

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
CASE NO. 01-15-0005-9838

ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE TIC. LTD. STI.,
Claimant,

and

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,
Respondent.

DOCUMENTS IN SUPPORT OF ICANN'S RESPONSE TO IRP

EXHIBIT	DESCRIPTION
Resp. Ex. 1.	Articles of Incorporation of Internet Corporation For Assigned Names and Numbers
Resp. Ex. 2.	ICANN's Bylaws
Resp. Ex. 3.	19 December 2013 Letter from Organization of Islamic Cooperation to ICANN's Steve Crocker
Resp. Ex. 4.	Program Statistics ICANN New gLTDs
Resp. Ex. 5.	gTLD Applicant Guidebook Version of June 4, 2012
Resp. Ex. 6.	Board Resolution 2012.04.10.02 Establishment of New gTLD Program Committee
Resp. Ex. 7.	GAC Advice ICANN New gTLDs
Resp. Ex. 8.	ICANN Accountability Mechanisms available to the ICANN Community
Resp. Ex. 9.	Process for Responding to ICANN's Documentary Information Disclosure Policy (DIDP) Requests
Resp. Ex. 10.	ICANN Documentary Information Disclosure Policy
Resp. Ex. 11.	4 June 2013 Annex 1 to NGPC Resolution No. 2013.06.04.NGO1
Resp. Ex. 12.	Shahram Soboutipour Biography
Resp. Ex. 13.	25 July 2013 Letter from Kuwait Minister of Communications to

	ICANN
Resp. Ex. 14.	4 September 2013 Letter from Lebanese GAC Representative to NCPC Chairman
Resp. Ex. 15.	29 November 2013 GAC Communiqué Buenos Aires, Argentina
Resp. Ex. 16.	4 December 2013 Letter from Asia Green IT System to ICANN
Resp. Ex. 17.	30 December 2013 Letter from Asia Green IT System to ICANN's Board of Directors
Resp. Ex. 18.	5 February 2014 Approved Resolutions Meeting of the New gTLD Program Committee
Resp. Ex. 19.	Annex 1 to ICANN NGPC Resolution No. 2014.02.NG01 Action and Updates Scorecard
Resp. Ex. 20.	Pending CEP and IRP Matters Archive
Resp. Ex. 21.	10 September 2015 Asia Green IT System Letter to ICANN (DIDP Request)
Resp. Ex. 22.	10 October 2015 Letter to Mike Rodenbaugh Re Request No 2015091-1 Response to Documentary Information Disclosure Policy Request (DIDP Response)
Resp. Ex. 23.	Supplementary Procedures for Internet Corporation for Assigned Names and Numbers Independent Review Process
Resp. Ex. 24.	gTLD Correspondence ICANN New gTLDs
Resp. Ex. 25.	11 December 2015 Final Declaration of the Independent Review Process Panel in <i>Merck v. ICANN</i> , Case No. 01-14-0000-9604
Resp. Ex. 26.	3 March 2015 Final Declaration of the Independent Review Process Panel in <i>Booking.com v. ICANN</i> , Case No. 50-20-1400-0247
Resp. Ex. 27.	ICANN's Response to Claimants Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, And Radix FZC'S Request For Independent Review Process, ICDR Case No. 01-14-0001-5004
Resp. Ex. 28.	17 November 2015 Procedural Order No. 2 Production Ruling International Centre For Dispute Resolution Case No. 01-15-0002-9938 Corn Lake, LLC v. Internet Corporation for Assigned Names and Numbers

Resp. Ex. 29.	4 May 2015 Procedural Order No. 3 Independent Review Process, ICDR Case No. 01-14-001-5004 re Document Request in the matter of Dot Registry, LLC and Internet Corporation For Assigned Names and Numbers.
Resp. Ex. 30.	9 October 2015 In The Matter of An Independent Review Process Before The International Centre For Dispute Resolution Between Vistaprint Limited and Internet Corporation For Assigned Names And Numbers, Final Declaration of the Independent Review Panel

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ARTICLES OF INCORPORATION OF INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

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As Revised November 21, 1998

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

<input type="checkbox"/> Agreements Annual Reports	authoritative Internet <u>DNS</u> root server system; and (v) engaging in any other related lawful activity in furtherance of items (i) through (iv).
<input type="checkbox"/> Financials	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.
<input type="checkbox"/> Planning Presentations RFPs Litigation Newsletter	
<input type="checkbox"/> Correspondence Quarterly Reports	
<input type="checkbox"/> Groups	
Business	
<input type="checkbox"/> Contractual Compliance	b. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall be empowered to make the election under § 501 (h) of the Code.
<input type="checkbox"/> Registrars	c. The Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.
<input type="checkbox"/> Registries	
Operational Metrics	d. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its members, directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 3 hereof.
<input type="checkbox"/> Identifier Systems Security, Stability and Resiliency (IS-SSR)	
<input type="checkbox"/> ccTLDs	
<input type="checkbox"/> Internationalized Domain Names	e. In no event shall the Corporation be controlled directly or indirectly by one or more "disqualified persons" (as defined in § 4946 of the Code) other than foundation managers and other than one or more organizations described in paragraph (1) or (2) of § 509 (a) of the Code.
<input type="checkbox"/> Universal Acceptance Initiative	6. To the full extent permitted by the California Nonprofit Public Benefit Corporation Law or any other applicable laws presently or hereafter in effect, no director of the Corporation shall be personally liable to the Corporation or its members, should the Corporation elect to have members in the future, for or with respect to any acts or omissions in the performance of his or her duties as a director of the Corporation. Any repeal or modification of this
<input type="checkbox"/> Policy	

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Article 6 shall not adversely affect any right or protection of a director of the Corporation existing immediately prior to such repeal or modification.

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

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

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



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

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As amended 30 July 2014

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ARTICLE I: MISSION AND CORE VALUES

Section 1. MISSION

The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
 - a. Domain names (forming a system referred to as "DNS");
 - b. Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and
 - c. Protocol port and parameter numbers.
2. Coordinates the operation and evolution of the DNS root name server system.
3. Coordinates policy development reasonably and appropriately related to these technical functions.

Section 2. CORE VALUES

In performing its mission, the following core values should guide the decisions and actions of ICANN:

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

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2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.
3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.
4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.
5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.
6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.
7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.
8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.
9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.
10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.
11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or

enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

ARTICLE II: POWERS

Section 1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board. With respect to any matters that would fall within the provisions of [Article III, Section 6](#), the Board may act only by a majority vote of all members of the Board. In all other matters, except as otherwise provided in these Bylaws or by law, the Board may act by majority vote of those present at any annual, regular, or special meeting of the Board. Any references in these Bylaws to a vote of the Board shall mean the vote of only those members present at the meeting where a quorum is present unless otherwise specifically provided in these Bylaws by reference to "all of the members of the Board."

Section 2. RESTRICTIONS

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

Section 3. NON-DISCRIMINATORY TREATMENT

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

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

Section 2. WEBSITE

ICANN shall maintain a publicly-accessible Internet World Wide Web site (the "Website"), which may include, among other things, (i) a calendar of scheduled meetings of the Board, Supporting Organizations, and Advisory Committees; (ii) a docket of all pending policy development matters, including their schedule and current status; (iii) specific meeting notices and agendas as described below; (iv) information on ICANN's budget, annual audit, financial contributors and the amount of their contributions, and related matters; (v) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (vi) announcements about ICANN activities of interest to significant segments of the ICANN community; (vii) comments received from the community on policies being developed and other matters; (viii) information about ICANN's physical meetings and public forums; and (ix) other information of interest to the ICANN community.

Section 3. MANAGER OF PUBLIC PARTICIPATION

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

Section 4. MEETING NOTICES AND AGENDAS

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

Section 5. MINUTES AND PRELIMINARY REPORTS

1. All minutes of meetings of the Board and Supporting Organizations (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN Secretary for posting on the Website.

2. No later than 11:59 p.m. on the second business days after the conclusion of each meeting (as calculated by local time at the location of ICANN's principal office), any resolutions passed by the Board of Directors at that meeting shall be made publicly available on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the preliminary report made publicly available. The Secretary shall send notice to the Board of Directors and the Chairs of the Supporting Organizations (as set forth in Articles VIII - X of these Bylaws) and Advisory Committees (as set forth in Article XI of these Bylaws) informing them that the resolutions have been posted.

3. No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the location of ICANN's principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website, subject to the limitations on disclosure set forth in Section 5.2 above. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.

4. No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN's principal office, then the next immediately following business day), the minutes shall be made publicly available on the Website; provided, however, that any minutes relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.

Section 6. NOTICE AND COMMENT ON POLICY ACTIONS

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

- a. provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;
- b. provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments, prior to any action by the Board; and
- c. in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board's request.

2. Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in [Section 6\(1\)\(b\) of this Article](#), prior to any final Board action.

3. After taking action on any policy subject to this Section, the Board shall publish in the meeting minutes the reasons for any action taken, the vote of each Director voting on the action, and the separate statement of any Director desiring publication of such a statement.

Section 7. TRANSLATION OF DOCUMENTS

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

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 1. PURPOSE

In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in [Article I of these Bylaws](#). The provisions of this Article, creating processes for reconsideration and independent review of ICANN actions and periodic review of ICANN's structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of [Article III](#) and the Board and other selection mechanisms set forth throughout these Bylaws.

Section 2. RECONSIDERATION

1. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board.
2. Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:
 - a. one or more staff actions or inactions that contradict established ICANN policy(ies); or
 - b. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
 - c. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.
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 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 website. at <http://www.icann.org/en/groups/board/governance/reconsideration>.

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

7. Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.
8. The Board Governance Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is the same for all of the requestors. Every requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.
9. The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; (ii) it is frivolous, querulous or vexatious; or (iii) the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. The Board Governance Committee's summary dismissal of a Reconsideration Request shall be posted on the Website.
10. For all Reconsideration Requests that are not summarily dismissed, the Board Governance Committee shall promptly proceed to review and consideration.
11. The Board Governance Committee may ask the ICANN staff for its views on the matter, which comments shall be made publicly available on the Website.
12. The Board Governance Committee may request additional information or clarifications from the requestor, and may elect to conduct a meeting with the requestor by telephone, email or, if acceptable to the party requesting reconsideration, in person. A

requestor may ask for an opportunity to be heard; the Board Governance Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.

13. The Board Governance Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation. Any information collected from third parties shall be provided to the requestor.
14. The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN staff, and by any third party.
15. For all Reconsideration Requests brought regarding staff action or inaction, the Board Governance Committee shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.
16. The Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation. The final recommendation shall be posted on ICANN's website.
17. The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the

Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN's website. The Board's decision on the recommendation is final.

18. If the requestor believes that the Board action or inaction posed for Reconsideration is so urgent that the timing requirements of the Reconsideration process are too long, the requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (calculated at ICANN's headquarters in Los Angeles, California) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.
19. The Board Governance Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Governance Committee agrees to consider the matter with urgency, it will cause notice to be provided to the requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Governance Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Request, or as soon thereafter as feasible. If the Board Governance Committee does not agree to consider the matter with urgency, the requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.
20. The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:
 - 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 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 decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in [Section 2 of this Article](#), ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.
2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.
3. A request for independent review must be filed within thirty days of the posting of the minutes of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation. Consolidated requests may be appropriate when the causal connection between the circumstances of the requests and the harm is the same for each of the requesting parties.
4. Requests for such independent review shall be referred to an Independent Review Process Panel ("IRP Panel"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether

the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

- 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's response shall not exceed that same length. Parties may submit documentary evidence supporting their positions without limitation. In the event that parties submit expert evidence, such evidence must be provided in writing and there will be a right of reply to the expert evidence.
6. There shall be an omnibus standing panel of between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN's mission and work from which each specific IRP Panel shall be selected. The panelists shall serve for terms that are staggered to allow for continued review of the size of the panel and the range of expertise. A Chair of the standing panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within the ICANN structure are not eligible to serve on the standing panel. In the event that an omnibus standing panel: (i) is not in place when an IRP Panel must be convened for a given proceeding, the IRP proceeding will be considered by a one- or three-member panel comprised in accordance with the rules of the IRP Provider; or (ii) is in place but does not have the requisite diversity of skill and experience needed for a particular proceeding, the IRP Provider shall identify one or more panelists, as required, from outside the omnibus standing panel to augment the panel members for that proceeding.
7. All IRP proceedings shall be administered by an international dispute resolution provider appointed from time to time by ICANN ("the IRP Provider"). The membership of the standing

panel shall be coordinated by the IRP Provider subject to approval by ICANN.

8. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this [Section 3](#).
9. Either party may request that the IRP be considered by a one- or three-member panel; the Chair of the standing panel shall make the final determination of the size of each IRP panel, taking into account the wishes of the parties and the complexity of the issues presented.
10. The IRP Provider shall determine a procedure for assigning members from the standing panel to individual IRP panels.
11. The IRP Panel shall have the authority to:
 - 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, 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 for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. The cooperative engagement process is published on ICANN.org and is incorporated into this Section 3 of the Bylaws.
15. Upon the filing of a request for an independent review, the parties are urged to participate in a conciliation period for the purpose of narrowing the issues that are stated within the request for independent review. A conciliator will be appointed from the members of the omnibus standing panel by the Chair of that panel. The conciliator shall not be eligible to serve as one of the panelists presiding over that particular IRP. The Chair of the standing panel may deem conciliation unnecessary if cooperative engagement sufficiently narrowed the issues remaining in the independent review.
16. Cooperative engagement and conciliation are both voluntary. However, if the party requesting the independent review does not participate in good faith in the cooperative engagement and the conciliation processes, if applicable, and ICANN is the prevailing party in the request for independent review, the IRP Panel must award to ICANN all reasonable fees and costs incurred by ICANN in the proceeding, including legal fees.
17. All matters discussed during the cooperative engagement and conciliation phases are to remain confidential and not subject to discovery or as evidence for any purpose within the IRP, and are without prejudice to either party.
18. The IRP Panel should strive to issue its written declaration no later than six months after the filing of the request for independent review. The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties'

positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.

19. The IRP operating procedures, and all petitions, claims, and declarations, shall be posted on ICANN's website when they become available.
20. The IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets.
21. Where feasible, the Board shall consider the IRP Panel declaration at the Board's next meeting. The declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value.

Section 4. PERIODIC REVIEW OF ICANN STRUCTURE AND OPERATIONS

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

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

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

2. The Governmental Advisory Committee shall provide its own review

mechanisms.

ARTICLE V: OMBUDSMAN

Section 1. OFFICE OF OMBUDSMAN

1. There shall be an Office of Ombudsman, to be managed by an Ombudsman and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.
2. The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.
3. The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.
4. The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN budget recommended by the ICANN President to the Board. Nothing in this Article shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

Section 2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration Policy set forth in [Section 2 of Article IV](#) or the Independent Review Policy set forth in [Section 3 of Article IV](#) have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as

negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

Section 3. OPERATIONS

The Office of Ombudsman shall:

1. facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN community (excluding employees and vendors/suppliers of ICANN) may have with specific actions or failures to act by the Board or ICANN staff which have not otherwise become the subject of either the Reconsideration or Independent Review Policies;
2. exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN's interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations;
3. have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN);
4. heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN community and online availability;
5. maintain neutrality and independence, and have no bias or personal stake in an outcome; and
6. comply with all ICANN conflicts-of-interest and confidentiality policies.

Section 4. INTERACTION WITH ICANN AND OUTSIDE ENTITIES

1. No ICANN employee, Board member, or other participant in Supporting Organizations or Advisory Committees shall prevent or impede the Ombudsman's contact with the ICANN community (including employees of ICANN). ICANN employees and Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.
2. ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.
3. Contact with the Ombudsman shall not constitute notice to ICANN of any particular action or cause of action.
4. The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.
5. The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN structure, procedures, processes, or any conduct by the ICANN Board, staff, or constituent bodies.

Section 5. ANNUAL REPORT

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

ARTICLE VI: BOARD OF DIRECTORS

Section 1. COMPOSITION OF THE BOARD

The ICANN Board of Directors ("Board") shall consist of sixteen voting members ("Directors"). In addition, four non-voting liaisons ("Liaisons") shall be designated for the purposes set forth in [Section 9 of this Article](#). Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the ICANN Board.

Section 2. DIRECTORS AND THEIR SELECTION; ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

1. The Directors shall consist of:

- a. Eight voting members selected by the Nominating Committee established by [Article VII of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seats 1 through 8.
- b. Two voting members selected by the [Address Supporting Organization](#) according to the provisions of [Article VIII of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seat 9 and Seat 10.
- c. Two voting members selected by the [Country-Code Names Supporting Organization](#) according to the provisions of [Article IX of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seat 11 and Seat 12.
- d. Two voting members selected by the [Generic Names Supporting Organization](#) according to the provisions of [Article X of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seat 13 and Seat 14.
- e. One voting member selected by the At-Large Community according to the provisions of Article XI of these Bylaws. This seat on the Board of Directors is referred to in these Bylaws as Seat 15.
- f. The President ex officio, who shall be a voting member.

2. In carrying out its responsibilities to fill Seats 1 through 8, the Nominating Committee shall seek to ensure that the ICANN Board is composed of members who in the aggregate display diversity in

geography, culture, skills, experience, and perspective, by applying the criteria set forth in [Section 3 of this Article](#). At no time when it makes its selection shall the Nominating Committee select a Director to fill any vacancy or expired term whose selection would cause the total number of Directors (not including the President) from countries in any one Geographic Region (as defined in [Section 5 of this Article](#)) to exceed five; and the Nominating Committee shall ensure when it makes its selections that the Board includes at least one Director who is from a country in each ICANN Geographic Region ("Diversity Calculation").

For purposes of this sub-section 2 of Article VI, Section 2 of the ICANN Bylaws, if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile"), that candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this sub-section 2 of Article VI, Section 2 of the ICANN Bylaws, a person can only have one "Domicile," which shall be determined by where the candidate has a permanent residence and place of habitation.

3. In carrying out their responsibilities to fill Seats 9 through 15, the Supporting Organizations and the At-Large Community shall seek to ensure that the ICANN Board is composed of members that in the aggregate display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in [Section 3 of this Article](#). At any given time, no two Directors selected by a Supporting Organization shall be citizens from the same country or of countries located in the same Geographic Region.

For purposes of this sub-section 3 of Article VI, Section 2 of the ICANN Bylaws, if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile"), that candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Supporting Organization or the At-Large Community to use for selection purposes. For purposes of this sub-section 3 of Article VI, Section 2 of the ICANN Bylaws, a person can only have one "Domicile," which shall be determined by where the candidate has a permanent residence and place of habitation.

4. The Board shall annually elect a Chairman and a Vice-Chairman from among the Directors, not including the President.

Section 3. CRITERIA FOR SELECTION OF DIRECTORS

ICANN Directors shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;
2. Persons with an understanding of ICANN's mission and the potential impact of ICANN decisions on the global Internet community, and committed to the success of ICANN;
3. Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section;
4. Persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars; with ccTLD registries; with IP address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet; and
5. Persons who are able to work and communicate in written and spoken English.

Section 4. ADDITIONAL QUALIFICATIONS

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

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

3. Persons serving in any capacity on the Nominating Committee shall be ineligible for selection to positions on the Board as provided by [Article VII, Section 8](#).

Section 5. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board, the selection of Directors by the Nominating Committee, each Supporting Organization and the At-Large Community shall comply with all applicable diversity provisions of these Bylaws or of any Memorandum of Understanding referred to in these Bylaws concerning the Supporting Organization. One intent of these diversity provisions is to ensure that at all times each Geographic Region shall have at least one Director, and at all times no region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "Geographic Region": Europe; Asia/Australia/Pacific; Latin America/Caribbean islands; Africa; and North America. The specific countries included in each Geographic Region shall be determined by the Board, and this Section shall be reviewed by the Board from time to time (but at least every three years) to determine whether any change is appropriate, taking account of the evolution of the Internet.

Section 6. DIRECTORS' CONFLICTS OF INTEREST

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

Section 7. DUTIES OF DIRECTORS

Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN and not as representatives of the entity that selected them, their employers, or any other organizations or constituencies.

