant local and international stakeholders on the Internet Governance, Cybersecurity and Cyber criminality;

4.   **WORK** with our counterparts Ministers in charge of transport and energy to ensure the deployment of ducts for fiber optic on national and regional infrastructure network roll-outs;

5.   **INTEGRATE** the Development of African local Content in all our strategies related to Communication and ICT;

6.   **DEVELOP** and implement policies on access to information, freedom of expression and the safety of journalists; strengthen the capacity of African media personnel and reinforce the Pan African media landscape;

7.   **JOIN** efforts to enforce the visibility of the symbols and image of the AU at national levels;

8.   **STRENGTHEN** the cooperation with the African private sector for mobilization of resources for Communication and ICT projects especially in rural and remote areas;

9.   **PROMOTE** and attract investment in communication and ICT sectors for localisation;

10.   **ENCOURAGE** development partners to fully support the implementation of the continental joint initiative for the connectivity of Post Offices;

HEREBY REQUEST MEMBER STATES TO:

11. **PROVIDE** all required support to the African Union Commission (AUC) as the only vehicle for the implementation of Dot Africa and withdraw all supports provided to competing applications to the one championed by AUC;

12. **COORDINATE** efforts in collaboration with the Regional Economic Communities (RECs) regarding the modalities of the establishment of the Pan African TV and Radio channels as well as the promotion of African content exchange platforms to develop local content;

13. **AUTHORISE** the establishment of a working group / follow-up Committee to examine the Study Report of the Pan African Radio and TV channels , discuss the modalities of its operationalization, including the funding models and agree on the proposed scheme of setting up, based on the Member States' inputs and comments;

14. **WORK** in consultation with AUC on the implementation and ownership of the AU communication and Advocacy strategy, and the AU branding campaign;

15. **WORK** together to own the AU Agenda 2063, to position it in the mind of all African citizen, and to contribute to its implementation and domesticate its communication strategy by mobilizing African citizens around its objectives and programmes ;

16. **ACCELERATE** the signature and the ratification of the AU Convention on Cyber Security and Personal Data Protection and the development of National Cyber-Security legislations and creation of national and regional Computer Emergency Response Team (CERT) and/or Computer Incident Response Team (CIRT);

17. **PREPARE s**trategies and plans for the migration from IPv4 to IPv6;

18. **WELCOME** the creation of Network of Journalists for Peace and Security in Africa (NetPeace) and work towards the finalization of the draft strategy for African Journalists Safety and Protection;

19. **PROMOTE** national and regional Internet Governance Forum (IGFs) through provision of technical and financial resources and participation in their activities;

20. **CONTRIBUTE TO** the finalization of the draft proposed outer space policy and strategy;

21. **NOTE** the efforts made by AUC to ensure the sustainability of the Pan African e-Network for Tele Medicine and Tele Education (PAeN) and commend the Indian Government for the extension of its assistance to the PAeN;

22. **NOTE** the importance of the sustainability of the network (PAeN) and services upon its transfer to the African Party;

23. **CONSIDER** the Option 1 of the PAeN Sustainability Action Plan as viable option and exhort Member States notably those who have signed the PAeN agreements to contribute to the financing and participate in the implementation of the PAeN Sustainability Action Plan. The amount of the contribution of each participating

Member State should take into consideration the total budget and also the level of use of services by this Member, after further consultations on the matter through appropriate channels. Contributions should be made before the date of the transfer to the African Party.

24. **REQUEST** the AUC in collaboration with the STC-CICT Bureau to set up the structures of governance in charge of the management of the PAeN as per the Sustainable Action Plan's OPTION 1 after its hand over to the African Party;

25. **PROMOTE** and respect the principles in the declaration on the Pan African Platform on Access to Information (APAI) while not contradicting national sovereignty and celebrate the 28 September as *"African Right to Information Day"*

26. **SUPPORT** and accelerate the implementation of the local content exchange network MEMOS (*Multimedia Exchange Network Over Satellite*) on continent wide by facilitating access to financing sources to the African Union of Broadcasting and its Members;