Section 8. TERMS OF DIRECTORS

1. The regular term of office of Director Seats 1 through 15 shall begin as follows:
 - a. The regular terms of Seats 1 through 3 shall begin at the conclusion of ICANN's annual meeting in 2003 and each ICANN annual meeting every third year after 2003;
 - b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN's annual meeting in 2004 and each ICANN annual meeting every third year after 2004;
 - c. The regular terms of Seats 7 and 8 shall begin at the conclusion of ICANN's annual meeting in 2005 and each ICANN annual meeting every third year after 2005;
 - d. The terms of Seats 9 and 12 shall continue until the conclusion

of ICANN's ICANN's annual meeting in 2015. The next terms of Seats 9 and 12 shall begin at the conclusion of ICANN's annual meeting in 2015 and each ICANN annual meeting every third year after 2015;

e. The terms of Seats 10 and 13 shall continue until the conclusion of ICANN's annual meeting in 2013. The next terms of Seats 10 and 13 shall begin at the conclusion of ICANN's annual meeting in 2013 and each ICANN annual meeting every third year after 2013; and

f. The terms of Seats 11, 14 and 15 shall continue until the conclusion of ICANN's annual meeting in 2014. The next terms of Seats 11, 14 and 15 shall begin at the conclusion of ICANN's annual meeting in 2014 and each ICANN annual meeting every third year after 2014.

2. Each Director holding any of Seats 1 through 15, including a Director selected to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been selected and qualified or until that Director resigns or is removed in accordance with these Bylaws.

3. At least two months before the commencement of each annual meeting, the Nominating Committee shall give the Secretary of ICANN written notice of its selection of Directors for seats with terms beginning at the conclusion of the annual meeting.

4. At least six months before the date specified for the commencement of the term as specified in paragraphs 1.d-f above, any Supporting Organization or the At-Large community entitled to select a Director for a Seat with a term beginning that year shall give the Secretary of ICANN written notice of its selection.

5. Subject to the provisions of the Transition Article of these Bylaws, no Director may serve more than three consecutive terms. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. (Note: In the period prior to the beginning of the first regular term of Seat 15 in 2010, Seat 15 was deemed vacant for the purposes of calculation of terms of service.)

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

office of President.

Section 9. NON-VOTING LIAISONS

1. The non-voting liaisons shall include:

- a. One appointed by the [Governmental Advisory Committee](#);
- b. One appointed by the Root Server System [Advisory Committee](#) established by [Article XI of these Bylaws](#);
- c. One appointed by the [Security and Stability Advisory Committee](#) established by [Article XI of these Bylaws](#);
- d. One appointed by the Internet Engineering Task Force.

2. The non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of [ICANN](#) written notice of its appointment.

3. Each non-voting liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the liaison resigns or is removed in accordance with these Bylaws.

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

Section 10. RESIGNATION OF A DIRECTOR OR NON-VOTING LIAISON

Subject to Section 5226 of the CNPBCL, any Director or non-voting liaison may resign at any time, either by oral tender of resignation at any meeting of the Board (followed by prompt written notice to the Secretary of ICANN) or by giving written notice thereof to the President or the Secretary of ICANN. Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective. The successor shall be selected pursuant to [Section 12 of this Article](#).

Section 11. REMOVAL OF A DIRECTOR OR NON-VOTING LIAISON

1. Any Director may be removed, following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that the Director who is the subject of the removal action shall not be entitled to vote on such an action or be counted as a voting member of the Board when calculating the required three-fourths (3/4) vote; and provided further, that each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director. If the Director was selected by a Supporting Organization, notice must be provided to that Supporting Organization at the same time notice is provided to the Director. If the Director was selected by the At-Large Community, notice must be provided to the At-Large Advisory Committee at the same time notice is provided to the Director.

2. With the exception of the non-voting liaison appointed by the Governmental Advisory Committee, any non-voting liaison may be removed, following notice to that liaison and to the organization by which that liaison was selected, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that liaison following such notice. The Board may request the Governmental Advisory Committee to consider the replacement of the non-voting liaison appointed by that Committee if the Board, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate.

Section 12. VACANCIES

1. A vacancy or vacancies in the Board of Directors shall be deemed to exist in the case of the death, resignation, or removal of any Director; if the authorized number of Directors is increased; or if a Director has

been declared of unsound mind by a final order of court or convicted of a felony or incarcerated for more than 90 days as a result of a criminal conviction or has been found by final order or judgment of any court to have breached a duty under Sections 5230 et seq. of the CNPBCL. Any vacancy occurring on the Board of Directors shall be filled by the Nominating Committee, unless (a) that Director was selected by a Supporting Organization, in which case that vacancy shall be filled by that Supporting Organization, or (b) that Director was the President, in which case the vacancy shall be filled in accordance with the provisions of [Article XIII of these Bylaws](#). The selecting body shall give written notice to the Secretary of ICANN of their appointments to fill vacancies. A Director selected to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been selected and qualified. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

2. The organizations selecting the non-voting liaisons identified in [Section 9 of this Article](#) are responsible for determining the existence of, and filling, any vacancies in those positions. They shall give the Secretary of ICANN written notice of their appointments to fill vacancies.

Section 13. ANNUAL MEETINGS

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

Section 14. REGULAR MEETINGS

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

Section 15. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of one-

quarter (1/4) of the members of the Board or by the Chairman of the Board or the President. A call for a special meeting shall be made by the Secretary of ICANN. In the absence of designation, special meetings shall be held at the principal office of ICANN.

Section 16. NOTICE OF MEETINGS

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

Section 17. QUORUM

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

Section 18. ACTION BY TELEPHONE MEETING OR BY OTHER COMMUNICATIONS EQUIPMENT

Members of the Board or any Committee of the Board may participate in a meeting of the Board or Committee of the Board through use of (i) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (ii)

electronic video screen communication or other communication equipment; provided that (a) all Directors participating in such a meeting can speak to and hear one another, (b) all Directors are provided the means of fully participating in all matters before the Board or Committee of the Board, and (c) ICANN adopts and implements means of verifying that (x) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (y) all actions of, or votes by, the Board or Committee of the Board are taken or cast only by the members of the Board or Committee and not persons who are not members. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting. ICANN shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit members of the Board to participate by telephone.

Section 19. ACTION WITHOUT MEETING

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

Section 20. ELECTRONIC MAIL

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

Section 21. RIGHTS OF INSPECTION

Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of ICANN. ICANN shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 22. COMPENSATION

1. Except for the President of ICANN, who serves ex officio as a voting member of the Board, each of the Directors shall be entitled to receive compensation for his/her services as a Director. The President shall

receive only his/her compensation for service as President and shall not receive additional compensation for service as a Director.

2. If the Board determines to offer a compensation arrangement to one or more Directors other than the President of ICANN for services to ICANN as Directors, the Board shall follow a process that is calculated to pay an amount for service as a Director that is in its entirety Reasonable Compensation for such service under the standards set forth in §53.4958-4(b) of the Treasury Regulations.
3. As part of the process, the Board shall retain an Independent Valuation Expert to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a Reasoned Written Opinion from such expert regarding the ranges of Reasonable Compensation for any such services by a Director. The expert's opinion shall address all relevant factors affecting the level of compensation to be paid a Director, including offices held on the Board, attendance at Board and Committee meetings, the nature of service on the Board and on Board Committees, and appropriate data as to comparability regarding director compensation arrangements for U.S.-based, nonprofit, tax-exempt organizations possessing a global employee base.
4. After having reviewed the expert's written opinion, the Board shall meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert.
5. The Board shall adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination.
6. In addition to authorizing payment of compensation for services as Directors as set forth in this Section 22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by non-voting liaisons performing their duties as Directors or non-voting liaisons.
7. As used in this Section 22, the following terms shall have the following meanings:

(a) An "Independent Valuation Expert" means a person retained

by ICANN to value compensation arrangements that: (i) holds itself out to the public as a compensation consultant; (ii) performs valuations regarding compensation arrangements on a regular basis, with a majority of its compensation consulting services performed for persons other than ICANN; (iii) is qualified to make valuations of the type of services involved in any engagement by and for ICANN; (iv) issues to ICANN a Reasoned Written Opinion regarding a particular compensation arrangement; and (v) includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in (i) through (iv) of this definition.

(b) A "Reasoned Written Opinion" means a written opinion of a valuation expert who meets the requirements of subparagraph 7(a) (i) through (iv) of this Section. To be reasoned, the opinion must be based upon a full disclosure by ICANN to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, and the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding the whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.

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

8. Each of the non-voting liaisons to the Board, with the exception of the Governmental Advisory Committee liaison, shall be entitled to receive compensation for his/her services as a non-voting liaison. If the Board determines to offer a compensation arrangement to one or more non-voting liaisons, the Board shall approve that arrangement by a required three-fourths (3/4) vote.

Section 23. PRESUMPTION OF ASSENT

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

ARTICLE VII: NOMINATING COMMITTEE

Section 1. DESCRIPTION

There shall be a Nominating Committee of ICANN, responsible for the selection of all ICANN Directors except the President and those Directors selected by ICANN's Supporting Organizations, and for such other selections as are set forth in these Bylaws.

Section 2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

1. A non-voting Chair, appointed by the ICANN Board;
2. A non-voting Chair-Elect, appointed by the ICANN Board as a non-voting advisor;
3. A non-voting liaison appointed by the ICANN Root Server System Advisory Committee established by [Article XI of these Bylaws](#);
4. A non-voting liaison appointed by the ICANN Security and Stability Advisory Committee established by [Article XI of these Bylaws](#);
5. A non-voting liaison appointed by the [Governmental Advisory Committee](#);
6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the At-Large Advisory Committee established by [Article XI of these Bylaws](#);
7. Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization, established by [Article X](#)

of these [Bylaws](#), as follows:

- a. One delegate from the Registries Stakeholder Group;
 - b. One delegate from the Registrars Stakeholder Group;
 - c. Two delegates from the Business Constituency, one representing small business users and one representing large business users;
 - d. One delegate from the Internet Service Providers Constituency;
 - e. One delegate from the Intellectual Property Constituency; and
 - f. One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.
8. One voting delegate each selected by the following entities:
- a. The Council of the Country Code Names Supporting Organization established by [Article IX of these Bylaws](#);
 - b. The Council of the Address Supporting Organization established by [Article VIII of these Bylaws](#); and
 - c. The Internet Engineering Task Force.
9. A non-voting Associate Chair, who may be appointed by the Chair, at his or her sole discretion, to serve during all or part of the term of the Chair. The Associate Chair may not be a person who is otherwise a member of the same Nominating Committee. The Associate Chair shall assist the Chair in carrying out the duties of the Chair, but shall not serve, temporarily or otherwise, in the place of the Chair.

Section 3. TERMS

Subject to the provisions of the [Transition Article of these Bylaws](#):

1. Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.
2. The regular term of each voting delegate shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the immediately following ICANN annual meeting.
3. Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next ICANN annual meeting.
4. It is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.
5. Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be filled by the entity entitled to select the delegate, non-voting liaison, Chair or Chair-Elect involved. For any term that the Chair-Elect position is vacant pursuant to paragraph 4 of this Article, or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 2(9) of this Article.
6. The existence of any vacancies shall not affect the obligation of the Nominating Committee to carry out the responsibilities assigned to it in these Bylaws.

Section 4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES

Delegates to the ICANN Nominating Committee shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;
2. Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN;
3. Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;
4. Persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;
5. Persons with an understanding of ICANN's mission and the potential impact of ICANN's activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and
6. Persons who are able to work and communicate in written and spoken English.

Section 5. DIVERSITY

In carrying out its responsibilities to select members of the ICANN Board (and selections to any other ICANN bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the ICANN Board (and such other bodies), and seek to ensure that the persons selected to fill vacancies on the ICANN Board (and each such other body) shall, to the extent feasible and consistent with the other criteria required to be applied by [Section 4 of this Article](#), make selections guided by Core Value 4 in [Article I, Section 2](#) .

Section 6. ADMINISTRATIVE AND OPERATIONAL SUPPORT

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

Section 7. PROCEDURES

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

Section 8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

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

Section 9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

No person who is an employee of or paid consultant to ICANN (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in [Section 2 of this Article](#).

ARTICLE VIII: ADDRESS SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

1. The Address Supporting Organization (ASO) shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.
2. The ASO shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN and the Number Resource Organization (NRO), an organization of the existing regional Internet registries (RIRs).

Section 2. ADDRESS COUNCIL

1. The ASO shall have an Address Council, consisting of the members of the NRO Number Council.
2. The Address Council shall select Directors to those seats on the Board designated to be filled by the ASO.

ARTICLE IX: COUNTRY-CODE NAMES SUPPORTING

ORGANIZATION

Section 1. DESCRIPTION

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

1. developing and recommending to the Board global policies relating to country-code top-level domains;
2. Nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs; and
3. Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN.

Policies that apply to ccNSO members by virtue of their membership are only those policies developed according to section 4.10 and 4.11 of this Article. However, the ccNSO may also engage in other activities authorized by its members. Adherence to the results of these activities will be voluntary and such activities may include: seeking to develop voluntary best practices for ccTLD managers, assisting in skills building within the global community of ccTLD managers, and enhancing operational and technical cooperation among ccTLD managers.

Section 2. ORGANIZATION

The ccNSO shall consist of (i) ccTLD managers that have agreed in writing to be members of the ccNSO (see [Section 4\(2\) of this Article](#)) and (ii) a ccNSO Council responsible for managing the policy-development process of the ccNSO.

Section 3. ccNSO COUNCIL

1. The ccNSO Council shall consist of (a) three ccNSO Council members selected by the ccNSO members within each of ICANN's Geographic Regions in the manner described in [Section 4\(7\) through \(9\) of this Article](#); (b) three ccNSO Council members selected by the ICANN Nominating Committee; (c) liaisons as described in [paragraph 2 of this Section](#); and (iv) observers as described in [paragraph 3 of this Section](#).

2. There shall also be one liaison to the ccNSO Council from each of the following organizations, to the extent they choose to appoint such a liaison: (a) the Governmental Advisory Committee; (b) the At-Large Advisory Committee; and (c) each of the Regional Organizations described in [Section 5 of this Article](#). These liaisons shall not be members of or entitled to vote on the ccNSO Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO Council. Appointments of liaisons shall be made by providing written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

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

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

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

6. ccNSO Council members may be removed for not attending three consecutive meetings of the ccNSO Council without sufficient cause or for grossly inappropriate behavior, both as determined by at least a 66% vote of all of the members of the ccNSO Council.
7. A vacancy on the ccNSO Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO Council member. Vacancies in the positions of the three members selected by the Nominating Committee shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN Secretary written notice of its selection, with a notification copy to the ccNSO Council Chair. Vacancies in the positions of the ccNSO Council members selected by ccNSO members shall be filled for the unexpired term by the procedure described in [Section 4\(7\) through \(9\) of this Article](#).
8. The role of the ccNSO Council is to administer and coordinate the affairs of the ccNSO (including coordinating meetings, including an annual meeting, of ccNSO members as described in [Section 4\(6\) of this Article](#)) and to manage the development of policy recommendations in accordance with Section 6 of this Article. The ccNSO Council shall also undertake such other roles as the members of the ccNSO shall decide from time to time.
9. The ccNSO Council shall make selections to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO Council then in office. Notification of the ccNSO Council's selections shall be given by the ccNSO Council Chair in writing to the ICANN Secretary, consistent with Article VI, [Sections 8\(4\) and 12\(1\)](#).
10. The ccNSO Council shall select from among its members the ccNSO Council Chair and such Vice Chair(s) as it deems appropriate. Selections of the ccNSO Council Chair and Vice Chair(s) shall be by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO Council then in office. The term of office of the ccNSO Council Chair and any Vice Chair(s) shall be as specified by the ccNSO Council at or before the time the selection is made. The ccNSO Council Chair or any Vice Chair(s) may be recalled from office by the same procedure as used for selection.
11. The ccNSO Council, subject to direction by the ccNSO members, shall adopt such rules and procedures for the ccNSO as it deems

necessary, provided they are consistent with these Bylaws. Rules for ccNSO membership and operating procedures adopted by the ccNSO Council shall be published on the Website.

12. Except as provided by [paragraphs 9 and 10 of this Section](#), the ccNSO Council shall act at meetings. The ccNSO Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO Council, meetings may be held in person or by other means, provided that all ccNSO Council members are permitted to participate by at least one means described in [paragraph 14 of this Section](#). Except where determined by a majority vote of the members of the ccNSO Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.

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

14. Members of the ccNSO Council may participate in a meeting of the ccNSO Council through personal attendance or use of electronic communication (such as telephone or video conference), provided that (a) all ccNSO Council members participating in the meeting can speak to and hear one another, (b) all ccNSO Council members participating in the meeting are provided the means of fully participating in all matters before the ccNSO Council, and (c) there is a reasonable means of verifying the identity of ccNSO Council members participating in the meeting and their votes. A majority of the ccNSO Council members (i.e. those entitled to vote) then in office shall constitute a quorum for the transaction of business, and actions by a majority vote of the ccNSO Council members present at any meeting at which there is a quorum shall be actions of the ccNSO Council, unless otherwise provided in these Bylaws. The ccNSO Council shall transmit minutes of

its meetings to the ICANN Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following the meeting, and no later than 21 days following the meeting.

Section 4. MEMBERSHIP

1. The ccNSO shall have a membership consisting of ccTLD managers. Any ccTLD manager that meets the membership qualifications stated in [paragraph 2 of this Section](#) shall be entitled to be members of the ccNSO. For purposes of this Article, a ccTLD manager is the organization or entity responsible for managing an ISO 3166 country-code top-level domain and referred to in the IANA database under the current heading of "Sponsoring Organization", or under any later variant, for that country-code top-level domain.
2. Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (a) to adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of this Article](#). A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. Upon resignation the ccTLD manager ceases to agree to (a) adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of this Article](#). In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices.
3. Neither membership in the ccNSO nor membership in any Regional Organization described in [Section 5 of this Article](#) shall be a condition

for access to or registration in the IANA database. Any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services is not in any way contingent upon membership in the ccNSO.

4. The Geographic Regions of ccTLDs shall be as described in [Article VI, Section 5 of these Bylaws](#). For purposes of this Article, managers of ccTLDs within a Geographic Region that are members of the ccNSO are referred to as ccNSO members "within" the Geographic Region, regardless of the physical location of the ccTLD manager. In cases where the Geographic Region of a ccNSO member is unclear, the ccTLD member should self-select according to procedures adopted by the ccNSO Council.

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

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

7. The ccNSO Council members selected by the ccNSO members from each Geographic Region (see [Section 3\(1\)\(a\) of this Article](#)) shall be selected through nomination, and if necessary election, by the ccNSO members within that Geographic Region. At least 90 days before the end of the regular term of any ccNSO-member-selected member of the ccNSO Council, or upon the occurrence of a vacancy in the seat of such a ccNSO Council member, the ccNSO Council shall establish a nomination and election schedule, which shall be sent to all ccNSO members within the Geographic Region and posted on the Website.

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

support the policies committed to by ccNSO members.

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

10. Subject to clause 4(11), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies (a) only address issues that are within scope of the ccNSO according to Article IX, Section 6 and Annex C; (b) have been developed through the ccPDP as described in [Section 6 of this Article](#), and (c) have been recommended as such by the ccNSO to the Board, and (d) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLDs.

11. A ccNSO member shall not be bound if it provides a declaration to the ccNSO Council stating that (a) implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in [paragraph 10 of this Section](#)), and (b) failure to implement the policy would not impair DNS operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO Council will provide a response to the ccNSO member's declaration. If there is a ccNSO Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO Council, the response shall state the ccNSO Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO Council's agreement with the declaration. If the ccNSO Council disagrees, the ccNSO Council shall review the situation

after a six-month period. At the end of that period, the ccNSO Council shall make findings as to (a) whether the ccNSO members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in [paragraph 10 of this Section](#)) and (b) whether failure to implement the policy would impair DNS operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO Council.

Section 5. REGIONAL ORGANIZATIONS

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

Section 6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

1. The scope of the ccNSO's policy-development role shall be as stated in [Annex C to these Bylaws](#); any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.
2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall be as stated in [Annex B to these Bylaws](#); modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Section 7. STAFF SUPPORT AND FUNDING

1. Upon request of the ccNSO Council, a member of the ICANN staff may be assigned to support the ccNSO and shall be designated as the ccNSO Staff Manager. Alternatively, the ccNSO Council may designate, at ccNSO expense, another person to serve as ccNSO Staff

Manager. The work of the ccNSO Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO Council, and may include the duties of ccPDP Issue Manager.