27. **SUPPORT** the African Union of Broadcasting for the procurement at affordable price of broadcasting rights for sport events and take in charge the Memorandum established to that end by the African Union of Broadcasting;

28. **EXHORT** Member States to : (i) incorporate addressing and postcode systems project in national development plans and adopt and publish strategies for their smooth implementation, (ii) take ownership of the project on electrification and connectivity of Post offices in Africa with the view to leveraging postal networks for socio-economic development of rural and remote areas in Africa and, (iii) make required resources available through avenues such as national budget, universal service funds, public-private partnerships, international development partners, etc., to upgrade and improve postal infrastructure by ensuring post offices have access to stable energy supply and are connected to internet, so as to deliver social and financial inclusion;

29. **ENCOURAGE** Member States and the Pan African Postal Union (PAPU) to explore the utilization of the Regional African Satellite Communications Organization (RASCOM) solution in implementing the project on Electrification and Connectivity (ECP) of Post Offices in Africa;

30. **ACCELERATE** the implementation of the Smart Africa Manifesto (Decision Assembly AU//Dec/.508(XXII));

ALSO REQUEST:

31. **Member States** to consider the use of RASCOM's solution in the implementation of national, regional and continental ICT development policies and projects;

32. **Member States** which have not yet sent a letter to the US State Department approving the amendment to article XII (c) (ii) of the International Telecommunication Satellite Organization (ITSO) Agreement, to do so;

33. **Member States** to participate in the rolling out the "One Africa Network" as per the

Decision of the AU Assembly (Assembly /AU/Dec.563 XXIV) adopted in January 2015;

34. **The African Telecommunication Union (ATU)** in collaboration with the Member States, RECs and AUC as well as other concerned stakeholders to:

- Note that African Common Position discussion on the C Band are ongoing
- Urge Member States to actively participate in World Radiocommunication Conference 2015 (WRC-15) and continue to support the African Common Position submitted to the International Telecommunication Union (ITU)
- Pursuit studies related to C Band current (re)allocation until an alternative solution is found and adopted to fulfill the current need of satellites services;

35. **Member States** to support spectrum allocation at WRC-15 to enable Global Flight Tracking;

36. **The United Nations Economic Commission for Africa (UNECA)** to provide AUC with all required support for the implementation of Dot Africa including the withdrawal of all support provided earlier to any other entity on matters related to dot Africa;

37. **The Pan African Postal Union (PAPU)** in collaboration of the Member States, RECs and AUC to develop a continental project on addressing systems and mobilize the required resources to assist Member States with the implementation;

FURTHER REQUEST THE AFRICAN UNION COMMISSION TO:

38. **STUDY** practical modalities to create a structure for coordinating production/coproduction and exchange of contents among Member States Broadcasting channels;

39. **ENSURE** the follow up of the signing and ratification by Member States of the African Union Convention on Cyber-Security and Personal Data Protection;

40. **SUBMIT** ad hoc reports on: (i) the Addressing and postcode systems to other pertinent STCs namely to the Committee on Finance, Economic Planning and Integration and/or to the Committee on Public Services, Local Government Urban Development and Decentralization for further support and, (ii) the electrification and connectivity of Post offices to the Committee on Finance, Economic Planning and Integration, and to the Committee on Transport, Transcontinental and Interregional Infrastructures , Energy and Tourism;

41. **MONITOR AND REPORT** in collaboration with UNECA on the implementation of the resolution 924 (XLVII) of the joint AU and UNECA Conference of Ministers of Economy and Finances (CAMEF);

42. **PARTICIPATE** in the Regional IGF in collaboration with UNECA and the RECs;

43. **CONTRIBUTE** to implementing the "One Africa Network Initiative" by supporting the creation of a Working Group on the technical, legal and strategic details for the implementation of the initiative and submit in collaboration with the implementing

body a report to the next STC-CICT ordinary session;

44. **CONTINUE** to support the African Technology and Information Center initiated by the Republic of Chad (CATI) and accelerate the implementation of activities in collaboration with Chad according to the Decision Assembly/AU/Dec.558 (XXIV) held in Addis Ababa, January 2014,