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

3. The ccNSO Council shall establish fees to be paid by ccNSO members to defray ccNSO expenses as described in [paragraphs 1 and 2 of this Section](#), as approved by the ccNSO members.

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

ARTICLE X: GENERIC NAMES SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains.

Section 2. ORGANIZATION

The GNSO shall consist of:

- (i) A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in [Section 5 of this Article](#);
- (ii) Four Stakeholder Groups organized within Houses as described in

[Section 5 of this Article](#);

(iii) Two Houses within the GNSO Council as described in [Section 3\(8\) of this Article](#); and

(iv) a GNSO Council responsible for managing the policy development process of the GNSO, as described in [Section 3 of this Article](#).

Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own charters with the approval of their members and of the ICANN Board of Directors.

Section 3. GNSO COUNCIL

1. Subject to the provisions of [Transition Article XX, Section 5 of these Bylaws](#) and as described in [Section 5 of Article X](#), the GNSO Council shall consist of:

a. three representatives selected from the Registries Stakeholder Group;

b. three representatives selected from the Registrars Stakeholder Group;

c. six representatives selected from the Commercial Stakeholder Group;

d. six representatives selected from the Non-Commercial Stakeholder Group; and

e. three representatives selected by the ICANN Nominating Committee, one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the GNSO Council including, e.g. the making and seconding of motions and of serving as Chair if elected. One Nominating Committee Appointee voting representative shall be assigned to each House (as described in [Section 3\(8\) of this Article](#)) by the Nominating Committee.

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

Council at the same time.

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

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

2. Subject to the provisions of the [Transition Article XX, and Section 5 of these Bylaws](#), the regular term of each GNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the second ICANN annual meeting thereafter. The regular term of two representatives selected from Stakeholder Groups with three Council seats shall begin in even-numbered years and the regular term of the other representative selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of three representatives selected from Stakeholder Groups with six Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

Except in a "special circumstance," such as, but not limited to, meeting geographic or other diversity requirements defined in the Stakeholder Group charters, where no alternative representative is available to serve, no Council member may be selected to serve more than two consecutive terms, in such a special circumstance a Council member may serve one additional term. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term.

A former Council member who has served two consecutive terms must remain out of office for one full term prior to serving any subsequent term as Council member. A "special circumstance" is defined in the GNSO Operating Procedures.

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

A GNSO Council member selected by the Nominating Committee may be removed for cause: i) stated by a three-fourths (3/4) vote of all members of the applicable House to which the Nominating Committee appointee is assigned; or ii) stated by a three-fourths (3/4) vote of all members of each House in the case of the non-voting Nominating Committee appointee (see [Section 3\(8\) of this Article](#)). Such removal shall be subject to reversal by the ICANN Board on appeal by the affected GNSO Council member.

4. The GNSO Council is responsible for managing the policy development process of the GNSO. It shall adopt such procedures (the "GNSO Operating Procedures") as it sees fit to carry out that responsibility, provided that such procedures are approved by a majority vote of each House. The GNSO Operating Procedures shall be effective upon the expiration of a twenty-one (21) day public comment period, and shall be subject to Board oversight and review. Until any modifications are recommended by the GNSO Council, the applicable procedures shall be as set forth in [Section 6 of this Article](#).

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

6. The GNSO shall make selections to fill Seats 13 and 14 on the ICANN Board by written ballot or by action at a meeting. Each of the two voting Houses of the GNSO, as described in [Section 3\(8\) of this Article](#), shall make a selection to fill one of two ICANN Board seats, as outlined below; any such selection must have affirmative votes comprising sixty percent (60%) of all the respective voting House members:

- a. the Contracted Party House shall select a representative to fill Seat 13; and
- b. the Non-Contracted Party House shall select a representative to fill Seat 14

Election procedures are defined in the GNSO Operating Procedures.

Notification of the Board seat selections shall be given by the GNSO Chair in writing to the ICANN Secretary, consistent with Article VI, Sections [8\(4\)](#) and [12\(1\)](#).

7. The GNSO Council shall select the GNSO Chair for a term the GNSO Council specifies, but not longer than one year. Each House (as described in [Section 3.8 of this Article](#)) shall select a Vice-Chair, who will be a Vice-Chair of the whole of the GNSO Council, for a term the GNSO Council specifies, but not longer than one year. The procedures for selecting the Chair and any other officers are contained in the GNSO Operating Procedures. In the event that the GNSO Council has not elected a GNSO Chair by the end of the previous Chair's term, the Vice-Chairs will serve as Interim GNSO Co-Chairs until a successful election can be held.

8. Except as otherwise required in these Bylaws, for voting purposes, the GNSO Council (see [Section 3\(1\) of this Article](#)) shall be organized into a bicameral House structure as described below:

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

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

GNSO Council.

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

- a. Create an Issues Report: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.
- b. Initiate a Policy Development Process ("PDP") Within Scope (as described in [Annex A](#)): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- c. Initiate a PDP Not Within Scope: requires an affirmative vote of GNSO Supermajority.
- d. Approve a PDP Team Charter for a PDP Within Scope: requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- e. Approve a PDP Team Charter for a PDP Not Within Scope: requires an affirmative vote of a GNSO Supermajority.
- f. Changes to an Approved PDP Team Charter: For any PDP Team Charter approved under d. or e. above, the GNSO Council may approve an amendment to the Charter through a simple majority vote of each House.
- g. Terminate a PDP: Once initiated, and prior to the publication of a Final Report, the GNSO Council may terminate a PDP only for significant cause, upon a motion that passes with a GNSO Supermajority Vote in favor of termination.
- h. Approve a PDP Recommendation Without a GNSO Supermajority: requires an affirmative vote of a majority of each House and further requires that one GNSO Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation.
- i. Approve a PDP Recommendation With a GNSO Supermajority:

requires an affirmative vote of a GNSO Supermajority,

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

k. Modification of Approved PDP Recommendation: Prior to Final Approval by the ICANN Board, an Approved PDP Recommendation may be modified or amended by the GNSO Council with a GNSO Supermajority vote.

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

Section 4. STAFF SUPPORT AND FUNDING

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

2. ICANN shall provide administrative and operational support necessary for the GNSO to carry out its responsibilities. Such support shall not include an obligation for ICANN to fund travel expenses incurred by GNSO participants for travel to any meeting of the GNSO or for any other purpose. ICANN may, at its discretion, fund travel expenses for GNSO participants under any travel support procedures or guidelines that it may adopt from time to time.

Section 5. STAKEHOLDER GROUPS

1. The following Stakeholder Groups are hereby recognized as representative of a specific group of one or more Constituencies or interest groups and subject to the provisions of the [Transition Article](#)

XX, Section 5 of these Bylaws:

- a. Registries Stakeholder Group representing all gTLD registries under contract to ICANN;
 - b. Registrars Stakeholder Group representing all registrars accredited by and under contract to ICANN;
 - c. Commercial Stakeholder Group representing the full range of large and small commercial entities of the Internet; and
 - d. Non-Commercial Stakeholder Group representing the full range of non-commercial entities of the Internet.
2. Each Stakeholder Group is assigned a specific number of Council seats in accordance with [Section 3\(1\) of this Article](#).
3. Each Stakeholder Group identified in [paragraph 1 of this Section](#) and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN Board. Recognition is granted by the Board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder Group and Constituency Charters may be reviewed periodically as prescribed by the Board.
4. Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency in the Non-Contracted Parties House. Any such petition shall contain:
- a. A detailed explanation of why the addition of such a Constituency will improve the ability of the GNSO to carry out its policy-development responsibilities;
 - b. A detailed explanation of why the proposed new Constituency adequately represents, on a global basis, the stakeholders it seeks to represent;
 - c. A recommendation for organizational placement within a particular Stakeholder Group; and

- d. A proposed charter that adheres to the principles and procedures contained in these Bylaws.

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

5. The Board may create new Constituencies as described in [Section 5\(3\)](#) in response to such a petition, or on its own motion, if the Board determines that such action would serve the purposes of ICANN. In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment, and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment, the Board shall notify the [GNSO Council](#) and the appropriate Stakeholder Group affected and shall consider any response to that notification prior to taking action.

Section 6. POLICY DEVELOPMENT PROCESS

The policy-development procedures to be followed by the [GNSO](#) shall be as stated in [Annex A](#) to these Bylaws. These procedures may be supplemented or revised in the manner stated in [Section 3\(4\) of this Article](#).

ARTICLE XI: ADVISORY COMMITTEES

Section 1. GENERAL

The Board may create one or more [Advisory Committees](#) in addition to those set forth in this Article. [Advisory Committee](#) membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. [Advisory Committees](#) shall have no legal authority to act for [ICANN](#), but shall report their findings and recommendations to the Board.

Section 2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following [Advisory Committees](#):

1. Governmental Advisory Committee

- a. The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.
- b. Membership in the Governmental Advisory Committee shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations, on the invitation of the Governmental Advisory Committee through its Chair.
- c. The Governmental Advisory Committee may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.
- d. The chair of the Governmental Advisory Committee shall be elected by the members of the Governmental Advisory Committee pursuant to procedures adopted by such members.
- e. Each member of the Governmental Advisory Committee shall appoint one accredited representative to the Committee. The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.
- f. The Governmental Advisory Committee shall annually appoint one non-voting liaison to the ICANN Board of Directors, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN Nominating Committee.
- g. The Governmental Advisory Committee may designate a non-voting liaison to each of the Supporting Organization Councils and Advisory Committees, to the extent the Governmental

Advisory Committee deems it appropriate and useful to do so.

- h. The Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues on which it or any of ICANN's supporting organizations or advisory committees seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.
- i. The Governmental Advisory Committee may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.
- j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.
- k. If no such solution can be found, the ICANN Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

2. Security and Stability Advisory Committee

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

1. To communicate on security matters with the Internet technical community and the operators and managers of

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

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

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

4. To report periodically to the Board on its activities.

5. To make policy recommendations to the ICANN community and Board.

b. The SSAC's chair and members shall be appointed by the Board. SSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. The chair and members may be re-appointed, and there are no limits to the number of terms the chair or members may serve. The SSAC chair may provide recommendations to the Board regarding appointments to the SSAC. The SSAC chair shall stagger appointment recommendations so that approximately one-third (1/3) of the

membership of the SSAC is considered for appointment or re-appointment each year. The Board shall also have to power to remove SSAC appointees as recommended by or in consultation with the SSAC. (Note: The first full term under this paragraph shall commence on 1 January 2011 and end on 31 December 2013. Prior to 1 January 2011, the SSAC shall be comprised as stated in the Bylaws as amended 25 June 2010, and the SSAC chair shall recommend the re-appointment of all current SSAC members to full or partial terms as appropriate to implement the provisions of this paragraph.)

c. The SSAC shall annually appoint a non-voting liaison to the ICANN Board according to [Section 9 of Article VI](#).

3. Root Server System Advisory Committee

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

1. Communicate on matters relating to the operation of the Root Servers and their multiple instances with the Internet technical community and the ICANN community. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS servers.
2. Communicate on matters relating to the administration of the Root Zone with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the Root Zone File.
3. Engage in ongoing threat assessment and risk analysis of the Root Server System and recommend any necessary audit activity to assess the current status of root servers and the root zone.
4. Respond to requests for information or opinions from the

ICANN Board of Directors.

5. Report periodically to the Board on its activities.

6. Make policy recommendations to the ICANN community and Board.

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

1. RSSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms the members may serve. The RSSAC chairs shall provide recommendations to the Board regarding appointments to the RSSAC. If the board declines to appoint a person nominated by the RSSAC then it will provide the rationale for its decision. The RSSAC chairs shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the RSSAC is considered for appointment or re-appointment each year. The Board shall also have to power to remove RSSAC appointees as recommended by or in consultation with the RSSAC. (Note: The first term under this paragraph shall commence on 1 July 2013 and end on 31 December 2015, and shall be considered a full term for all purposes. All other full terms under this paragraph shall begin on 1 January of the corresponding year. Prior to 1 July 2013, the RSSAC shall be comprised as stated in the Bylaws as amended 16 March 2012, and the RSSAC chairs shall recommend the re-appointment of all current RSSAC members to full or partial terms as appropriate to implement the provisions of this paragraph.)

2. The RSSAC shall recommend the appointment of the chairs to the board following a nomination process that it devises and documents.

c. The RSSAC shall annually appoint a non-voting liaison to the

4. At-Large Advisory Committee

- a. The At-Large Advisory Committee (ALAC) is the primary organizational home within ICANN for individual Internet users. The role of the ALAC shall be to consider and provide advice on the activities of ICANN, insofar as they relate to the interests of individual Internet users. This includes policies created through ICANN's Supporting Organizations, as well as the many other issues for which community input and advice is appropriate. The ALAC, which plays an important role in ICANN's accountability mechanisms, also coordinates some of ICANN's outreach to individual Internet users.
- b. The ALAC shall consist of (i) two members selected by each of the Regional At-Large Organizations ("RALOs") established according to paragraph 4(g) of this Section, and (ii) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to Section 5 of Article VI.
- c. Subject to the provisions of the Transition Article of these Bylaws, the regular terms of members of the ALAC shall be as follows:
 1. The term of one member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an even-numbered year.
 2. The term of the other member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an odd-numbered year.
 3. The terms of three of the members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an odd-numbered year and the terms of the other two members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an even-numbered year.

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

d. The Chair of the ALAC shall be elected by the members of the ALAC pursuant to procedures adopted by the Committee.

e. The ALAC shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region, as defined according to [Section 5 of Article VI](#)) to the Nominating Committee.

f. Subject to the provisions of the [Transition Article of these Bylaws](#), the At-Large Advisory Committee may designate non-voting liaisons to each of the ccNSO Council and the GNSO Council.

g. There shall be one RALO for each Geographic Region established according to [Section 5 of Article VI](#). Each RALO shall serve as the main forum and coordination point for public input to ICANN in its Geographic Region and shall be a non-profit organization certified by ICANN according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee. An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN addressing the respective roles and responsibilities of ICANN and the RALO regarding the process for selecting ALAC members and requirements of openness, participatory opportunities, transparency, accountability, and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent At-Large Structures.

h. Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region that have been certified to meet the requirements of the RALO's Memorandum of Understanding with ICANN according to [paragraph 4\(i\) of this Section](#). If so provided by its Memorandum of Understanding with ICANN, a RALO may also include individual Internet users who are citizens or residents of countries within the RALO's Geographic Region.

i. Membership in the At-Large Community

1. The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on recommendations from the ALAC and shall be stated in the Memorandum of Understanding between ICANN and the RALO for each Geographic Region.
2. The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region (as defined in [Section 5 of Article VI](#)) of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others.
3. Each RALO's Memorandum of Understanding shall also include provisions designed to allow, to the greatest extent possible, every individual Internet user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures.
4. To the extent compatible with these objectives, the criteria and standards should also afford to each RALO the type of structure that best fits the customs and character of its Geographic Region.
5. Once the criteria and standards have been established as provided in this Clause i, the ALAC, with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structure accreditation.
6. Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC in its Rules of Procedure, save always that any changes made to the Rules of Procedure in respect of ALS applications shall be subject to review by the RALOs and by the ICANN Board.
7. Decisions as to whether to accredit, not to accredit, or disaccredit an At-Large Structure shall be subject to

review according to procedures established by the Board.

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

j. The ALAC is also responsible, working in conjunction with the RALOs, for coordinating the following activities:

1. Making a selection by the At-Large Community to fill Seat 15 on the Board. Notification of the At-Large Community's selection shall be given by the ALAC Chair in writing to the ICANN Secretary, consistent with Article VI, Sections 8(4) and 12(1).

2. Keeping the community of individual Internet users informed about the significant news from ICANN;

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

4. Promoting outreach activities in the community of individual Internet users;

5. Developing and maintaining on-going information and education programs, regarding ICANN and its work;

6. Establishing an outreach strategy about ICANN issues in each RALO's Region;

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

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

9. Offering Internet-based mechanisms that enable discussions among members of At-Large structures; and

10. Establishing mechanisms and processes that enable two-way communication between members of At-Large

Structures and those involved in ICANN decision-making, so interested individuals can share their views on pending ICANN issues.

Section 3. PROCEDURES

Each Advisory Committee shall determine its own rules of procedure and quorum requirements.

Section 4. TERM OF OFFICE

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

Section 5. VACANCIES

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

Section 6. COMPENSATION

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

ARTICLE XI-A: OTHER ADVISORY MECHANISMS

Section 1. EXTERNAL EXPERT ADVICE

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

from such expert bodies or individuals.

2. Types of Expert Advisory Panels.

a. On its own initiative or at the suggestion of any ICANN body, the Board may appoint, or authorize the President to appoint, Expert Advisory Panels consisting of public or private sector individuals or entities. If the advice sought from such Panels concerns issues of public policy, the provisions of [Section 1\(3\)\(b\) of this Article](#) shall apply.

b. In addition, in accordance with [Section 1\(3\) of this Article](#), the Board may refer issues of public policy pertinent to matters within ICANN's mission to a multinational governmental or treaty organization.

3. Process for Seeking Advice-Public Policy Matters.

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

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

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

4. Process for Seeking and Advice-Other Matters. Any reference of issues not concerning public policy to an Expert Advisory Panel by the

Board or President in accordance with [Section 1\(2\)\(a\) of this Article](#) shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.

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

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

Section 2. TECHNICAL LIAISON GROUP

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

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

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

a. In response to a request for information, to connect the Board or other [ICANN](#) body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which [ICANN](#) seeks an authoritative answer to a specific technical question. Where information is requested regarding a

particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.

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

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

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

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

ARTICLE XII: BOARD AND TEMPORARY COMMITTEES

Section 1. BOARD COMMITTEES

The Board may establish one or more committees of the Board, which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all members of the Board; provided, however, that any Director or Directors which are the subject of the removal action shall not be entitled to vote on such an action or be counted as a member of the Board when calculating the required two-thirds (2/3) vote; and, provided further, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all members of the Board.

Section 2. POWERS OF BOARD COMMITTEES

1. The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:
 - a. The filling of vacancies on the Board or on any committee;
 - b. The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;
 - c. The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
 - d. The appointment of committees of the Board or the members thereof;
 - e. The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CNPBCL;
 - f. The approval of the annual budget required by [Article XVI](#); or
 - g. The compensation of any officer described in [Article XIII](#).

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

Section 3. TEMPORARY COMMITTEES

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

ARTICLE XIII: OFFICERS

Section 1. OFFICERS

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

Section 2. ELECTION OF OFFICERS

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

Section 3. REMOVAL OF OFFICERS

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

been elected.

Section 4. PRESIDENT

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

Section 5. SECRETARY

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

Section 6. CHIEF FINANCIAL OFFICER

The Chief Financial Officer ("CFO") shall be the chief financial officer of ICANN. If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of ICANN and shall keep or cause to be kept, in books belonging to ICANN, full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of ICANN as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of ICANN. The CFO shall be responsible for ICANN's financial planning and forecasting and shall assist the President in the preparation of ICANN's annual budget. The CFO shall coordinate and oversee ICANN's funding, including any audits or other reviews of ICANN or its Supporting Organizations. The CFO shall be responsible for all other matters relating to the financial operation of ICANN.

Section 7. ADDITIONAL OFFICERS

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

be assigned to them by the President or the Board.

Section 8. COMPENSATION AND EXPENSES

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

Section 9. CONFLICTS OF INTEREST

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

ARTICLE XIV: INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

ICANN shall, to maximum extent permitted by the CNPBCL, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN, provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN's best interests and not criminal. For purposes of this Article, an "agent" of ICANN includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (including a member of any Supporting Organization, any Advisory Committee, the Nominating Committee, any other ICANN committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN would have the power to indemnify the agent against that liability under the provisions of this Article.

ARTICLE XV: GENERAL PROVISIONS

Section 1. CONTRACTS

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of ICANN, and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind ICANN or to render it liable for any debts or obligations.

Section 2. DEPOSITS

All funds of ICANN not otherwise employed shall be deposited from time to time to the credit of ICANN in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

Section 3. CHECKS

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ICANN shall be signed by such Officer or Officers, agent or agents, of ICANN and in such a manner as shall from time to time be determined by resolution of the Board.

Section 4. LOANS

No loans shall be made by or to ICANN and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans shall be made by ICANN to its Directors or Officers.

ARTICLE XVI: FISCAL MATTERS

Section 1. ACCOUNTING

The fiscal year end of ICANN shall be determined by the Board.

Section 2. AUDIT

At the end of the fiscal year, the books of ICANN shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

Section 3. ANNUAL REPORT AND ANNUAL STATEMENT

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement and a description of any payments

made by ICANN to Directors (including reimbursements of expenses). ICANN shall cause the annual report and the annual statement of certain transactions as required by the CNPBCL to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN's fiscal year.

Section 4. ANNUAL BUDGET

At least forty-five (45) days prior to the commencement of each fiscal year, the President shall prepare and submit to the Board, a proposed annual budget of ICANN for the next fiscal year, which shall be posted on the Website. The proposed budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item. The Board shall adopt an annual budget and shall publish the adopted Budget on the Website.

Section 5. FEES AND CHARGES

The Board may set fees and charges for the services and benefits provided by ICANN, with the goal of fully recovering the reasonable costs of the operation of ICANN and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN. Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

ARTICLE XVII: MEMBERS

ICANN shall not have members, as defined in the California Nonprofit Public Benefit Corporation Law ("CNPBCL"), notwithstanding the use of the term "Member" in these Bylaws, in any ICANN document, or in any action of the ICANN Board or staff.

ARTICLE XVIII: OFFICES AND SEAL

Section 1. OFFICES

The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

Section 2. SEAL

The Board may adopt a corporate seal and use the same by causing it or a

facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE XIX: AMENDMENTS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the Articles of Incorporation or Bylaws of ICANN may be altered, amended, or repealed and new Articles of Incorporation or Bylaws adopted only upon action by a two-thirds (2/3) vote of all members of the Board.

ARTICLE XX: TRANSITION ARTICLE

Section 1. PURPOSE

This Transition Article sets forth the provisions for the transition from the processes and structures defined by the ICANN Bylaws, as amended and restated on 29 October 1999 and amended through 12 February 2002 (the "[Old Bylaws](#)"), to the processes and structures defined by the Bylaws of which this Article is a part (the "[New Bylaws](#)"). [Explanatory Note (dated 10 December 2009): For Section 5(3) of this Article, reference to the Old Bylaws refers to the Bylaws as amended and restated through to 20 March 2009.]

Section 2. BOARD OF DIRECTORS

1. For the period beginning on the adoption of this Transition Article and ending on the Effective Date and Time of the New Board, as defined in [paragraph 5 of this Section 2](#), the Board of Directors of the Corporation ("Transition Board") shall consist of the members of the Board who would have been Directors under the Old Bylaws immediately after the conclusion of the annual meeting in 2002, except that those At-Large members of the Board under the Old Bylaws who elect to do so by notifying the Secretary of the Board on 15 December 2002 or in writing or by e-mail no later than 23 December 2002 shall also serve as members of the Transition Board. Notwithstanding the provisions of [Article VI, Section 12 of the New Bylaws](#), vacancies on the Transition Board shall not be filled. The Transition Board shall not have liaisons as provided by [Article VI, Section 9 of the New Bylaws](#). The Board Committees existing on the date of adoption of this Transition Article shall continue in existence, subject to any change in Board Committees or their membership that the Transition Board may adopt by resolution.

2. The Transition Board shall elect a Chair and Vice-Chair to serve until the Effective Date and Time of the New Board.

3. The "New Board" is that Board described in [Article VI, Section 2\(1\) of the New Bylaws](#).
4. Promptly after the adoption of this Transition Article, a Nominating Committee shall be formed including, to the extent feasible, the delegates and liaisons described in [Article VII, Section 2 of the New Bylaws](#), with terms to end at the conclusion of the ICANN annual meeting in 2003. The Nominating Committee shall proceed without delay to select Directors to fill Seats 1 through 8 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for those Seats in [Article VI, Section 8\(1\)\(a\)-\(c\) of the New Bylaws](#), and shall give the ICANN Secretary written notice of that selection.
5. The Effective Date and Time of the New Board shall be a time, as designated by the Transition Board, during the first regular meeting of ICANN in 2003 that begins not less than seven calendar days after the ICANN Secretary has received written notice of the selection of Directors to fill at least ten of Seats 1 through 14 on the New Board. As of the Effective Date and Time of the New Board, it shall assume from the Transition Board all the rights, duties, and obligations of the ICANN Board of Directors. Subject to Section 4 of this Article, the Directors ([Article VI, Section 2\(1\)\(a\)-\(d\)](#)) and non-voting liaisons ([Article VI, Section 9](#)) as to which the ICANN Secretary has received notice of selection shall, along with the President ([Article VI, Section 2\(1\)\(e\)](#)), be seated upon the Effective Date and Time of the New Board, and thereafter any additional Directors and non-voting liaisons shall be seated upon the ICANN Secretary's receipt of notice of their selection.
6. The New Board shall elect a Chairman and Vice-Chairman as its first order of business. The terms of those Board offices shall expire at the end of the annual meeting in 2003.
7. Committees of the Board in existence as of the Effective Date and Time of the New Board shall continue in existence according to their existing charters, but the terms of all members of those committees shall conclude at the Effective Date and Time of the New Board. Temporary committees in existence as of the Effective Date and Time of the New Board shall continue in existence with their existing charters and membership, subject to any change the New Board may adopt by resolution.
8. In applying the term-limitation provision of [Section 8\(5\) of Article VI](#), a Director's service on the Board before the Effective Date and Time of

the New Board shall count as one term.

Section 3. ADDRESS SUPPORTING ORGANIZATION

The Address Supporting Organization shall continue in operation according to the provisions of the [Memorandum of Understanding originally entered on 18 October 1999](#) between ICANN and a group of regional Internet registries (RIRs), and [amended in October 2000](#), until a replacement Memorandum of Understanding becomes effective. Promptly after the adoption of this Transition Article, the Address Supporting Organization shall make selections, and give the ICANN Secretary written notice of those selections, of:

1. Directors to fill Seats 9 and 10 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for each of those Seats in [Article VI, Section 8\(1\)\(d\) and \(e\) of the New Bylaws](#); and
2. the delegate to the Nominating Committee selected by the Council of the Address Supporting Organization, as called for in [Article VII, Section 2\(8\)\(f\) of the New Bylaws](#).

With respect to the ICANN Directors that it is entitled to select, and taking into account the need for rapid selection to ensure that the New Board becomes effective as soon as possible, the Address Supporting Organization may select those Directors from among the persons it previously selected as ICANN Directors pursuant to the Old Bylaws. To the extent the Address Supporting Organization does not provide the ICANN Secretary written notice, on or before 31 March 2003, of its selections for Seat 9 and Seat 10, the Address Supporting Organization shall be deemed to have selected for Seat 9 the person it selected as an ICANN Director pursuant to the Old Bylaws for a term beginning in 2001 and for Seat 10 the person it selected as an ICANN Director pursuant to the Old Bylaws for a term beginning in 2002.

Section 4. COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

1. Upon the enrollment of thirty ccTLD managers (with at least four within each Geographic Region) as members of the ccNSO, written notice shall be posted on the Website. As soon as feasible after that notice, the members of the initial ccNSO Council to be selected by the

ccNSO members shall be selected according to the procedures stated in [Article IX, Section 4\(8\) and \(9\)](#). Upon the completion of that selection process, a written notice that the ccNSO Council has been constituted shall be posted on the Website. Three ccNSO Council members shall be selected by the ccNSO members within each Geographic Region, with one member to serve a term that ends upon the conclusion of the first ICANN annual meeting after the ccNSO Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN annual meeting after the ccNSO Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN annual meeting after the ccNSO Council is constituted. (The definition of "ccTLD manager" stated in [Article IX, Section 4\(1\)](#) and the definitions stated in [Article IX, Section 4\(4\)](#) shall apply within this Section 4 of Article XX.)

2. After the adoption of [Article IX of these Bylaws](#), the Nominating Committee shall select the three members of the ccNSO Council described in [Article IX, Section 3\(1\)\(b\)](#). In selecting three individuals to serve on the ccNSO Council, the Nominating Committee shall designate one to serve a term that ends upon the conclusion of the first ICANN annual meeting after the ccNSO Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN annual meeting after the ccNSO Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN annual meeting after the ccNSO Council is constituted. The three members of the ccNSO Council selected by the Nominating Committee shall not take their seats before the ccNSO Council is constituted.

3. Upon the ccNSO Council being constituted, the At-Large Advisory Committee and the Governmental Advisory Committee may designate one liaison each to the ccNSO Council, as provided by [Article IX, Section 3\(2\)\(a\) and \(b\)](#).

4. Upon the ccNSO Council being constituted, the Council may designate Regional Organizations as provided in [Article IX, Section 5](#). Upon its designation, a Regional Organization may appoint a liaison to the ccNSO Council.

5. Until the ccNSO Council is constituted, Seats 11 and 12 on the New Board shall remain vacant. Promptly after the ccNSO Council is constituted, the ccNSO shall, through the ccNSO Council, make selections of Directors to fill Seats 11 and 12 on the New Board, with terms to conclude upon the commencement of the next regular term

specified for each of those Seats in [Article VI, Section 8\(1\)\(d\) and \(f\) of the New Bylaws](#), and shall give the ICANN Secretary written notice of its selections.

6. Until the ccNSO Council is constituted, the delegate to the Nominating Committee established by the New Bylaws designated to be selected by the ccNSO shall be appointed by the Transition Board or New Board, depending on which is in existence at the time any particular appointment is required, after due consultation with members of the ccTLD community. Upon the ccNSO Council being constituted, the delegate to the Nominating Committee appointed by the Transition Board or New Board according to this Section 4(9) then serving shall remain in office, except that the ccNSO Council may replace that delegate with one of its choosing within three months after the conclusion of ICANN's annual meeting, or in the event of a vacancy. Subsequent appointments of the Nominating Committee delegate described in [Article VII, Section 2\(8\)\(c\)](#) shall be made by the ccNSO Council.

Section 5. GENERIC NAMES SUPPORTING ORGANIZATION

1. The Generic Names Supporting Organization ("GNSO"), upon the adoption of this Transition Article, shall continue its operations; however, it shall be restructured into four new Stakeholder Groups which shall represent, organizationally, the former Constituencies of the GNSO, subject to ICANN Board approval of each individual Stakeholder Group Charter:

- a. The gTLD Registries Constituency shall be assigned to the Registries Stakeholder Group;
- b. The Registrars Constituency shall be assigned to the Registrars Stakeholder Group;
- c. The Business Constituency shall be assigned to the Commercial Stakeholder Group;
- d. The Intellectual Property Constituency shall be assigned to the Commercial Stakeholder Group;
- e. The Internet Services Providers Constituency shall be assigned

to the Commercial Stakeholder Group; and

f. The Non-Commercial Users Constituency shall be assigned to the Non-Commercial Stakeholder Group.

2. Each GNSO Constituency described in paragraph 1 of this subsection shall continue operating substantially as before and no Constituency official, working group, or other activity shall be changed until further action of the Constituency, provided that each GNSO Constituency described in paragraph 1 (c-f) shall submit to the ICANN Secretary a new or revised Charter inclusive of its operating procedures, adopted according to the Constituency's processes and consistent with these Bylaws Amendments, no later than the ICANN meeting in October 2009, or another date as the Board may designate by resolution.

3. Prior to the commencement of the ICANN meeting in October 2009, or another date the Board may designate by resolution, the GNSO Council shall consist of its current Constituency structure and officers as described in [Article X, Section 3\(1\) of the Bylaws](#) (as amended and restated on 29 October 1999 and amended through 20 March 2009 (the "Old Bylaws")). Thereafter, the composition of the GNSO Council shall be as provided in these Bylaws, as they may be amended from time to time. All committees, task forces, working groups, drafting committees, and similar groups established by the GNSO Council and in existence immediately before the adoption of this Transition Article shall continue in existence with the same charters, membership, and activities, subject to any change by action of the GNSO Council or ICANN Board.

4. Beginning with the commencement of the ICANN Meeting in October 2009, or another date the Board may designate by resolution (the "Effective Date of the Transition"), the GNSO Council seats shall be assigned as follows:

a. The three seats currently assigned to the Registry Constituency shall be reassigned as three seats of the Registries Stakeholder Group;

b. The three seats currently assigned to the Registrar Constituency shall be reassigned as three seats of the Registrars Stakeholder Group;

- c. The three seats currently assigned to each of the Business Constituency, the Intellectual Property Constituency, and the Internet Services Provider Constituency (nine total) shall be decreased to be six seats of the Commercial Stakeholder Group;
- d. The three seats currently assigned to the Non-Commercial Users Constituency shall be increased to be six seats of the Non-Commercial Stakeholder Group;
- e. The three seats currently selected by the Nominating Committee shall be assigned by the Nominating Committee as follows: one voting member to the Contracted Party House, one voting member to the Non-Contracted Party House, and one non-voting member assigned to the GNSO Council at large.

Representatives on the GNSO Council shall be appointed or elected consistent with the provisions in each applicable Stakeholder Group Charter, approved by the Board, and sufficiently in advance of the October 2009 ICANN Meeting that will permit those representatives to act in their official capacities at the start of said meeting.

5. The GNSO Council, as part of its Restructure Implementation Plan, will document: (a) how vacancies, if any, will be handled during the transition period; (b) for each Stakeholder Group, how each assigned Council seat to take effect at the 2009 ICANN annual meeting will be filled, whether through a continuation of an existing term or a new election or appointment; (c) how it plans to address staggered terms such that the new GNSO Council preserves as much continuity as reasonably possible; and (d) the effect of Bylaws term limits on each Council member.

6. As soon as practical after the commencement of the ICANN meeting in October 2009, or another date the Board may designate by resolution, the GNSO Council shall, in accordance with [Article X, Section 3\(7\)](#) and its GNSO Operating Procedures, elect officers and give the ICANN Secretary written notice of its selections.

Section 6. PROTOCOL SUPPORTING ORGANIZATION

The [Protocol Supporting Organization referred to in the Old Bylaws](#) is discontinued.

Section 7. ADVISORY COMMITTEES AND TECHNICAL LIAISON GROUP

1. Upon the adoption of the New Bylaws, the Governmental Advisory Committee shall continue in operation according to its existing operating principles and practices, until further action of the committee. The Governmental Advisory Committee may designate liaisons to serve with other ICANN bodies as contemplated by the New Bylaws by providing written notice to the ICANN Secretary. Promptly upon the adoption of this Transition Article, the Governmental Advisory Committee shall notify the ICANN Secretary of the person selected as its delegate to the Nominating Committee, as set forth in [Article VII, Section 2 of the New Bylaws](#).
2. The organizations designated as members of the Technical Liaison Group under [Article XI-A, Section 2\(2\) of the New Bylaws](#) shall each designate the two individual technical experts described in [Article XI-A, Section 2\(6\) of the New Bylaws](#), by providing written notice to the ICANN Secretary. As soon as feasible, the delegate from the Technical Liaison Group to the Nominating Committee shall be selected according to [Article XI-A, Section 2\(7\) of the New Bylaws](#).
3. Upon the adoption of the New Bylaws, the Security and Stability Advisory Committee shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Security and Stability Advisory Committee shall notify the ICANN Secretary of the person selected as its delegate to the Nominating Committee, as set forth in [Article VII, Section 2\(4\) of the New Bylaws](#).
4. Upon the adoption of the New Bylaws, the Root Server System Advisory Committee shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Root Server Advisory Committee shall notify the ICANN Secretary of the person selected as its delegate to the Nominating Committee, as set forth in [Article VII, Section 2\(3\) of the New Bylaws](#).
5. At-Large Advisory Committee
 - a. There shall exist an Interim At-Large Advisory Committee until such time as ICANN recognizes, through the entry of a

Memorandum of Understanding, all of the Regional At-Large Organizations (RALOs) identified in [Article XI, Section 2\(4\) of the New Bylaws](#). The Interim At-Large Advisory Committee shall be composed of (i) ten individuals (two from each ICANN region) selected by the ICANN Board following nominations by the At-Large Organizing Committee and (ii) five additional individuals (one from each ICANN region) selected by the initial Nominating Committee as soon as feasible in accordance with the principles established in [Article VII, Section 5 of the New Bylaws](#). The initial Nominating Committee shall designate two of these individuals to serve terms until the conclusion of the ICANN annual meeting in 2004 and three of these individuals to serve terms until the conclusion of the ICANN annual meeting in 2005.

b. Upon the entry of each RALO into such a Memorandum of Understanding, that entity shall be entitled to select two persons who are citizens and residents of that Region to be members of the At-Large Advisory Committee established by [Article XI, Section 2\(4\) of the New Bylaws](#). Upon the entity's written notification to the ICANN Secretary of such selections, those persons shall immediately assume the seats held until that notification by the Interim At-Large Advisory Committee members previously selected by the Board from the RALO's region.

c. Upon the seating of persons selected by all five RALOs, the Interim At-Large Advisory Committee shall become the At-Large Advisory Committee, as established by [Article XI, Section 2\(4\) of the New Bylaws](#). The five individuals selected to the Interim At-Large Advisory Committee by the Nominating Committee shall become members of the At-Large Advisory Committee for the remainder of the terms for which they were selected.

d. Promptly upon its creation, the Interim At-Large Advisory Committee shall notify the ICANN Secretary of the persons selected as its delegates to the Nominating Committee, as set forth in [Article VII, Section 2\(6\) of the New Bylaws](#).

Section 8. OFFICERS

ICANN officers (as defined in [Article XIII of the New Bylaws](#)) shall be elected by the then-existing Board of ICANN at the annual meeting in 2002 to serve

until the annual meeting in 2003.

Section 9. GROUPS APPOINTED BY THE PRESIDENT

Notwithstanding the adoption or effectiveness of the New Bylaws, task forces and other groups appointed by the ICANN President shall continue unchanged in membership, scope, and operation until changes are made by the President.

Section 10. CONTRACTS WITH ICANN

Notwithstanding the adoption or effectiveness of the New Bylaws, all agreements, including employment and consulting agreements, entered by ICANN shall continue in effect according to their terms.

Annex A: GNSO Policy Development Process

The following process shall govern the GNSO policy development process ("PDP") until such time as modifications are recommended to and approved by the ICANN Board of Directors ("Board"). The role of the GNSO is outlined in Article X of these Bylaws. If the GNSO is conducting activities that are not intended to result in a Consensus Policy, the Council may act through other processes.

Section 1. Required Elements of a Policy Development Process

The following elements are required at a minimum to form Consensus Policies as defined within ICANN contracts, and any other policies for which the GNSO Council requests application of this Annex A:

- a. Final Issue Report requested by the Board, the GNSO Council ("Council") or Advisory Committee, which should include at a minimum
 - a) the proposed issue raised for consideration, b) the identity of the party submitting the issue, and c) how that party is affected by the issue;
- b. Formal initiation of the Policy Development Process by the Council;
- c. Formation of a Working Group or other designated work method;
- d. Initial Report produced by a Working Group or other designated work method;

- e. Final Report produced by a Working Group, or other designated work method, and forwarded to the Council for deliberation;
- f. Council approval of PDP Recommendations contained in the Final Report, by the required thresholds;
- g. PDP Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council]; and
- h. Board approval of PDP Recommendations.

Section 2. **Policy Development Process Manual**

The GNSO shall maintain a Policy Development Process Manual (PDP Manual) within the operating procedures of the GNSO maintained by the GNSO Council. The PDP Manual shall contain specific additional guidance on completion of all elements of a PDP, including those elements that are not otherwise defined in these Bylaws. The PDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Article X, Section 3.6.

Section 3. **Requesting an Issue Report**

Board Request. The Board may request an Issue Report by instructing the GNSO Council ("Council") to begin the process outlined the PDP Manual. In the event the Board makes a request for an Issue Report, the Board should provide a mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for an Issue Report.

Council Request. The GNSO Council may request an Issue Report by a vote of at least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

Advisory Committee Request. An Advisory Committee may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO Council.

Section 4. **Creation of an Issue Report**

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a properly supported motion from the GNSO Council; or (iii) a

properly supported motion from an Advisory Committee, the Staff Manager will create a report (a "Preliminary Issue Report"). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report.