Done in Addis Ababa, Ethiopia, on 4th September 2015

The Ministers

EXHIBIT 23

October 13th 2015

Director of the New gTLD Program
Internet Corporation for Assigned Names and Numbers (ICANN)

Geographic Names Panel
Internet Corporation for Assigned Names and Numbers (ICANN)

Committee Chair
ICANN Board New gTLD Program Committee (NGPC)
Internet Corporation for Assigned Names and Numbers (ICANN)

Dr. Stephen Crocker
Chairman of the Board
Internet Corporation for Assigned Names and Numbers (ICANN)

Chairperson of the Governmental Advisory Committee
Internet Corporation for Assigned Names and Numbers (ICANN)
Los Angeles
USA

_____

Dear Sir/Madam,

Subject: DotConnectAfrica Trust's Reaction & Response to the AUC Commissioner for Infrastructure and Energy Letter to the ICANN Geographic Names Panel

The attention of DotConnectAfrica Trust (DCA Trust) has been drawn to a letter that was written by Dr. Elham Ibrahim, the African Union Commissioner for Infrastructure and Energy to the ICANN Geographic Names Panel (GNP).   As a directly affected party, we hereby write to convey our official reaction to this letter that was sent to the ICANN GNP.

Our presentation is in **two parts.**   The first part relates to our general response to the Commissioner's letter; whilst the second part deals with specific issues that have been referred to in her letter.

DotConnectAfrica Trust's Reaction & Response to the AUC Commissioner for Infrastructure and Energy *Letter to the ICANN GNP 13th Oct 2015*

1 | **P a g e**

Part I

Introduction and General Comments

Our general comments in response to the AUC letter that was sent to the ICANN GNP are as follows:

1. We think that the letter is inappropriate and we disagree with its contents; tactical objective and its overall intended purpose. We ask ICANN Board and GNP not to countenance the letter.

2. There is no place in the new gTLD procedures or governing policy for this type of letter. It is neither a legitimate challenge to the 'resumed evaluation' by ICANN of DCA Trust's .Africa application; nor is it a solicited input that would aid the process.

3. From Section 2.4.3.1 of the new gTLD Applicant Guidebook, we can infer the important stipulation to:

   > **"safeguard against the potential for inappropriate influence and ensure applications are evaluated in an objective and independent manner".**

   We therefore strongly believe that the letter by AUC Commissioner amounts to inappropriate interference designed to undermine the objectivity and independence of the GNP.

4. We note that Section 2.2.4. ('Communication Channels') of the ICANN new gTLD Applicant Guidebook clearly stipulates *inter alia*:

   > ***"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."***

   Therefore, no party (including the AUC) may contact an Evaluation Panel (or Panels) directly. This ensures that any work being conducted by an Evaluation Panel is independent and free of interference from any party. It is obvious that the AUC letter is intended to advocate (or lobby) for a particular outcome and is very inappropriate according to the Guidebook provisions.

5. The DCA vs ICANN IRP brought to light the same kind of inappropriate intervention by ICANN staff in the initial GNP Evaluation of both .Africa applications. These irregularities were extensively covered during the IRP in which DCA prevailed. Impartiality may have been compromised. InterConnect Communication's (ICC) Mark McFadden wrote: ***"so far, so good, I think. The ball is now in Sophia's court – if she wants to invoke Independent Review, then good luck to her."***

Finally, DCA urges ICANN to disregard these letters as it is intended to create a negative influence that would prejudice the outcome of the **'resumed evaluation'** by ICANN in order to fail DCA Trust's .Africa application. Therefore, if accepted by   for the purpose of the present **'resumed evaluation' by ICANN** of DCA Trust's .Africa application, it would be a serious violation of the new gTLD Guidebook principles, and due process.

DotConnectAfrica Trust's Reaction & Response to the AUC Commissioner for Infrastructure and Energy *Letter to the ICANN GNP 13th Oct 2015*

2 | P a g e

Part II

Since the AUC Infrastructure and Energy Division letter has mentioned several points pertaining to GAC Early Warnings, GAC Objection Advice, Governmental support, AU RFP etc., we use this opportunity to exercise our right to respond to those points. We find it necessary to restate our views on the subject as follows:

I) Early Warning & GAC Objection Advice

DCA Trust has always questioned the validity of the GAC Early Warnings – since those were provided mostly by ccTLD operatives who have no mandate over .Africa. The operatives **had not consulted with their home governments** but were made to sign a pre-prepared template.