The following elements should be considered in the Issue Report:

- a) The proposed issue raised for consideration;
- b) The identity of the party submitting the request for the Issue Report;
- c) How that party is affected by the issue, if known;
- d) Support for the issue to initiate the PDP, if known;
- e) The opinion of the ICANN General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the ICANN's mission, policy process and more specifically the role of the GNSO as set forth in the Bylaws.
- f) The opinion of ICANN Staff as to whether the Council should initiate the PDP on the issue

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the ICANN website for a public comment period that complies with the designated practice for public comment periods within ICANN.

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a Final Issue Report based upon the comments received. The Staff Manager should forward the Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO Council for consideration for initiation of a PDP.

Section 5. **Initiation of the PDP**

The Council may initiate the PDP as follows:

Board Request. If the Board requested an Issue Report, the Council, within the

timeframe set forth in the PDP Manual, shall initiate a PDP. No vote is required for such action.

GNSO Council or Advisory Committee Requests: The Council may only initiate the PDP by a vote of the Council. Initiation of a PDP requires a vote as set forth in [Article X, Section 3, paragraph 9\(b\) and \(c\)](#) in favor of initiating the PDP.

Section 6. **Reports**

An Initial Report should be delivered to the GNSO Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN, which time may be extended in accordance with the PDP Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

Section 7. **Council Deliberation**

Upon receipt of a Final Report, whether as the result of a working group or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP Manual.

The Council approval process is set forth in [Article X, Section 3, paragraph 9\(d\) through \(g\)](#), as supplemented by the PDP Manual.

Section 8. **Preparation of the Board Report**

If the PDP recommendations contained in the Final Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the ICANN Board.

Section 9. **Board Approval Processes**

The Board will meet to discuss the GNSO Council recommendation as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the PDP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in

the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.

b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO Supermajority Vote or less than a GNSO Supermajority vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

Section 10. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to ICANN staff to work with the GNSO Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy. The GNSO Council may, but is not required to, direct the creation of an implementation review team to assist in implementation of the policy.

Section 11. **Maintenance of Records**

Throughout the PDP, from policy suggestion to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each PDP issue. Such status page will outline the completed and upcoming steps in the PDP process, and contain links to key resources (e.g. Reports, Comments Fora, WG Discussions, etc.).

Section 12. **Additional Definitions**

"Comment Site", "Comment Forum", "Comments For a" and "Website" refer to one or more websites designated by ICANN on which notifications and comments regarding the PDP will be posted.

"Supermajority Vote" means a vote of more than sixty-six (66) percent of the members present at a meeting of the applicable body, with the exception of the GNSO Council.

"Staff Manager" means an ICANN staff person(s) who manages the PDP.

"GNSO Supermajority Vote" shall have the meaning set forth in the Bylaws.

Section 13. **Applicability**

The procedures of this Annex A shall be applicable to all requests for Issue Reports and PDPs initiated after 8 December 2011. For all ongoing PDPs initiated prior to 8 December 2011, the Council shall determine the feasibility of transitioning to the procedures set forth in this Annex A for all remaining steps within the PDP. If the Council determines that any ongoing PDP cannot be feasibly transitioned to these updated procedures, the PDP shall be concluded according to the procedures set forth in Annex A in force on 7 December 2011.

Annex B: ccNSO Policy-Development Process (ccPDP)

The following process shall govern the ccNSO policy-development process ("PDP").

1. Request for an Issue Report

An Issue Report may be requested by any of the following:

- a. *Council.* The ccNSO Council (in this Annex B, the "Council") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting by e-mail.
- b. *Board.* The ICANN Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.
- c. *Regional Organization.* One or more of the Regional Organizations representing ccTLDs in the ICANN recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- d. *ICANN Supporting Organization or Advisory Committee.* An ICANN Supporting Organization or an ICANN Advisory Committee may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- e. *Members of the ccNSO.* The members of the ccNSO may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO present at any meeting or voting by e-mail.

Any request for an Issue Report must be in writing and must set out the issue upon which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation for the purpose of determining whether or not the requested Issue Report should be created.

2. Creation of the Issue Report and Initiation Threshold

Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (in which case the costs of the Issue Manager shall be borne by ICANN) or such other person or persons selected by the Council (in which case the ccNSO shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the issue;
- c. How that party is affected by the issue;
- d. Support for the issue to initiate the PDP;
- e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy process and within the scope of the ccNSO. In coming to his or her opinion, the General Counsel shall examine whether:

- 1) The issue is within the scope of ICANN's mission statement;
- 2) Analysis of the relevant factors according to [Article IX, Section 6\(2\)](#) and [Annex C](#) affirmatively demonstrates that the issue is within the scope of the ccNSO;

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

- 3) Implicates or affects an existing ICANN policy;
- 4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this [Annex B](#)) or to the scope of the ccNSO ([Annex C](#)) shall be within the scope of ICANN and the ccNSO.

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Article IX, Section 6 and Annex C a majority of 10

or more Council members is of the opinion the issue is within scope the Chair of the ccNSO shall inform the Issue Manager accordingly. General Counsel and the ccNSO Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP including both the opinion and analysis of General Counsel and Council in the Issues Report.

f. In the event that the Manager Recommendation is in favor of initiating the PDP, a proposed time line for conducting each of the stages of PDP outlined herein (PDP Time Line).

g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the ICANN Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP.

3. Initiation of PDP

The Council shall decide whether to initiate the PDP as follows:

a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP. Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.

b. A vote of ten or more Council members in favor of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the ICANN mission statement and the ccNSO Scope.

4. Decision Whether to Appoint Task Force; Establishment of Time Line

At the meeting of the Council where the PDP has been initiated (or, where the Council employs a vote by e-mail, in that vote) pursuant to Item 3 above, the Council shall decide, by a majority vote of members present at the meeting (or voting by e-mail), whether or not to appoint a task force to address the issue. If the Council votes:

- a. In favor of convening a task force, it shall do so in accordance with Item 7 below.
- b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by e-mail, approve or amend and approve the PDP Time Lineset out in the Issue Report.

5. Composition and Selection of Task Forces

- a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see [Article IX, Section 6](#)) to appoint two individuals to participate in the task force (the "Representatives"). Additionally, the Council may appoint up to three advisors (the "Advisors") from outside the ccNSO and, following formal request for GAC participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.
- b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.
- c. The Council may also pursue other actions that it deems appropriate to assist in the PDP, including appointing a particular individual or

organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the PDP Time Line.

6. Public Notification of Initiation of the PDP and Comment Period

After initiation of the PDP, ICANN shall post a notification of such action to the Website and to the other ICANN Supporting Organizations and Advisory Committees. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be commenced for the issue. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. The Issue Manager, or some other designated Council representative shall review the comments and incorporate them into a report (the "Comment Report") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

7. Task Forces

a. *Role of Task Force.* If a task force is created, its role shall be responsible for (i) gathering information documenting the positions of the ccNSO members within the Geographic Regions and other parties and groups; and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "Charter") within the time designated in the PDP Time Line. Such Charter shall include:

1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP;
2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a

compelling reason to extend the timeline; and

3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by e-mail. The quorum requirements of [Article IX, Section 3\(14\)](#) shall apply to Council actions under this Item 7(b).

c. *Appointment of Task Force Chair.* The Issue Manager shall convene the first meeting of the task force within the time designated in the PDP Time Line. At the initial meeting, the task force members shall, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. *Collection of Information.*

1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems appropriate, including the comments of the ccNSO members in that region that are not members of the Regional Organization, regarding the issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "Regional Statement") within the time designated in the PDP Time Line. Every Regional Statement shall include at least the following:

- (i) If a Supermajority Vote (as defined by the Regional Organization) was reached, a clear statement of the Regional Organization's position on the issue;

- (ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by the members of the Regional Organization;
- (iii) A clear statement of how the Regional Organization arrived at its position(s). Specifically, the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;
- (iv) A statement of the position on the issue of any ccNSO members that are not members of the Regional Organization;
- (v) An analysis of how the issue would affect the Region, including any financial impact on the Region; and
- (vi) An analysis of the period of time that would likely be necessary to implement the policy.

2. *Outside Advisors.* The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP Time Line.

e. *Task Force Report.* The chair of the task force, working with the Issue Manager, shall compile the Regional Statements, the Comment Report, and other information or reports, as applicable, into a single document ("Preliminary Task Force Report") and distribute the Preliminary Task Force Report to the full task force within the time designated in the PDP Time Line. The task force shall have a final task force meeting to consider the issues and try and reach a Supermajority Vote. After the final task force meeting, the chair of the task force and the Issue Manager shall create the final task force report (the "Task Force Report") and post it on the Website and to the other ICANN Supporting Organizations and Advisory Committees. Each Task Force Report must include:

1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue;
2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the time line for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position;
3. An analysis of how the issue would affect each Region, including any financial impact on the Region;
4. An analysis of the period of time that would likely be necessary to implement the policy; and
5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

8. Procedure if No Task Force is Formed

- a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP Time Line.
- b. The Council may, in its discretion, take other steps to assist in the PDP, including, for example, appointing a particular individual or organization, to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP Time Line.
- c. The Council shall formally request the Chair of the GAC to offer opinion or advice.
- d. The Issue Manager shall take all Regional Statements, the Comment

Report, and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

9. Comments to the Task Force Report or Initial Report

- a. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.
- b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "Final Report". The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.
- c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP Time Line.

10. Council Deliberation

- a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members; (ii) call for a Council meeting within the time designated in the PDP Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC Chair an invitation to the GAC to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.
- b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-

mail discussions, or any other means the Council may choose.

c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor; and (iii) accompanied by a detailed statement of the advisor's (a) qualifications and relevant experience and (b) potential conflicts of interest.

11. Recommendation of the Council

In considering whether to make a recommendation on the issue (a "Council Recommendation"), the Council shall seek to act by consensus. If a minority opposes a consensus position, that minority shall prepare and circulate to the Council a statement explaining its reasons for opposition. If the Council's discussion of the statement does not result in consensus, then a recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council, and shall be conveyed to the Members as the Council's Recommendation. Notwithstanding the foregoing, as outlined below, all viewpoints expressed by Council members during the PDP must be included in the Members Report.

12. Council Report to the Members

In the event that a Council Recommendation is adopted pursuant to Item 11 then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by the Council and then to be submitted to the Members (the "Members Report"). The Members Report must contain at least the following:

- a. A clear statement of the Council's recommendation;
- b. The Final Report submitted to the Council; and
- c. A copy of the minutes of the Council's deliberation on the policy issue (see Item 10), including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

13. Members Vote

Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO members lodge votes in the first round of voting, the first round will not be employed and the results of a final, second round of voting, conducted after at least thirty days notice to the ccNSO members, will be employed if at least 50% of the ccNSO members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation.

14. Board Report

The Issue Manager shall within seven days after a ccNSO Recommendation being made in accordance with Item 13 incorporate the ccNSO Recommendation into a report to be approved by the Council and then to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:

- a. A clear statement of the ccNSO recommendation;
- b. The Final Report submitted to the Council; and
- c. the Members' Report.

15. Board Vote

- a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the

best interest of the ICANN community or of ICANN.

1. In the event that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.
3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "Supplemental Recommendation"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13. In the event that more than 66% of the votes cast by ccNSO Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company.
4. In the event that the Board does not accept the ccNSO Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("Supplemental Board Statement").
5. In the event the Board determines not to accept a ccNSO Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such

time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

16. Implementation of the Policy

Upon adoption by the Board of a ccNSO Recommendation or ccNSO Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN staff to implement the policy.

17. Maintenance of Records

With respect to each ccPDP for which an Issue Report is requested (see Item 1), ICANN shall maintain on the Website a status web page detailing the progress of each ccPDP, which shall provide a list of relevant dates for the ccPDP and shall also link to the following documents, to the extent they have been prepared pursuant to the ccPDP:

- a. Issue Report;
- b. PDP Time Line;
- c. Comment Report;
- d. Regional Statement(s);
- e. Preliminary Task Force Report;
- f. Task Force Report;
- g. Initial Report;
- h. Final Report;
- i. Members' Report;
- j. Board Report;
- k. Board Statement;
- l. Supplemental Members' Report; and

m. Supplemental Board Statement.

In addition, ICANN shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

Annex C: The Scope of the ccNSO

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO's policy-development role. As provided in [Article IX, Section 6\(2\)](#) of the Bylaws, that scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO's authority and responsibilities must recognize the complex relation between ICANN and ccTLD managers/registries with regard to policy issues. This annex shall assist the ccNSO, the ccNSO Council, and the ICANN Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO's policy role should be based on an analysis of the following functional model of the DNS:

1. Data is registered/maintained to generate a zone file,
2. A zone file is in turn used in TLD name servers.

Within a TLD two functions have to be performed (these are addressed in greater detail below):

1. Entering data into a database (Data Entry Function) and
2. Maintaining and ensuring upkeep of name-servers for the TLD (Name Server Function).

These two core functions must be performed at the ccTLD registry level as well as at a higher level (IANA function and root servers) and at lower levels

of the DNS hierarchy. This mechanism, as RFC 1591 points out, is recursive:

There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees fit (as long as it is true and correct).

The Core Functions

1. Data Entry Function (DEF):

Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions:

(a) under which data will be collected and entered into a database or data changed (at the TLD level among others, data to reflect a transfer from registrant to registrant or changing registrar) in the database.

(b) for making certain data generally and publicly available (be it, for example, through Whois or nameservers).

2. The Name-Server Function (NSF)

The name-server function involves essential interoperability and stability issues at the heart of the domain name system. The importance of this function extends to nameservers at the ccTLD level, but also to the root servers (and root-server system) and nameservers at lower levels.

On its own merit and because of interoperability and stability considerations, properly functioning nameservers are of utmost importance to the individual, as well as to the local and the global Internet communities.

With regard to the nameserver function, therefore, policies need to be defined and established. Most parties involved, including the majority of ccTLD registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC 1591.

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

It is in the interest of ICANN and ccTLD managers to ensure the stable and proper functioning of the domain name system. ICANN and the ccTLD registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO cannot be established without reaching a common understanding of the allocation of authority between ICANN and ccTLD registries.

Three roles can be distinguished as to which responsibility must be assigned on any given issue:

- Policy role: i.e. the ability and power to define a policy;
- Executive role: i.e. the ability and power to act upon and implement the policy; and
- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue that needs to be addressed those who are involved in defining and setting the policy need to be determined and defined. Secondly, this presupposes an executive role defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to be defined and determined.

The information below offers an aid to:

1. delineate and identify specific policy areas;
2. define and determine roles with regard to these specific policy areas.

This annex defines the scope of the ccNSO with regard to developing policies. The scope is limited to the policy role of the ccNSO policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.

Name Server Function (as to ccTLDs)

Level 1: Root Name Servers
Policy role: IETF, RSSAC (ICANN)

Executive role: Root Server System Operators
Accountability role: RSSAC (ICANN), (US DoC-ICANN MoU)

Level 2: ccTLD Registry Name Servers in respect to interoperability
Policy role: ccNSO Policy Development Process (ICANN), for best practices a ccNSO process can be organized
Executive role: ccTLD Manager
Accountability role: part ICANN (IANA), part Local Internet Community, including local government

Level 3: User's Name Servers
Policy role: ccTLD Manager, IETF (RFC)
Executive role: Registrant
Accountability role: ccTLD Manager

Data Entry Function (as to ccTLDs)

Level 1: Root Level Registry
Policy role: ccNSO Policy Development Process (ICANN)
Executive role: ICANN (IANA)
Accountability role: ICANN community, ccTLD Managers, US DoC, (national authorities in some cases)

Level 2: ccTLD Registry
Policy role: Local Internet Community, including local government, and/or ccTLD Manager according to local structure
Executive role: ccTLD Manager
Accountability role: Local Internet Community, including national authorities in some cases

Level 3: Second and Lower Levels
Policy role: Registrant
Executive role: Registrant
Accountability role: Registrant, users of lower-level domain names



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Resp. Ex. 3



OIC/SG-01/2013 006754

Jeddah

Dear Mr. Crocker,

I would like to refer to my letter to Ms. Heather Dryden the Chair of GAC dated 4 November 2013 (copy attached) and her reply dated 29 November 2013 regarding the new gTLD applications for .halal and .islam. I wish to seize this opportunity to thank the GAC Chair and you personally for paying due consideration to our concerns, as well as for the understanding of ICANN for OIC position on new gTLD applications for .halal and .islam.

I have the honor to inform you that the Foreign Ministers of the 57 Muslim Member States of the Organization of Islamic Cooperation, which is the sole official representative of the Muslim world has approved and adopted the OIC position as indicated in my aforementioned letter. I would like here to stress that the resolution was unanimously adopted after extensive consultations between Member States on the issue. The official delegates of the Muslim World have considered the fact that new gTLDs with Islamic identity are of such sensitive nature as they concern the entire Muslim nation and subsequently has decided to file an official objection to ICANN for the use of gTLDs .Islam and .Halal, and preserve the right of member states in this regard.

The resolution also urged OIC Member States to ICANN to support United Arab Emirates' position and the measures it took to block the sale of the two domains .Islam and .halal or any other domains which concern the entire Islamic Ummah.

In light of the above, you may agree that the adopted resolution clearly nullifies the observation of the GAC members about the lack of community involvement and support to the OIC request. You would also kindly appreciate that the OIC resolution on the issue underlines the need for constructive engagement between the ICANN and OIC as well as between ICANN and OIC Member States.

In this context, I would like to reiterate and affirm the official opposition of the OIC Member States towards any probable authorization by the GAC allowing use of these new gTLDs .islam and .halal by any entity not reflecting the collective voice of the Muslim People.

While appreciating the response by the GAC Chair, I would also like to underline that we all strive towards achieving our ultimate goal of ensuring betterment for our people, and when an issue as sensitive as the one under discussion is being considered, there always should be a scope to reintroduce even after apparent conclusion of deliberations.

I look forward to working closely with you on this important issue. Please accept, Mr. Chair, the assurances of my highest consideration.

Sincerely,

Ekmeleddin Ihsanoglu

Mr. Stephen D. Crocker
Chair, ICANN Board of Directors

CC: Mr. Fadi Chehade, the President & CEO of ICANN
CC: Mr. Cherine Chalaby Chariman and other members of the new gTLD Program Committee
CC: Mrs. Heather Dryden, Chair of Governmental Advisory Committee



Resp. Ex. 4



New Generic Top-Level Domains



Program Statistics

13 June 2012, ICANN posted all the applied-for strings to this site.

On this page you will find high-level statistics about the overall program as the applications work their way through the evaluation process.

[Centralized Zone Data Service \(CZDS\)](#)

[Comments & Feedback](#)

[Current Application Status](#)

[Delegated Strings](#)

[Contention Set Status](#)

[Evaluation Panels](#)

[gTLD Correspondence](#)

[Objection & Dispute Resolution](#)

[Post-Delegation Dispute Resolution Procedures \(PDDRP\)](#)

[Program Statistics](#) →

[Timelines](#)

[TLD Startup Information - Sunrise and Claims Periods](#)

[Trademark Clearinghouse \(TMCH\)](#)

[Uniform Rapid Suspension System](#)

PROGRAM STATISTICS

Current Statistics *(Updated weekly)*

Application Statistics: Overview (as of 22 January 2016)	
Total Applications Submitted	1930
Completed New gTLD Program (gTLD Delegated** - introduced into Internet)	892
Application Withdrawn	562
Applications that Will Not Proceed/Not Approved	36
Currently Proceeding through New gTLD Program*	440

Contention Resolution	
Total Contention Sets	233
Resolved Contention Sets	211
Contention Sets Resolved via ICANN Auction	14
Unresolved Contention Sets	22
Applications Pending Contention Resolution	52

About the Program

New gTLD Application

Quick Facts

Overview of New gTLD

Applications

Contracting	
Executed Registry Agreements (completed contracting)	1220
Registry Agreements with Specification 13	473
Registry Agreements with Code of Conduct Exemption	65
In Contracting	26

Pre-Delegation Testing (PDT)	
Passed PDT	1014

**Breakdown: Delegation Statistics	
Delegated gTLDs (Introduced into Internet)	892
Select Subcategories of Delegated gTLDs	
(NOTE: gTLDs may fall into more than one subcategory)	
Community	40
Geographic	45
Internationalized Domain Names (IDNs)	68

gTLD Startup Statistics (as of 19 January 2016)	
Sunrise	
Completed	470
In Progress	8
Not Started	8
Claims	
Completed	480
In Progress	115
Not Started	44

[Get a status update on an individual application »](#)

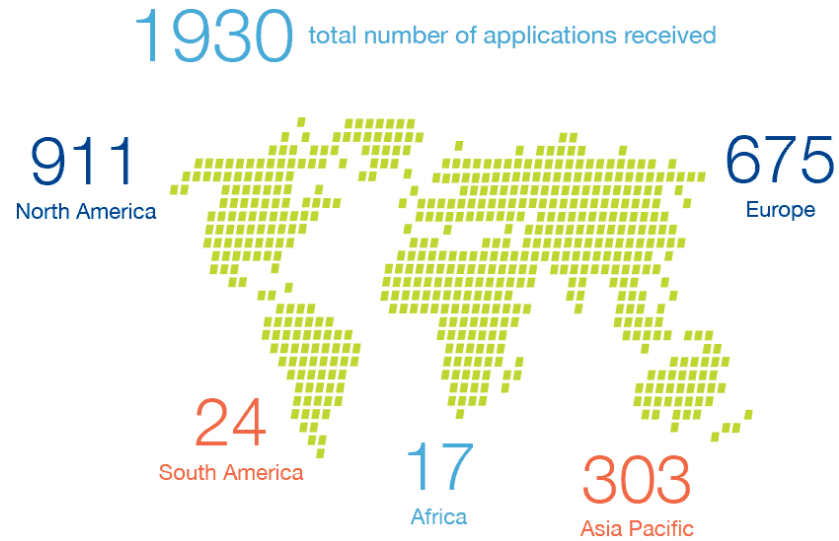
New gTLD Application Submission Statistics

The statistics in this section were calculated based on applications received by the 29 March 2012 deadline.