Similarly, DCA has already questioned the validity of the GAC Objection that was procured against DCA Trust's .Africa application, and the ICANN Board decision in that regard. DCA disagreed with the objection advice and ICANN Board decision and these issues have already been addressed during the IRP - the unanimous decision of the IRP Panel was "*that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN*"[1].

II) Issue of Governmental Support

On Matters of AUC

a. Purported Withdrawal of DCA' s Endorsement for .africa

First, in 2009 DCA Trust received a letter of support from the AUC Chairperson   the highest office of the institution.   We have always maintained that this endorsement for the .Africa string remains valid. Efforts that were made to repudiate or withdraw the letter of support that had been legitimately granted to DCA Trust are not reasonable within the context of the application process. This is the same position that we have clearly stated in our application's Answer to Evaluation Question No. 21.   In this regard therefore, our position remains unchanged.   We think that a validly issued letter of support cannot be withdrawn by an endorsing party unless there is non-performance of a contract. This is provided for in the guidebook 2.2.1.4.3 Documentation Requirements page 71 of 338.

b. Purported Heads of State Declarations & Ministerial Resolutions on .africa

It is our view that as far as the new gTLD Program is concerned, these Ministerial Declarations and Resolutions mentioned in the AUC letter written by Infrastructure and Energy Division do **not count as valid endorsements, letters of support or objections.**   This view has also been reinforced by ICC during their review of endorsement as evidenced in the IRP discovery process.

For instance, various examples have been noted in the AUC's letter on such matters. These include the Heads of State Oliver Tambo declaration dated 2-5 November 2009, ICT Ministers Abuja Declaration dated 3-7 August 2010 and recently in the attached document to the GNP citing a resolution Number 11, dated 4th September 2015 Addis Ababa Declaration of the First Ordinary Session of the African Union Specialized Technical Committee on Communication and Information Technologies (STC-CICT). The latter states amongst other numerous project lists by the division:

---

[1] Cf. No. 148 on page 61 of IRP Final Declaration

DotConnectAfrica Trust's Reaction & Response to the AUC Commissioner for Infrastructure and Energy *Letter to the ICANN GNP 13th Oct 2015*

3 | P a g e

> *"PROVIDE all required support to the African Union Commission (AUC) as the only vehicle for the implementation of Dot Africa and withdraw all supports provided to competing applications to the one championed by AUC;"*

These are the sorts of statements that are deliberately inserted in official Communiqués and Resolutions. Heads of State and or Ministers may or may not actually be present or not –as for example in the Dakar 2011 Ministerial meeting that we are often forced to challenge. Such carefully crafted resolutions of questionable validity are often being used to justify a legitimate support or voice of Africa in the .africa matter. It is not correct.

c. **Lack of 60% Requirement by ZACR/AUC Infrastructure and Energy Division application for .africa**

It would have been more convincing if the AUC Infrastructure and Energy Division had obtained the individual endorsements from 60 per cent of the individual countries in Africa to demonstrate that in truth the AUC has been given the **required support or Mandate from African Heads of States and Governments** as the only vehicle for the implementation of DotAfrica, instead of the use of yet another resolution or declaration.

How could informed African ICT ministers issue yet another Declaration that approves the AUC infrastructure and Energy Division as *'the only vehicle for the implementation of DotAfrica'*, against the backdrop that, in truth, the AUC Infrastructure and Energy Division cannot implement DotAfrica – for the simple reason that the AUC is a political organization, which is not in the Internet DNS/registry services business?