Application Breakdown by: [Region](#) | [Type](#) | [String Similarity](#)

Application Breakdown by Region

Statistics as of 13 June 2012

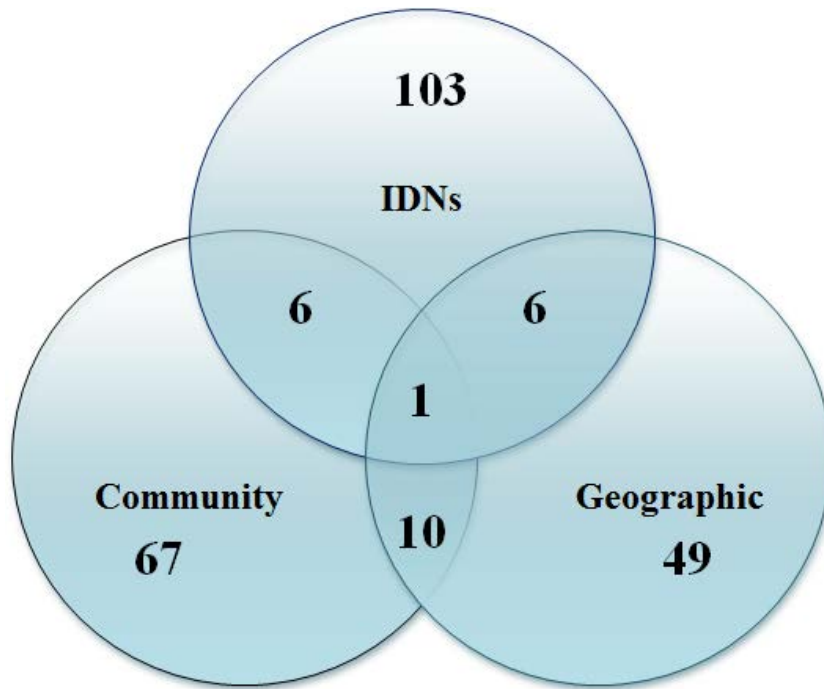


Application Breakdown by Type

Statistics as of 13 June 2012

Application Totals

- Community: 84
- Geographic: 66
- Internationalized Domain Names: 116
 - Total Scripts Represented: 12
- Other: 1846



Application Breakdown by String Similarity

Statistics as of 26 February 2013

Approximate Number of Unique Applied-for Strings: 1,400

- Contention Sets
 - Exact Match: 230
(two or more applications for a string with same characters)
 - Confusingly Similar: 2
 - .hotels & .hoteis
 - .unicorn & .unicom
- Applications in a Contention Set: 751

Resp. Ex. 5

**gTLD Applicant
Guidebook**

Version 2012-06-04



4 June 2012

Preamble

New gTLD Program Background

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

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

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

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

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



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 1

4 June 2012

Module 1

Introduction to the gTLD Application Process

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

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

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

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

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

1.1 Application Life Cycle and Timelines

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

1.1.1 Application Submission Dates

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

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

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

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

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

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

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

- It is received after the close of the application submission period.
- The application form is incomplete (either the questions have not been fully answered or required supporting documents are missing). Applicants will not ordinarily be permitted to supplement their applications after submission.
- The evaluation fee has not been paid by the deadline. Refer to Section 1.5 for fee information.

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

1.1.2 Application Processing Stages

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

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

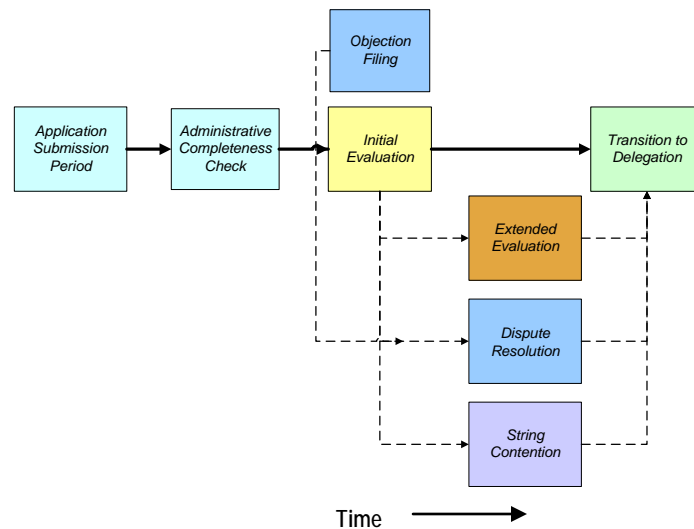


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

1.1.2.1 *Application Submission Period*

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

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

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

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

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

1.1.2.2 Administrative Completeness Check

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

- All mandatory questions are answered;
- Required supporting documents are provided in the proper format(s); and
- The evaluation fees have been received.

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

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

1.1.2.3 Comment Period

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

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

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

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

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

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

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

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

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

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

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

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

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

1.1.2.4 GAC Early Warning

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

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

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

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

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

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

1.1.2.5 Initial Evaluation

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

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

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

There are two main elements of the Initial Evaluation:

1. String reviews (concerning the applied-for gTLD string). String reviews include a determination that the applied-for gTLD string is not likely to cause security or stability problems in the DNS, including problems caused by similarity to existing TLDs or reserved names.
2. Applicant reviews (concerning the entity applying for the gTLD and its proposed registry services). Applicant reviews include a determination of whether the applicant has the requisite technical, operational, and financial capabilities to operate a registry.

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

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

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

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

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

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

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

1.1.2.6 Objection Filing

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

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

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

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

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

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

1.1.2.7 Receipt of GAC Advice on New gTLDs

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

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

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

1.1.2.8 Extended Evaluation

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

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

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

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

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

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

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

1.1.2.9 Dispute Resolution

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

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

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

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

1.1.2.10 String Contention

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

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

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

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

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

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

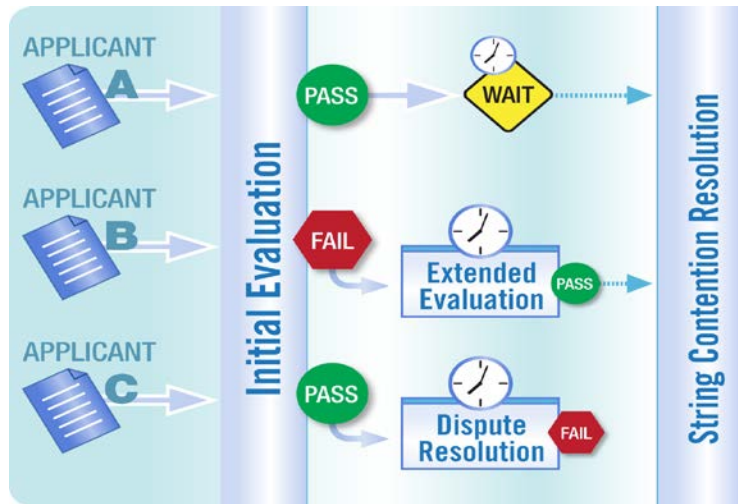


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

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

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

1.1.2.11 Transition to Delegation

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

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

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

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

1.1.3 Lifecycle Timelines

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

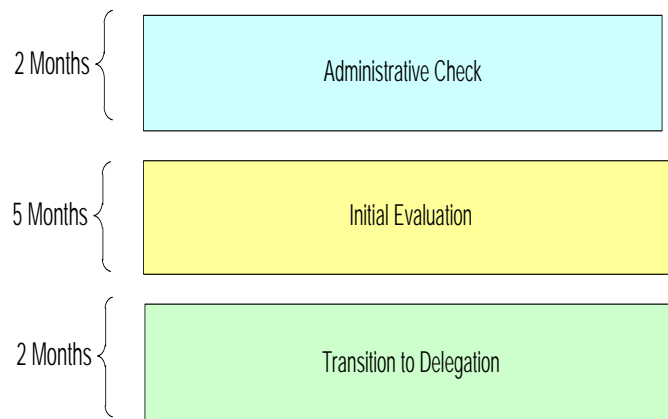


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

The lifecycle for a highly complex application could be much longer, such as 20 months in the example below:

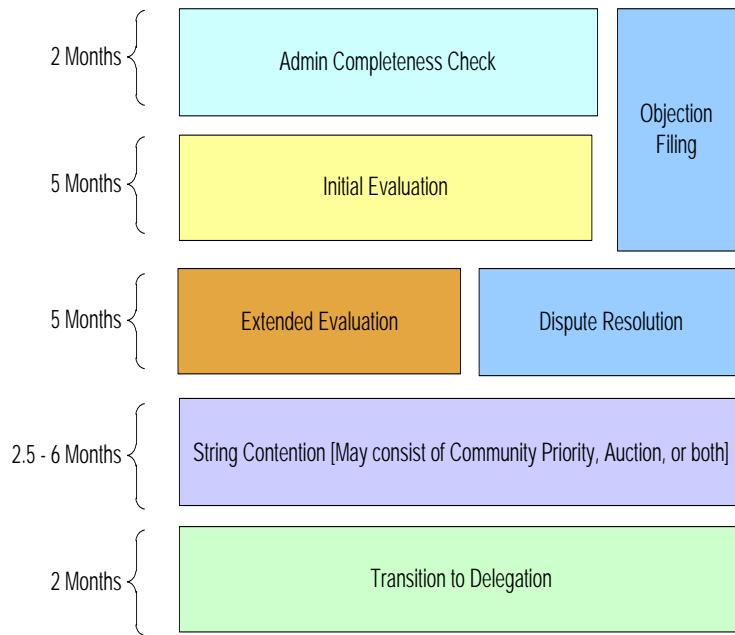


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

1.1.4 Posting Periods

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

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

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

1.1.5 Sample Application Scenarios

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

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

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

Scenario Number	Initial Evaluation	Extended Evaluation	Objection(s) Filed	String Contention	Approved for Delegation Steps	Estimated Elapsed Time
1	Pass	N/A	None	No	Yes	9 months
2	Fail	Pass	None	No	Yes	14 months
3	Pass	N/A	None	Yes	Yes	11.5 – 15 months
4	Pass	N/A	Applicant prevails	No	Yes	14 months
5	Pass	N/A	Objector prevails	N/A	No	12 months
6	Fail	Quit	N/A	N/A	No	7 months
7	Fail	Fail	N/A	N/A	No	12 months
8	Fail	Pass	Applicant prevails	Yes	Yes	16.5 – 20 months
9	Fail	Pass	Applicant prevails	Yes	No	14.5 – 18 months

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

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

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

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

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

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

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

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

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

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

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

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

1.1.6 Subsequent Application Rounds

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

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

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

1.2 Information for All Applicants

1.2.1 Eligibility

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

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

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

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

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

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

- a. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these;
- b. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of the funds of others;
- c. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;
- d. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;
- e. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;
- f. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;
- g. has ever been convicted of any violent or sexual offense victimizing children, the

elderly, or individuals with disabilities;

- h. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988³;
- i. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols)^{4,5};
- j. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes above (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) - (i) above);
- k. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents), within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) - (i) above);
- l. is the subject of a disqualification imposed by ICANN and in effect at the time the application is considered;
- m. has been involved in a pattern of adverse, final decisions indicating that the applicant

³ <http://www.unodc.org/unodc/en/treaties/illicit-traffic.html>

⁴ <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

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

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

- n. fails to provide ICANN with the identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the background screening process;
- o. fails to provide a good faith effort to disclose all relevant information relating to items (a) – (m).

Background screening is in place to protect the public interest in the allocation of critical Internet resources, and ICANN reserves the right to deny an otherwise qualified application based on any information identified during the background screening process. For example, a final and legally binding decision obtained by a national law enforcement or consumer protection authority finding that the applicant was engaged in fraudulent and deceptive commercial practices as defined in the Organization for Economic Co-operation and Development (OECD) Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders⁶ may cause an application to be rejected. ICANN may also contact the applicant with additional questions based on information obtained in the background screening process.

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

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

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

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

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

1.2.2 Required Documents

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

1. **Proof of legal establishment** – Documentation of the applicant's establishment as a specific type of entity in accordance with the applicable laws of its jurisdiction.
2. **Financial statements** – Applicants must provide audited or independently certified financial statements for the most recently completed fiscal year for the applicant. In some cases, unaudited financial statements may be provided.

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

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

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

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

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

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

2. **Government support or non-objection** – If an applicant has applied for a gTLD string that is a geographic name (as defined in this Guidebook), the applicant is required to submit documentation of support for or non-objection to its application from the relevant governments or public authorities. Refer to subsection 2.2.1.4 for more information on the requirements for geographic names. If applicable, this will be submitted in the geographic names section of the application.
3. **Documentation of third-party funding commitments** – If an applicant lists funding from third parties in its application, it must provide evidence of commitment by the party committing the funds. If applicable, this will be submitted in the financial section of the application.

1.2.3 Community-Based Designation

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

1.2.3.1 Definitions

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

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

1. Demonstrate an ongoing relationship with a clearly delineated community.
2. Have applied for a gTLD string strongly and specifically related to the community named in the application.
3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD, including appropriate security verification procedures, commensurate with the community-based purpose it has named.
4. Have its application endorsed in writing by one or more established institutions representing the community it has named.

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

1.2.3.2 Implications of Application Designation

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

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

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

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

- A **settlement between the parties** can occur at any time after contention is identified. The parties will be encouraged to meet with an objective to settle the contention. Applicants in contention always have the opportunity to resolve the contention voluntarily, resulting in the withdrawal of one or more applications, before reaching the contention resolution stage.
- A **community priority evaluation** will take place only if a community-based applicant in a contention set elects this option. All community-based applicants in a contention set will be offered this option in the event that there is contention remaining after the applications have successfully completed all previous evaluation stages.
- An **auction** will result for cases of contention not resolved by community priority evaluation or agreement between the parties. Auction occurs as a contention resolution means of last resort. If a community priority evaluation occurs but does not produce a clear winner, an auction will take place to resolve the contention.

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

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

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

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

1.2.3.3 Changes to Application Designation

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

1.2.4 Notice concerning Technical Acceptance Issues with New gTLDs

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

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

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

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

1.2.5 Notice concerning TLD Delegations

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

1.2.6 Terms and Conditions

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

1.2.7 Notice of Changes to Information

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

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

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

1.2.8 Voluntary Designation for High Security Zones

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

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

1.2.9 Security and Stability

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

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

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

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

1.2.10 Resources for Applicant Assistance

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

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

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

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

1.2.11 Updates to the Applicant Guidebook

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

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

1.3 Information for Internationalized Domain Name Applicants

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

1.3.1 IDN-Specific Requirements

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

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

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

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

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

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

1. Meaning or restatement of string in English. The applicant will provide a short description of what the string would mean or represent in English.
2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for gTLD string, both according to the ISO codes for the representation of names of languages, and in English.
3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO codes for the representation of names of scripts, and in English.
4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.
5. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator (i.e., the dot).⁷

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

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

⁷ See examples at <http://stupid.domain.name/node/683>

1.3.2 IDN Tables

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

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

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

Each applicant is responsible for developing its IDN Tables, including specification of any variant characters. Tables must comply with ICANN's IDN Guidelines⁸ and any updates thereto, including:

- Complying with IDN technical standards.
- Employing an inclusion-based approach (i.e., code points not explicitly permitted by the registry are prohibited).
- Defining variant characters.
- Excluding code points not permissible under the guidelines, e.g., line-drawing symbols, pictographic dingbats, structural punctuation marks.
- Developing tables and registration policies in collaboration with relevant stakeholders to address common issues.
- Depositing IDN tables with the IANA Repository for IDN Practices (once the TLD is delegated).

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

⁸ See <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>

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

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

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

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

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

1.3.3 IDN Variant TLDs

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

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

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

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

The following scenarios are possible during the gTLD evaluation process:

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

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

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

- b. Multiple applicants apply for strings that are identified by ICANN as variants of one another. These applications will be placed in a contention set and will follow the contention resolution procedures in Module 4.
- c. Applicant submits an application for a gTLD string and does not indicate variants to the applied-for gTLD string. ICANN will not identify variant strings unless scenario (b) above occurs.

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

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

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

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

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

1.4 Submitting an Application

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

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

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

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

1.4.1 Accessing the TLD Application System

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

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

1.4.1.1 User Registration

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

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

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

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

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

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

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

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

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

1.4.1.2 Application Form

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

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

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

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

1.4.2 Customer Service during the Application Process

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

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

1.4.3 Backup Application Process

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

1.5 Fees and Payments

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

1.5.1 gTLD Evaluation Fee

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

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

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

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

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

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

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

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

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

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

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

1.5.2 Fees Required in Some Cases

Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable. Those possible additional fees¹⁰ include:

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

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

- **Dispute Resolution Filing Fee** – This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable directly to the applicable dispute resolution service provider in accordance with the provider’s payment instructions. ICANN estimates that filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.
- **Advance Payment of Costs** – In the event of a formal objection, this amount is payable directly to the applicable dispute resolution service provider in accordance with that provider’s procedures and schedule of costs. Ordinarily, both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. In cases where disputes are consolidated and there are more than two parties involved, the advance payment will occur according to the dispute resolution service provider’s rules.

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

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

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

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

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

1.5.3 Payment Methods

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

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

1.5.4 Requesting a Remittance Form

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

1.6 Questions about this Applicant Guidebook

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

¹¹ Wire transfer is the preferred method of payment as it offers a globally accessible and dependable means for international transfer of funds. This enables ICANN to receive the fee and begin processing applications as quickly as possible.