Whether such Resolutions and Declarations are actually the appropriate means or not of conveying endorsements or withdrawing the support that has already been granted to competitors, we also believe that technically speaking, since the **AUC Infrastructure and Energy Division** is a **"co-applicant"** on the .Africa application that was submitted by ZACR[2], where ZACR stated it "**has given the rights of the registry database and the intellectual property to AUC in a separate contract**", the AUC Infrastructure and Energy Division cannot **self-endorse** itself for the .Africa string name, since it does not have the individual country endorsements - as required under the Guidebook *(**"documentation of support will be required from at least 60% of the respective national governments in the region**."*)

d. **Misrepresentation of endorsement by AUC Infrastructure and Energy Division for .africa**

It must be noted that the letters that the AUC Infrastructure and Energy Division had provided in support of its position on .Africa was for the .Africa new gTLD domain name and its equivalents in other languages (French, Arabic, etc.) to be included in the List of Top-Level Reserved Names so as to enable the AUC benefit from a special legislative protection such as the International Red Cross Society and the International Olympic Movement. This request was not approved by ICANN; all the same, ZACR/AU Infrastructure and Energy Division had appropriated such letters as its own letters of endorsement – which were not accepted as valid.

---

2 ZACR/AUC **Application ID:** 1-1243-89583 https://gtldresult.icann.org/applicationstatus/applicationdetails/1184

DotConnectAfrica Trust's Reaction & Response to the AUC Commissioner for Infrastructure and Energy *Letter to the ICANN GNP 13th Oct 2015*

4 | P a g e

III) The AUC RFP Process was not open and transparent

The AUC Infrastructure and Energy Division letter claims unequivocally that **an open and transparent process was followed** in appointing ZACR as the winner of the Request for Proposals (RFP) process on .Africa. We beg to differ – and the correct answers to the following pointed questions would clarify matters for everyone's benefit:

- How was the AUC .Africa RFP conducted?
- Where is the **complete list of firms/companies that responded to the AUC RFP** on .Africa?
- Where are the **official minutes of the AUC Tender Board meeting** that had been held to deliberate upon, and give consideration to the RFP outcome; and subsequent approval of the evaluated RFP results?
- **Was the .Africa RFP handled by the AUC Procurement Division?** And if not; why was the RFP not overseen by the AUC Procurement Unit as per AUC working procedures and official policy regarding RFPs, RFQs, and such like processes that are used to administrate procurement actions?

We hereby challenge the AUC to support its claim of an open and transparent process by proving to the entire world that the RFP was conducted based on a transparent and accountable process.

The position of DCA Trust has always been that the Country-Code Top Level Domains (ccTLDs) such as ZADNA (South African Domain Names Authority) and .CO.ZA also got involved in the process even though they have no mandate over .Africa and recommended that the ZACR should be appointed as the registry operator of .Africa – the same ZACR that manages the .CO.ZA second-level domain under .ZA ccTLD. Even the AUC RFP document mentioned that prospective bidders should partner with African ccTLDs which had caused DCA Trust to raise an exception remark during the last quarter of 2011. Furthermore, we also believe that Mr. Vika Mpisane then head of the ZADNA, and the AfTLD, had made the recommendation to the AUC that resulted in the appointment of ZACR as the registry operator of .Africa new gTLD by the AUC. Therefore, it is evident that there was no competitive, open and transparent RFP process despite claims to the contrary.

Consequently, we wish to request the AUC as a Pan-African institution that also aims to operate according to global best practices to demonstrate to ICANN, the ICANN GNP, and even to the ICANN GAC, that it had followed a regular, procurement process that was **overseen by the AUC Procurement Division and approved by the AUC Tender Board** in reaching a final decision to appoint ZACR as the registry operator of .Africa.

We believe that the entire .Africa saga has been bedeviled by these irregularities, and until a proper Administrative Panel of Inquiry is instituted to look into these issues, these problems shall remain unresolved.

Lack of Community Application on .Africa by AU RFP
Similarly, the AUC Infrastructure and Energy Division letter claimed in 2012 to have appointed ZACR to apply for .Africa gTLD on behalf of the African Community, yet the same ZACR failed to submit a Community TLD application – as per its appointment letter an observation that had caused DCA to challenge the validity of ZACR's application; which also clearly failed to acknowledge any community affiliation (by leaving the answers to the relevant evaluation questions blank).

DotConnectAfrica Trust's Reaction & Response to the AUC Commissioner for Infrastructure and Energy *Letter to the ICANN GNP 13th Oct 2015*

5 | P a g e

On Matters of UNECA

a. Purported withdrawal of DCA's UNECA Endorsement by UNECA's Secretary of the Commission

First off, we are surprised at UNECA's statement coming more than seven years after the endorsement was first written and given to DCA Trust in 2008, by the highest offices of the UNECA; and more than three years after the closing of the new gTLD application window in 2012.

We wish to note that the UNECA letter to the AUC would not have been written if ICANN had not **"resumed the evaluation"** of DCA Trust's .Africa application after the Final IRP decision was issued in July 2015. For instance, the attached document provided by the AUC Commissioner, Number 36 of the Addis Ababa Resolution of the First Ordinary Session of the African Union Specialized Technical Committee on Communication and Information Technologies (STC-CICT) on 4th September 2015 reads:

> *"The United Nations Economic Commission for Africa (UNECA) to provide AUC with all required support for the implementation of Dot Africa, including the <u>withdrawal</u> of all support provided earlier to any other entity on matters related to dot Africa;"[3]*.

It is patent from this excerpt that the **UNECA has not acted independently**, but has been unduly pressured by the AUC Commissioner to write this letter. This can be substantiated by the UNECA correspondence of 22nd September 2015 by the Executive Secretary Carlos Lopez, careful response (based on the urging of the AUC Commissioner for Infrastructure and Energy), attempting to renounce the earlier letter of support that had been issued to DCA Trust in 2008. This letter was also copied directly to DCA, correctly noted that the **'issue is of a legal nature'** and we expect ICANN and the ICANN GNP to take note of this specific fact. [4]

DCA strongly believes that this type of 'politics' have no place in the ICANN new gTLD Program. **The gTLD rulebook is procedure based program to fulfill certain contractual requirement and not led by governmental politics,** particularly when the governmental entity is partisan in this matter, due to being a competitor to DCA. To restate what we have already said, a validly issued letter of support cannot be withdrawn by an endorsing party unless there is non-performance of a contract. This is reinforced by guidebook *2.2.1.4.3 Documentation Requirements page 71 of 338.*

We also wish to bring to your attention that **there is an apparent incongruity in the date(s) of the UNECA letter that was written and signed by Ms. Sandra Baffoe-Bonnie,** as Secretary of the Commission and Legal advisor. We believe that these inconsistencies in dates are attributable to deliberate coordination. [5]

> For example, a copy of the same letter that was sent by email to DCA Trust on Saturday, 26th September 2015 bears a 21st September, 2015 date; whereas a copy of the same letter signed by Ms. Sandra Baffoe-Bonnie of UNECA discussing the same subject, having exactly the same contents and the same reference number (OES/15/09/0157), that was submitted to the ICANN GNP by the AUC Commissioner for Infrastructure and Energy Dr. Elham Ibrahim bears a July 20, 2015 date. Interestingly, Dr. Elham Ibrahim's letter to the UNECA to solicit support **('Re: Request for Support for DotAfrica Project')** was dated 4th August 2015 with Reference No. CIE/L//20/292.15. **The UNECA could not have replied (on July 20, 2015)** to a request made by the AUC Commissioner for Infrastructure and Energy, even two weeks before receiving the AUC's letter that bears a date of 4th August 2015.

---

[3] See page 7 of document available at https://www.icann.org/en/system/files/correspondence/ibrahim-to-gnp-29sep15-en.pdf
[4] UNECA Response for Dot Africa Project 2015 http://dotconnectafrica.org/wp-content/uploads/2015/10/UNECA-Response-for-Dot-Africa-Project-2015.pdf
[5] Letter from UNECA .africa Page 3 of 12 https://www.icann.org/en/system/files/correspondence/ibrahim-to-gnp-29sep15-en.pdf

DotConnectAfrica Trust's Reaction & Response to the AUC Commissioner for Infrastructure and Energy Letter to the ICANN GNP 13th Oct 2015