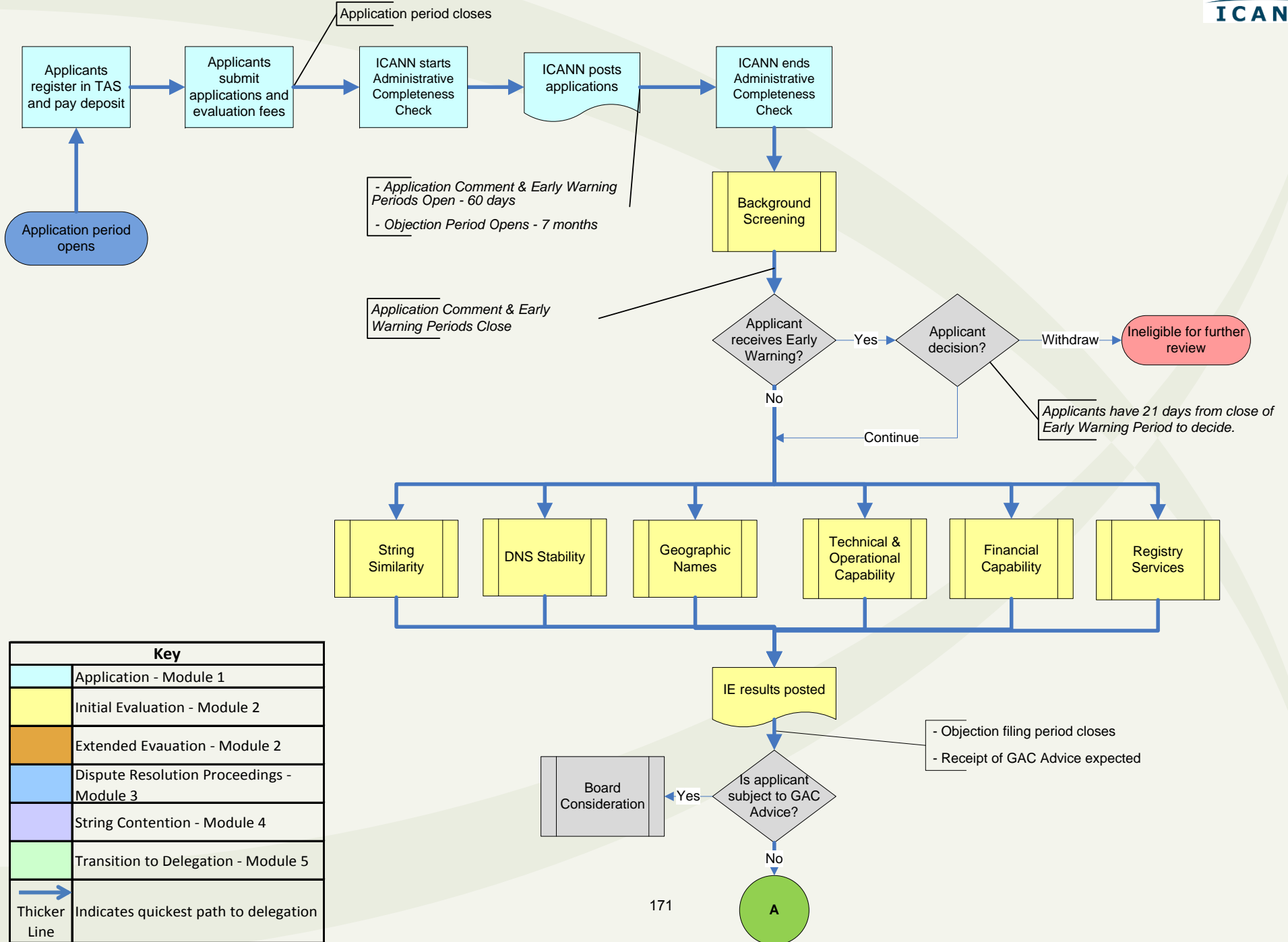
support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with processing the application.

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

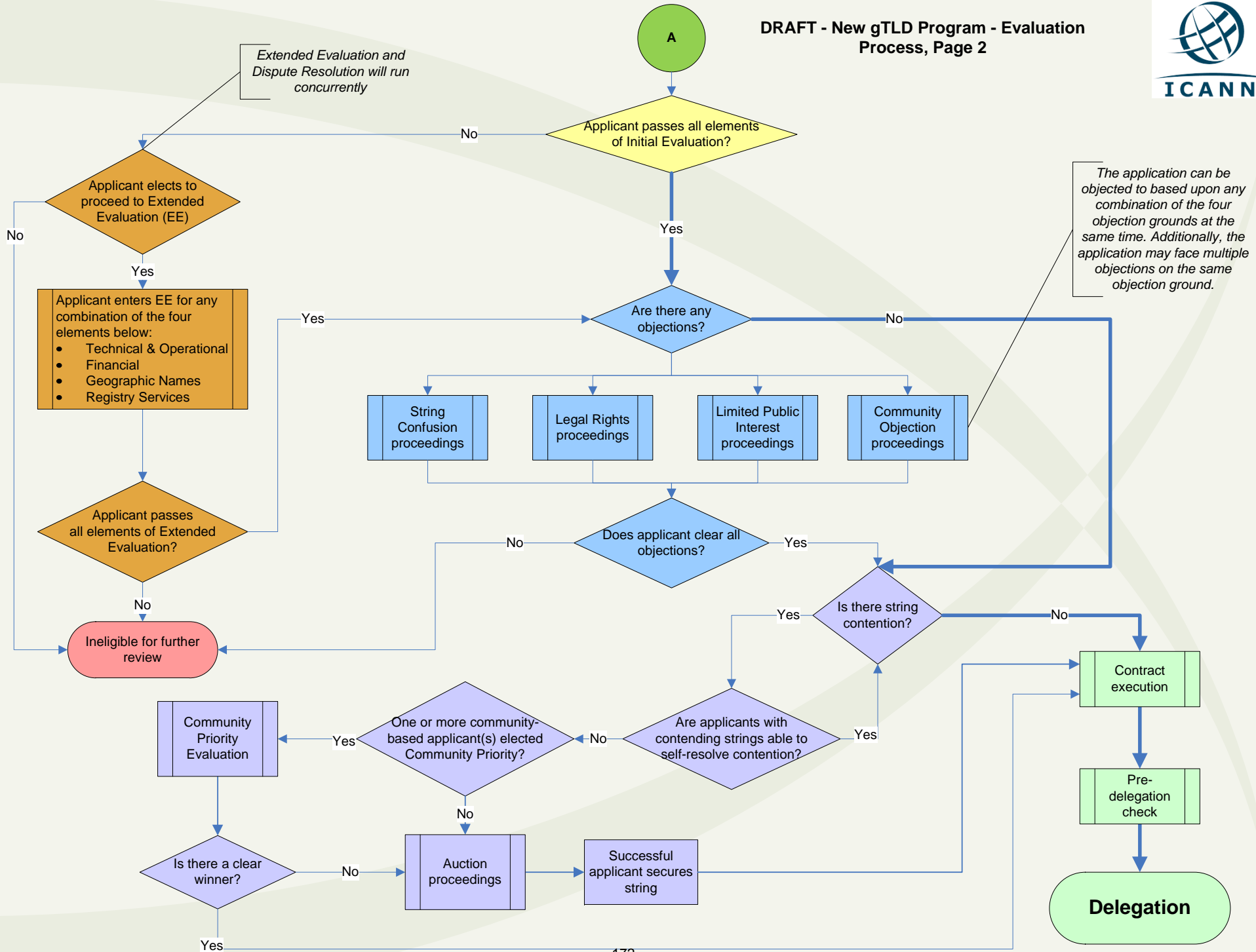
All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted to the ASC. ICANN will not grant requests from applicants for personal or telephone consultations regarding the preparation of an application. Applicants that contact ICANN for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

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

DRAFT - New gTLD Program - Evaluation Process



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





gTLD Applicant Guidebook

(v. 2012-06-04)

Module 2

4 June 2012

Module 2

Evaluation Procedures

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

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

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

- String Reviews
 - String similarity
 - Reserved names
 - DNS stability
 - Geographic names
- Applicant Reviews
 - Demonstration of technical and operational capability
 - Demonstration of financial capability
 - Registry services reviews for DNS stability issues

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

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

2.1 Background Screening

Background screening will be conducted in two areas:

- (a) General business diligence and criminal history; and
- (b) History of cybersquatting behavior.

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

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

2.1.1 General business diligence and criminal history

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

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

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

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

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

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

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

2.1.2 History of cybersquatting

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

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

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

2.2 Initial Evaluation

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

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

- Whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion;
- Whether the applied-for gTLD string might adversely affect DNS security or stability; and
- Whether evidence of requisite government approval is provided in the case of certain geographic names.

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

- Whether the applicant has the requisite technical, operational, and financial capability to operate a registry; and
- Whether the registry services offered by the applicant might adversely affect DNS security or stability.

2.2.1 *String Reviews*

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

2.2.1.1 *String Similarity Review*

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

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

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

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

2.2.1.1.1 *Reviews Performed*

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

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

- Applied-for gTLD strings against existing TLDs and reserved names;
- Applied-for gTLD strings against other applied-for gTLD strings;
- Applied-for gTLD strings against strings requested as IDN ccTLDs; and
- Applied-for 2-character IDN gTLD strings against:
 - Every other single character.
 - Any other 2-character ASCII string (to protect possible future ccTLD delegations).

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

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

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

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

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

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

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

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

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

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

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

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

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

- a) Any one-character label (in any script), and
- b) Any possible two-character ASCII combination.

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

2.2.1.1.2 Review Methodology

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

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

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

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

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

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

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

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

2.2.1.1.3 Outcomes of the String Similarity Review

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

² See <http://icann.sword-group.com/algorithm/>

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

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

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

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

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

2.2.1.2 Reserved Names and Other Unavailable Strings

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

2.2.1.2.1 Reserved Names

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

Top-Level Reserved Names List

<i>AFRINIC</i>	<i>IANA-SERVERS</i>	<i>NRO</i>
<i>ALAC</i>	<i>ICANN</i>	<i>RFC-EDITOR</i>
<i>APNIC</i>	<i>IESG</i>	<i>RIPE</i>
<i>ARIN</i>	<i>IETF</i>	<i>ROOT-SERVERS</i>
<i>ASO</i>	<i>INTERNIC</i>	<i>RSSAC</i>
<i>CCNSO</i>	<i>INVALID</i>	<i>SSAC</i>
<i>EXAMPLE*</i>	<i>IRTF</i>	<i>TEST*</i>
<i>GAC</i>	<i>ISTF</i>	<i>TLD</i>

<i>GNSO</i>	<i>LACNIC</i>	<i>WHOIS</i>
<i>GTLD-SERVERS</i>	<i>LOCAL</i>	<i>WWW</i>
<i>IAB</i>	<i>LOCALHOST</i>	
<i>IANA</i>	<i>NIC</i>	
*Note that in addition to the above strings, ICANN will reserve translations of the terms "test" and "example" in multiple languages. The remainder of the strings are reserved only in the form included above.		

If an applicant enters a Reserved Name as its applied-for gTLD string, the application system will recognize the Reserved Name and will not allow the application to be submitted.

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

2.2.1.2.2 Declared Variants

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

2.2.1.2.3 Strings Ineligible for Delegation

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

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

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

International Olympic Committee		
OLYMPIC	OLYMPIAD	OLYMPIQUE
OLYMPIADE	OLYMPISCH	OLÍMPICO
OLIMPÍADA	أولمبي	أولمبياد
奥林匹克	奥林匹亚	奥林匹克
奧林匹亞	Ολυμπιακοί	Ολυμπιάδα
올림픽	올림픽아드	Олимпийский
Олимпиада		
International Red Cross and Red Crescent Movement		
REDCROSS	REDCRESCENT	REDCRYSTAL
REDLIONANDSUN	MAGENDDAVIDADOM	REDSTAROFDAVID
CROIXROUGE	CROIX-ROUGE	CROISSANTROUGE
CROISSANT-ROUGE	CRISTALROUGE	CRISTAL-ROUGE
מגן דוד אדום	CRUZROJA	MEDIALUNAROJA
CRISTALROJO	Красный Крест	Красный Полумесяц
Красный Кристалл	رمح ألابي لصل	لاله ارمح ألابي
ءارمحل ءقرو لبل	الكريستلة الحمراء	紅十字
紅十字	紅新月	紅新月
紅水晶	紅水晶	

2.2.1.3 DNS Stability Review

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

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

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

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

2.2.1.3.1 DNS Stability: String Review Procedure

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

- ensure that applied-for gTLD strings comply with the requirements provided in section 2.2.1.3.2, and
- determine whether any strings raise significant security or stability issues that may require further review.

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

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

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

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

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

2.2.1.3.2 String Requirements

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

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

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

- 1.1 The ASCII label (i.e., the label as transmitted on the wire) must be valid as specified in technical standards *Domain Names: Implementation and Specification* (RFC 1035), and *Clarifications to the DNS Specification* (RFC 2181) and any updates thereto. This includes the following:
 - 1.1.1 The label must have no more than 63 characters.
 - 1.1.2 Upper and lower case characters are treated as identical.
- 1.2 The ASCII label must be a valid host name, as specified in the technical standards *DOD Internet Host Table Specification* (RFC 952), *Requirements for Internet Hosts — Application and Support* (RFC 1123), and *Application Techniques for Checking and Transformation of Names* (RFC 3696), *Internationalized Domain Names in Applications (IDNA)*(RFCs 5890-5894), and any updates thereto. This includes the following:
 - 1.2.1 The ASCII label must consist entirely of letters (alphabetic characters a-z), or

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

Part II -- Requirements for Internationalized Domain Names

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

- 2.1 The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further restricted by the following, non-exhaustive, list of limitations:
 - 2.1.1 Must be a valid A-label according to IDNA.
 - 2.1.2 The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (accompanied by unambiguous contextual rules).⁴
 - 2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Li, Lo, Lm, Mn, Mc).
 - 2.1.4 The U-label must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms*. See also examples in <http://unicode.org/faq/normalization.html>.
 - 2.1.5 The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.
- 2.2 The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names*. See <http://www.icann.org/en/topics/idn/implementation>

⁴ It is expected that conversion tools for IDNA will be available before the Application Submission period begins, and that labels will be checked for validity under IDNA. In this case, labels valid under the previous version of the protocol (IDNA2003) but not under IDNA will not meet this element of the requirements. Labels that are valid under both versions of the protocol will meet this element of the requirements. Labels valid under IDNA but not under IDNA2003 may meet the requirements; however, applicants are strongly advised to note that the duration of the transition period between the two protocols cannot presently be estimated nor guaranteed in any specific timeframe. The development of support for IDNA in the broader software applications environment will occur gradually. During that time, TLD labels that are valid under IDNA, but not under IDNA2003, will have limited functionality.

[n-guidelines.htm](#). This includes the following, non-exhaustive, list of limitations:

- 2.2.1 All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property (See <http://www.unicode.org/reports/tr24/>).
- 2.2.2 Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table are clearly defined.

Part III - Policy Requirements for Generic Top-Level Domains – These requirements apply to all prospective top-level domain strings applied for as gTLDs.

- 3.1 Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard.
- 3.2 Applied-for gTLD strings in IDN scripts must be composed of two or more visually distinct characters in the script, as appropriate.⁵ Note, however, that a two-character IDN string will not be approved if:
 - 3.2.1 It is visually similar to any one-character label (in any script); or
 - 3.2.2 It is visually similar to any possible two-character ASCII combination.

See the String Similarity review in subsection 2.2.1.1 for additional information on this requirement.

⁵ Note that the Joint ccNSO-GNSO IDN Working Group (JIG) has made recommendations that this section be revised to allow for single-character IDN gTLD labels. See the JIG Final Report at <http://gns0.icann.org/drafts/jig-final-report-30mar11-en.pdf>. Implementation models for these recommendations are being developed for community discussion.

2.2.1.4 *Geographic Names Review*

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

2.2.1.4.1 *Treatment of Country or Territory Names*⁶

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

- i. it is an alpha-3 code listed in the ISO 3166-1 standard.
- ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.
- iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.
- iv. it is the short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.
- v. it is a separable component of a country name designated on the “Separable Country Names List,” or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.
- vi. it is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or

⁶ Country and territory names are excluded from the process based on advice from the Governmental Advisory Committee in recent communiqués providing interpretation of Principle 2.2 of the GAC Principles regarding New gTLDs to indicate that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccPDP, and other geographic strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”

- vii. it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization.

2.2.1.4.2 Geographic Names Requiring Government Support

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

1. An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard.
2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

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

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

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

- (b) The applied-for string is a city name as listed on official city documents.⁷
3. An application for any string that is an exact match of a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.
 4. An application for a string listed as a UNESCO region⁸ or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.⁹

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

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

An applied-for gTLD string that falls into any of 1 through 4 listed above is considered to represent a geographic name. In the event of any doubt, it is in the applicant’s interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.

Strings that include but do not match a geographic name (as defined in this section) will not be considered geographic names as defined by section 2.2.1.4.2, and therefore will not require documentation of government support in the evaluation process.

⁷ City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

⁸ See <http://www.unesco.org/new/en/unesco/worldwide/>.

⁹ See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

For each application, the Geographic Names Panel will determine which governments are relevant based on the inputs of the applicant, governments, and its own research and analysis. In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

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

Note: the level of government and which administrative agency is responsible for the filing of letters of support or non-objection is a matter for each national administration to determine. Applicants should consult within the relevant jurisdiction to determine the appropriate level of support.

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

2.2.1.4.3 Documentation Requirements

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant

Governmental Advisory Committee (GAC) representative.¹⁰

The letter must clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and its intended use.

The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.)

A sample letter of support is available as an attachment to this module.

Applicants and governments may conduct discussions concerning government support for an application at any time. Applicants are encouraged to begin such discussions at the earliest possible stage, and enable governments to follow the processes that may be necessary to consider, approve, and generate a letter of support or non-objection.

It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.

It is also possible that a government may withdraw its support for an application at a later time, including after the new gTLD has been delegated, if the registry operator has deviated from the conditions of original support or non-objection. Applicants should be aware that ICANN has committed to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, **ICANN will comply with a legally binding order** from a court in the jurisdiction of the government or public authority that has given support to an application.

2.2.1.4.4 Review Procedure for Geographic Names

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic

¹⁰ See <https://gacweb.icann.org/display/gacweb/GAC+Members>

name, and verify the relevance and authenticity of the supporting documentation where necessary.

The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the application will not pass the Geographic Names review and will be denied. No additional reviews will be available.

For any application where the GNP determines that the applied-for gTLD string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.

The GNP may communicate with the signing entity of the letter to confirm their intent and their understanding of the terms on which the support for an application is given.

In cases where an applicant has not provided the required documentation, the applicant will be contacted and notified of the requirement, and given a limited time frame to provide the documentation. If the applicant is able to provide the documentation before the close of the Initial Evaluation period, and the documentation is found to meet the requirements, the applicant will pass the Geographic Names review. If not, the applicant will have additional time to obtain the required documentation; however, if the applicant has not produced the required documentation by the required date (at least 90 calendar days from the date of notice), the application will be considered incomplete and will be ineligible for further review. The applicant may reapply in subsequent application rounds, if desired, subject to the fees and requirements of the specific application rounds.

If there is more than one application for a string representing a certain geographic name as described in this section, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. If the applicants have not reached a resolution by either the date of the end of the application round (as announced by ICANN), or the date on which ICANN opens a subsequent application round, whichever comes first, the applications will be rejected and applicable refunds will be available to applicants according to the conditions described in section 1.5.

However, in the event that a contention set is composed of multiple applications with documentation of support from the same government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation.

If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the string contention will be resolved using the string contention procedures described in Module 4.

2.2.2 Applicant Reviews

Concurrent with the applied-for gTLD string reviews described in subsection 2.2.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

2.2.2.1 Technical/Operational Review

In its application, the applicant will respond to a set of questions (see questions 24 – 44 in the Application Form) intended to gather information about the applicant's technical capabilities and its plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete

a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

2.2.2.2 Financial Review

In its application, the applicant will respond to a set of questions (see questions 45-50 in the Application Form) intended to gather information about the applicant's financial capabilities for operation of a gTLD registry and its financial planning in preparation for long-term stability of the new gTLD.

Because different registry types and purposes may justify different responses to individual questions, evaluators will pay particular attention to the consistency of an application across all criteria. For example, an applicant's scaling plans identifying system hardware to ensure its capacity to operate at a particular volume level should be consistent with its financial plans to secure the necessary equipment. That is, the evaluation criteria scale with the applicant plans to provide flexibility.

2.2.2.3 Evaluation Methodology

Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews, according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

The evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators. These communications will occur via TAS. Unless otherwise noted, such communications will include a 2-week deadline for the applicant to respond. Any supplemental information provided by the applicant will become part of the application.

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made

available in the application and submitted by the due date, unless explicitly requested by the evaluators.

2.2.3 Registry Services Review

Concurrent with the other reviews that occur during the Initial Evaluation period, ICANN will review the applicant's proposed registry services for any possible adverse impact on security or stability. The applicant will be required to provide a list of proposed registry services in its application.

2.2.3.1 Definitions

Registry services are defined as:

1. operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement;
2. other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and
3. any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

Proposed registry services will be examined to determine if they might raise significant stability or security issues. Examples of services proposed by existing registries can be found at <http://www.icann.org/en/registries/rsep/>. In most cases, these proposed services successfully pass this inquiry.

Registry services currently provided by gTLD registries can be found in registry agreement appendices. See <http://www.icann.org/en/registries/agreements.htm>.