6 | P a g e

On our part, we have reasoned that the only explanation for these apparent incongruities in dates is attributable to the simple fact that the date on the copy of the UNECA letter that was sent to the ICANN GNP **was amended after the fact to give the impression   that the UNECA letter was written several weeks before the resumption of the GNP Evaluation of DCA Trust's .Africa application; even though this is not the case**   Therefore it should be dismissed as not credible.

b. **On Whether the UNECA is a public authority or not**

We are quite surprised that the **Secretary of the Commission of UNECA, Ms. Sandra Baffoe-Bonnie** has claimed that UNECA is not a public authority, and that its letter written to DCA should not be considered as an endorsement for the purpose of the ICANN new gTLD process, even though the letter of support from UNECA clearly indicated that it was supporting DCA for an application that would be submitted to ICANN for the .Africa top level domain name at the time it was issued.

UNECA is a Pan-African organization, established in 1958, that is also a member of the global United Nations Organization (UNO), and whose member states are the independent African countries. UNECA cannot suddenly **cease to be a public authority because of the issue of endorsing a geographic name string under the ICANN new gTLD Program** even though the same organization is largely recognized as a public authority by many who are informed and knowledgeable about the UNECA, including UNECA being a member of ICANN GAC since 2004.

 The Secretary of the Commission is also not in any position to interpret the New gTLD guidebook for the GNP.   The GNP is to do their work independently.

The undersigned is also well aware that UNECA is a public authority, and is quite familiar with the work of UNECA having been appointed by then UNECA Executive-Secretary, Mr. K.Y. Amoako in 2002/2003 and served on the African Technical Advisory Committee (ATAC) – a high-level expert advisory board - that was convened to provide informed policy advice to African Ministers of Information and Communications Technologies. See also personal testimony on IRP.[6]

c. **Our UNECA letter of support should be accepted as a valid endorsement for the .Africa geographic name string**

The excerpt from the Final IRP Declaration which confirms an ICANN official position in a legal proceeding states *inter alia*:

> *"Pursuant to the ICC's advice, the UNECA's endorsement was taken into account. Like the AUC, the UNECA had signed letters of support for both DCA and ZACR.[82] The ICC advised that because the UNECA was specifically named in the Abuja Declaration, it too should be treated as a relevant public authority. [83] ICANN accepted the ICC's advice". (This excerpt has been taken from No. 45 page 37 (Under Section No. 90) of the Final IRP Declaration [PDF, 1.04 MB] which may be found here.)[7]*

---

[6] Sophia Bekele Personal testimony to IRP Panel https://www.icann.org/en/system/files/files/eshete-witness-statement-redacted-03nov14-en.pdf

[7] Excerpt Final ruling DCA Trust vs ICANN IRP https://www.icann.org/en/system/files/files/final-declaration-2-redacted-09jul15-en.pdf

DotConnectAfrica Trust's Reaction & Response to the AUC Commissioner for Infrastructure and Energy *Letter to the ICANN GNP 13th Oct 2015*

7 | P a g e

We wish to note that since the UNECA endorsement has already been considered positively for ZACR/AUC Infrastructure and Energy Division – our competitor for the .Africa new gTLD string it would be an act of discrimination and unfair evaluation, if the same UNECA endorsement which DCA Trust has submitted was rejected based on the AUC's Infrastructure and Energy Division's unwarranted intervention in the process.

On matters of Individual Governments

If the AUC's support as a public authority equates to the 60 per cent requirement, then the UNECA letter of support that DCA Trust has submitted should also be considered as equivalent to satisfying the 60 per cent requirement for the sake of equitable and fair treatment to both .Africa new gTLD applicants.

Conclusion

In conclusion, as already conveyed in an official letter dated July 17, 2015 to the ICANN Board Chairman[8], DCA believes that certain new obstacles such as the UNECA Letter to the AUC are now being re-introduced as after-the-fact measures that would deliberately create the same problems that we have already overcome in the past. Therefore, this substantiates that DCA has no faith in this **"resumed evaluation by ICANN".** We would not normally participate in an evaluation process which we already think is prejudiced, but have participated in order to satisfy due process requirements, and complete all necessary formalities, even though it is crystal clear that DCA Trust has already satisfied all necessary criteria at the time of application.

Finally, we wish to reiterate that the AUC Infrastructure and Energy Division interference in this evaluation of DCA Trust's .Africa application is regrettable, and should be dismissed and not given any credence nor consideration. The letter is a complete violation of the new gTLD guidebook on due process and independence.

Thanking you in anticipation even as we express the hope that the ICANN GNP will remain unprejudiced and act in compliance with approved policy giving consideration given to equity, fairness and natural justice.

Yours sincerely,

Sbekele

Sophia Bekele
Executive Director/CEO
DotConnectAfrica Trust
Application ID: 1-1165-42560

---

[8] DCA Trust Official letter to the ICANN Board Chairman https://www.icann.org/en/system/files/correspondence/bekele-to-crocker-chehade-21jul15-en.pdf

DotConnectAfrica Trust's Reaction & Response to the AUC Commissioner for Infrastructure and Energy *Letter to the ICANN GNP 13th Oct 2015*

8 | P a g e

EXHIBIT 24

New gTLD Program
Initial Evaluation Report
Report Date: 12 July 2013

Application ID:	1-1243-89583
Applied-for String:	AFRICA
Priority Number:	307
Applicant Name:	UniForum SA (NPC) trading as Registry.Africa

Overall Initial Evaluation Summary

Initial Evaluation Result	Pass
Congratulations! Based on the review of your application against the relevant criteria in the Applicant Guidebook (including related supplemental notes and advisories), your application has passed Initial Evaluation.	

Background Screening Summary

Background Screening	Eligible
Based on review performed to-date, the application is eligible to proceed to the next step in the Program. ICANN reserves the right to perform additional background screening and research, to seek additional information from the applicant, and to reassess and change eligibility up until the execution of the Registry Agreement.	

Panel Summary

String Similarity	Pass - No Contention
The String Similarity Panel has determined that your application is consistent with the requirements in Sections 2.2.1.1 and 2.2.1.2 of the Applicant Guidebook, and your applied-for string is not in contention with any other applied-for strings.	

DNS Stability	Pass
The DNS Stability Panel has determined that your application is consistent with the requirements in Section 2.2.1.3 of the Applicant Guidebook.	

Geographic Names	Geographic Name - Pass
The Geographic Names Panel has determined that your application falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4, and the documentation of support or non-objection provided has met all relevant criteria in Section 2.2.1.4.3 of the Applicant Guidebook.	

Registry Services	Pass
The Registry Services Panel has determined that the proposed registry services do not require further review.	

Technical & Operational Capability	Pass
The Technical & Operational Capability Panel determined that: Your application meets the Technical & Operational Capability criteria specified in the Applicant Guidebook.	

Question	Score
24: SRS	1
25: EPP	1
26: Whois	2
27: Registration Life Cycle	1
28: Abuse Prevention and Mitigation	1
29: Rights Protection Mechanism	1
30: Security Policy	1
31: Technical Overview of Registry	1
32: Architecture	2
33: Database Capabilities	2

EXHIBIT 27 - Pg 0714

34: Geographic Diversity	2
35: DNS Service	1
36: IPv6 Reachability	1
37: Data Backup Policies & Procedures	1
38: Data Escrow	1
39: Registry Continuity	2
40: Registry Transition	1
41: Failover Testing	1
42: Monitoring and Fault Escalation	1
43: DNSSEC	1
44: IDNs (Optional)	0
Total	25
Minimum Required Total Score to Pass*	22

*No zero score allowed except on optional Q44

Financial Capability		Pass

The Financial Capability Panel determined that:

Your application meets the Financial Capability criteria specified in the Applicant Guidebook.

Question	Score
45: Financial Statements	1
46: Projections Template	1
47: Costs and Capital Expenditures	2
48: Funding and Revenue	1
49: Contingency Planning	2
50: Funding Critical Registry Functions	1
Total	8
Minimum Required Total Score to Pass**	8

**No zero score allowed on any question

Disclaimer: Please note that these Initial Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. All applications are subjected to due diligence at contracting time, which may include an additional review of the Continued Operations Instrument for conformance to Specification 8 of the Registry Agreement with ICANN. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.