A full definition of registry services can be found at <http://www.icann.org/en/registries/rsep/rsep.html>.

For purposes of this review, security and stability are defined as follows:

Security – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or

resources on the Internet by systems operating in accordance with all applicable standards.

Stability – an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator’s delegation information or provisioning services.

2.2.3.2 Customary Services

The following registry services are customary services offered by a registry operator:

- Receipt of data from registrars concerning registration of domain names and name servers
- Dissemination of TLD zone files
- Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois)
- DNS Security Extensions

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

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

2.2.3.3 TLD Zone Contents

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

- Apex SOA record.
- Apex NS records and in-bailiwick glue for the TLD’s DNS servers.

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

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

2.2.3.4 Methodology

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

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

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

2.2.4 Applicant's Withdrawal of an Application

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

2.3 Extended Evaluation

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

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

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

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

2.3.1 Geographic Names Extended Evaluation

In the case of an application that has been identified as a geographic name requiring government support, but where the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the Initial Evaluation period, the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation.

If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in

section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 calendar days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.

2.3.2 Technical/Operational or Financial Extended Evaluation

The following applies to an Extended Evaluation of an applicant's technical and operational capability or financial capability, as described in subsection 2.2.2.

An applicant who has requested Extended Evaluation will again access the online application system (TAS) and clarify its answers to those questions or sections on which it received a non-passing score (or, in the case of an application where individual questions were passed but the total score was insufficient to pass Initial Evaluation, those questions or sections on which additional points are possible). The answers should be responsive to the evaluator report that indicates the reasons for failure, or provide any amplification that is not a material change to the application. Applicants may not use the Extended Evaluation period to substitute portions of new information for the information submitted in their original applications, i.e., to materially change the application.

An applicant participating in an Extended Evaluation on the Technical / Operational or Financial reviews will have the option to have its application reviewed by the same evaluation panelists who performed the review during the Initial Evaluation period, or to have a different set of panelists perform the review during Extended Evaluation.

The Extended Evaluation allows an additional exchange of information between the evaluators and the applicant to further clarify information contained in the application. This supplemental information will become part of the application record. Such communications will include a deadline for the applicant to respond.

ICANN will notify applicants at the end of the Extended Evaluation period as to whether they have passed. If an application passes Extended Evaluation, it continues to the next stage in the process. If an application does not pass Extended Evaluation, it will proceed no further. No further reviews are available.

2.3.3 Registry Services Extended Evaluation

This section applies to Extended Evaluation of registry services, as described in subsection 2.2.3.

If a proposed registry service has been referred to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review, the RSTEP will form a review team of members with the appropriate qualifications.

The review team will generally consist of three members, depending on the complexity of the registry service proposed. In a 3-member panel, the review could be conducted within 30 to 45 calendar days. In cases where a 5-member panel is needed, this will be identified before the extended evaluation starts. In a 5-member panel, the review could be conducted in 45 calendar days or fewer.

The cost of an RSTEP review will be covered by the applicant through payment of the Registry Services Review Fee. Refer to payment procedures in section 1.5 of Module 1. The RSTEP review will not commence until payment has been received.

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant's registry agreement with ICANN. If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD. In this instance, an applicant has 15 calendar days to notify ICANN of its intent to proceed with the application. If an applicant does not explicitly provide such notice within this time frame, the application will proceed no further.

2.4 Parties Involved in Evaluation

A number of independent experts and groups play a part in performing the various reviews in the evaluation process. A brief description of the various panels, their evaluation roles, and the circumstances under which they work is included in this section.

2.4.1 *Panels and Roles*

The **String Similarity Panel** will assess whether a proposed gTLD string creates a probability of user confusion due to similarity with any reserved name, any existing TLD, any requested IDN ccTLD, or any new gTLD string applied for in the current application round. This occurs during the String Similarity review in Initial Evaluation. The panel may also review IDN tables submitted by applicants as part of its work.

The **DNS Stability Panel** will determine whether a proposed string might adversely affect the security or stability of the DNS. This occurs during the DNS Stability String review in Initial Evaluation.

The **Geographic Names Panel** will review each application to determine whether the applied-for gTLD represents a geographic name, as defined in this guidebook. In the event that the string is a geographic name requiring government support, the panel will ensure that the required documentation is provided with the application and verify that the documentation is from the relevant governments or public authorities and is authentic.

The **Technical Evaluation Panel** will review the technical components of each application against the criteria in the Applicant Guidebook, along with proposed registry operations, in order to determine whether the applicant is technically and operationally capable of operating a gTLD registry as proposed in the application. This occurs during the Technical/Operational reviews in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Financial Evaluation Panel** will review each application against the relevant business, financial and organizational criteria contained in the Applicant Guidebook, to determine whether the applicant is financially capable of maintaining a gTLD registry as proposed in the application. This occurs during the Financial review in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Registry Services Technical Evaluation Panel (RSTEP)** will review proposed registry services in the application to determine if they pose a risk of a meaningful adverse impact on security or stability. This occurs, if applicable, during the Extended Evaluation period.

Members of all panels are required to abide by the established Code of Conduct and Conflict of Interest guidelines included in this module.

2.4.2 Panel Selection Process

ICANN has selected qualified third-party providers to perform the various reviews, based on an extensive selection process.¹¹ In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:

- The provider must be able to convene – or have the capacity to convene - globally diverse panels and be able to evaluate applications from all regions of the world, including applications for IDN gTLDs.
- The provider should be familiar with the IETF IDNA standards, Unicode standards, relevant RFCs and the terminology associated with IDNs.
- The provider must be able to scale quickly to meet the demands of the evaluation of an unknown number of applications. At present it is not known how many applications will be received, how complex they will be, and whether they will be predominantly for ASCII or non-ASCII gTLDs.
- The provider must be able to evaluate the applications within the required timeframes of Initial and Extended Evaluation.

2.4.3 Code of Conduct Guidelines for Panelists

The purpose of the New gTLD Program (“Program”) Code of Conduct (“Code”) is to prevent real and apparent conflicts of interest and unethical behavior by any Evaluation Panelist (“Panelist”).

Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected

¹¹ <http://newgtlds.icann.org/about/evaluation-panels-selection-process>

to be guided by the following principles in carrying out their respective responsibilities. This Code is intended to summarize the principles and nothing in this Code should be considered as limiting duties, obligations or legal requirements with which Panelists must comply.

Bias -- Panelists shall:

- not advance personal agendas or non-ICANN approved agendas in the evaluation of applications;
- examine facts as they exist and not be influenced by past reputation, media accounts, or unverified statements about the applications being evaluated;
- exclude themselves from participating in the evaluation of an application if, to their knowledge, there is some predisposing factor that could prejudice them with respect to such evaluation; and
- exclude themselves from evaluation activities if they are philosophically opposed to or are on record as having made generic criticism about a specific type of applicant or application.

Compensation/Gifts -- Panelists shall not request or accept any compensation whatsoever or any gifts of substance from the Applicant being reviewed or anyone affiliated with the Applicant. (Gifts of substance would include any gift greater than USD 25 in value).

If the giving of small tokens is important to the Applicant's culture, Panelists may accept these tokens; however, the total of such tokens must not exceed USD 25 in value. If in doubt, the Panelist should err on the side of caution by declining gifts of any kind.

Conflicts of Interest -- Panelists shall act in accordance with the "New gTLD Program Conflicts of Interest Guidelines" (see subsection 2.4.3.1).

Confidentiality -- Confidentiality is an integral part of the evaluation process. Panelists must have access to sensitive information in order to conduct evaluations. Panelists must maintain confidentiality of information entrusted to them by ICANN and the Applicant and any other confidential information provided to them from whatever source,

except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes all elements of the Program and information gathered as part of the process – which includes but is not limited to: documents, interviews, discussions, interpretations, and analyses – related to the review of any new gTLD application.

Affirmation -- All Panelists shall read this Code prior to commencing evaluation services and shall certify in writing that they have done so and understand the Code.

2.4.3.1 Conflict of Interest Guidelines for Panelists

It is recognized that third-party providers may have a large number of employees in several countries serving numerous clients. In fact, it is possible that a number of Panelists may be very well known within the registry / registrar community and have provided professional services to a number of potential applicants.

To safeguard against the potential for inappropriate influence and ensure applications are evaluated in an objective and independent manner, ICANN has established detailed Conflict of Interest guidelines and procedures that will be followed by the Evaluation Panelists. To help ensure that the guidelines are appropriately followed ICANN will:

- Require each Evaluation Panelist (provider and individual) to acknowledge and document understanding of the Conflict of Interest guidelines.
- Require each Evaluation Panelist to disclose all business relationships engaged in at any time during the past six months.
- Where possible, identify and secure primary and backup providers for evaluation panels.
- In conjunction with the Evaluation Panelists, develop and implement a process to identify conflicts and re-assign applications as appropriate to secondary or contingent third party providers to perform the reviews.

Compliance Period -- All Evaluation Panelists must comply with the Conflict of Interest guidelines beginning with the opening date of the Application Submission period and ending with the public announcement by ICANN of the

final outcomes of all the applications from the Applicant in question.

Guidelines -- The following guidelines are the minimum standards with which all Evaluation Panelists must comply. It is recognized that it is impossible to foresee and cover all circumstances in which a potential conflict of interest might arise. In these cases the Evaluation Panelist should evaluate whether the existing facts and circumstances would lead a reasonable person to conclude that there is an actual conflict of interest.

Evaluation Panelists and Immediate Family Members:

- Must not be under contract, have or be included in a current proposal to provide Professional Services for or on behalf of the Applicant during the Compliance Period.
- Must not currently hold or be committed to acquire any interest in a privately-held Applicant.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed Applicant's outstanding equity securities or other ownership interests.
- Must not be involved or have an interest in a joint venture, partnership or other business arrangement with the Applicant.
- Must not have been named in a lawsuit with or against the Applicant.
- Must not be a:
 - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the Applicant;
 - Promoter, underwriter, or voting trustee of the Applicant; or
 - Trustee for any pension or profit-sharing trust of the Applicant.

Definitions--

Evaluation Panelist: An Evaluation Panelist is any individual associated with the review of an application. This includes

any primary, secondary, and contingent third party Panelists engaged by ICANN to review new gTLD applications.

Immediate Family Member: Immediate Family Member is a spouse, spousal equivalent, or dependent (whether or not related) of an Evaluation Panelist.

Professional Services: include, but are not limited to legal services, financial audit, financial planning / investment, outsourced services, consulting services such as business / management / internal audit, tax, information technology, registry / registrar services.

2.4.3.2 Code of Conduct Violations

Evaluation panelist breaches of the Code of Conduct, whether intentional or not, shall be reviewed by ICANN, which may make recommendations for corrective action, if deemed necessary. Serious breaches of the Code may be cause for dismissal of the person, persons or provider committing the infraction.

In a case where ICANN determines that a Panelist has failed to comply with the Code of Conduct, the results of that Panelist's review for all assigned applications will be discarded and the affected applications will undergo a review by new panelists.

Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period. Concerns of applicants regarding panels should be communicated via the defined support channels (see subsection 1.4.2). Concerns of the general public (i.e., non-applicants) can be raised via the public comment forum, as described in Module 1.

2.4.4 Communication Channels

Defined channels for technical support or exchanges of information with ICANN and with evaluation panels are available to applicants during the Initial Evaluation and Extended Evaluation periods. Contacting individual ICANN staff members, Board members, or individuals engaged by ICANN to perform an evaluation role in order to lobby for a particular outcome or to obtain confidential information about applications under review is not appropriate. In the interests of fairness and equivalent treatment for all applicants, any such individual contacts will be referred to the appropriate communication channels.

DRAFT - New gTLD Program – Initial Evaluation and Extended Evaluation



Application is confirmed as complete and ready for evaluation during Administrative Completeness Check

Background Screening
Third-party provider reviews applicant's background.

Initial Evaluation – String Review

Initial Evaluation – Applicant Review

String Similarity
String Similarity Panel reviews applied-for strings to ensure they are not too similar to existing TLDs or Reserved Names.

DNS Stability
All strings reviewed and in extraordinary cases, DNS Stability Panel may perform extended review for possible technical stability issues.

Geographic Names
Geographic Names Panel determines if applied-for string is geographic name requiring government support.

Technical and Operational Capability
Technical and Operational panel reviews applicant's answers to questions and supporting documentation.

Financial Capability
Financial panel reviews applicant's answers to questions and supporting documentation.

Registry Services
Preliminary review of applicant's registry services and referral to RSTEP for further review during Extended Evaluation where necessary

Panel compares all applied-for strings and creates contention sets.

Panel confirms supporting documentation where required.

ICANN will seek to publish contention sets prior to publication of full IE results.

Does applicant pass all elements of Initial Evaluation?

Applicant elects to pursue **Extended Evaluation?**

Extended Evaluation process

Applicant continues to subsequent steps.

Ineligible for further review

Does applicant pass all elements of Extended Evaluation?

Extended Evaluation can be for any or all of the four elements below:
 • Technical and Operational Capability
 • Financial Capability
 • Geographical Names
 • Registry Services
 But NOT for String Similarity or DNS Stability

Annex: Separable Country Names List

gTLD application restrictions on country or territory names are tied to listing in property fields of the ISO 3166-1 standard. Notionally, the ISO 3166-1 standard has an “English short name” field which is the common name for a country and can be used for such protections; however, in some cases this does not represent the common name. This registry seeks to add additional protected elements which are derived from definitions in the ISO 3166-1 standard. An explanation of the various classes is included below.

Separable Country Names List

Code	English Short Name	Cl.	Separable Name
ax	Åland Islands	B1	Åland
as	American Samoa	C	Tutuila
		C	Swain's Island
ao	Angola	C	Cabinda
ag	Antigua and Barbuda	A	Antigua
		A	Barbuda
		C	Redonda Island
au	Australia	C	Lord Howe Island
		C	Macquarie Island
		C	Ashmore Island
		C	Cartier Island
		C	Coral Sea Islands
bo	Bolivia, Plurinational State of	B1	Bolivia
bq	Bonaire, Sint Eustatius and Saba	A	Bonaire
		A	Sint Eustatius
		A	Saba
ba	Bosnia and Herzegovina	A	Bosnia
		A	Herzegovina
br	Brazil	C	Fernando de Noronha Island
		C	Martim Vaz Islands
		C	Trinidad Island
io	British Indian Ocean Territory	C	Chagos Archipelago
		C	Diego Garcia
bn	Brunei Darussalam	B1	Brunei
		C	Negara Brunei Darussalam
cv	Cape Verde	C	São Tiago
		C	São Vicente
ky	Cayman Islands	C	Grand Cayman
cl	Chile	C	Easter Island
		C	Juan Fernández Islands
		C	Sala y Gómez Island
		C	San Ambrosio Island
		C	San Félix Island
cc	Cocos (Keeling) Islands	A	Cocos Islands
		A	Keeling Islands
co	Colombia	C	Malpelo Island
		C	San Andrés Island
		C	Providencia Island
km	Comoros	C	Anjouan
		C	Grande Comore
		C	Mohéli
ck	Cook Islands	C	Rarotonga
cr	Costa Rica	C	Coco Island
ec	Ecuador	C	Galápagos Islands
gq	Equatorial Guinea	C	Annobón Island
		C	Bioko Island

		C	Rio Muni
fk	Falkland Islands (Malvinas)	B1	Falkland Islands
		B1	Malvinas
fo	Faroe Islands	A	Faroe
fj	Fiji	C	Vanua Levu
		C	Viti Levu
		C	Rotuma Island
pf	French Polynesia	C	Austral Islands
		C	Gambier Islands
		C	Marquesas Islands
		C	Society Archipelago
		C	Tahiti
		C	Tuamotu Islands
		C	Clipperton Island
tf	French Southern Territories	C	Amsterdam Islands
		C	Crozet Archipelago
		C	Kerguelen Islands
		C	Saint Paul Island
gr	Greece	C	Mount Athos
		B1	**
gd	Grenada	C	Southern Grenadine Islands
		C	Carriacou
gp	Guadeloupe	C	la Désirade
		C	Marie-Galante
		C	les Saintes
hm	Heard Island and McDonald Islands	A	Heard Island
		A	McDonald Islands
va	Holy See (Vatican City State)	A	Holy See
		A	Vatican
hn	Honduras	C	Swan Islands
in	India	C	Amindivi Islands
		C	Andaman Islands
		C	Laccadive Islands
		C	Minicoy Island
		C	Nicobar Islands
ir	Iran, Islamic Republic of	B1	Iran
ki	Kiribati	C	Gilbert Islands
		C	Tarawa
		C	Banaba
		C	Line Islands
		C	Kiritimati
		C	Phoenix Islands
		C	Abariringa
		C	Enderbury Island
kp	Korea, Democratic People's Republic of	C	North Korea
kr	Korea, Republic of	C	South Korea
la	Lao People's Democratic Republic	B1	Laos
mk	Macedonia, the Former Yugoslav Republic of	B1	**
my	Malaysia	C	Sabah
		C	Sarawak
mh	Marshall Islands	C	Jaluit
			Kwajalein
			Majuro
mu	Mauritius	C	Agalega Islands
		C	Cargados Carajos Shoals
		C	Rodrigues Island
fm	Micronesia, Federated States of	B1	Micronesia

		C	Caroline Islands (see also pw)
		C	Chuuk
		C	Kosrae
		C	Pohnpei
		C	Yap
md	Moldova, Republic of	B1	Moldova
		C	Moldava
nc	New Caledonia	C	Loyalty Islands
mp	Northern Mariana Islands	C	Mariana Islands
		C	Saipan
om	Oman	C	Musandam Peninsula
pw	Palau	C	Caroline Islands (see also fm)
		C	Babelthuap
ps	Palestinian Territory, Occupied	B1	Palestine
pg	Papua New Guinea	C	Bismarck Archipelago
		C	Northern Solomon Islands
		C	Bougainville
pn	Pitcairn	C	Ducie Island
		C	Henderson Island
		C	Oeno Island
re	Réunion	C	Bassas da Índia
		C	Europa Island
		C	Glorioso Island
		C	Juan de Nova Island
		C	Tromelin Island
ru	Russian Federation	B1	Russia
		C	Kaliningrad Region
sh	Saint Helena, Ascension, and Tristan de Cunha	A	Saint Helena
		A	Ascension
		A	Tristan de Cunha
		C	Gough Island
		C	Tristan de Cunha Archipelago
kn	Saint Kitts and Nevis	A	Saint Kitts
		A	Nevis
pm	Saint Pierre and Miquelon	A	Saint Pierre
		A	Miquelon
vc	Saint Vincent and the Grenadines	A	Saint Vincent
		A	The Grenadines
		C	Northern Grenadine Islands
		C	Bequia
		C	Saint Vincent Island
ws	Samoa	C	Savai'i
		C	Upolu
st	Sao Tome and Principe	A	Sao Tome
		A	Principe
sc	Seychelles	C	Mahé
		C	Aldabra Islands
		C	Amirante Islands
		C	Cosmoledo Islands
		C	Farquhar Islands
sb	Solomon Islands	C	Santa Cruz Islands
		C	Southern Solomon Islands
		C	Guadalcanal
za	South Africa	C	Marion Island
		C	Prince Edward Island
gs	South Georgia and the South Sandwich Islands	A	South Georgia
		A	South Sandwich Islands

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

Maintenance

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

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

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

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

Eligibility

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

- Class A:** The ISO 3166-1 English Short Name is comprised of multiple, separable parts whereby the country is comprised of distinct sub-entities. Each of these separable parts is eligible in its own right for consideration as a country name. For example, "Antigua and Barbuda" is comprised of "Antigua" and "Barbuda."
- Class B:** The ISO 3166-1 English Short Name (1) or the ISO 3166-1 English Full Name (2) contains additional language as to the type of country the entity is, which is often not used in common usage when referencing the country. For example, one such short name is "The Bolivarian Republic of Venezuela" for a country in common usage referred to as "Venezuela."
- ** Macedonia is a separable name in the context of this list; however, due to the ongoing dispute listed in UN documents between the Hellenic Republic (Greece) and the Former Yugoslav Republic of Macedonia over the name, no country will be afforded attribution or rights to the name "Macedonia" until the dispute over the name has been resolved. See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/240/37/IMG/N9324037.pdf>.
- Class C:** The ISO 3166-1 Remarks column containing synonyms of the country name, or sub-national entities, as denoted by "often referred to as," "includes", "comprises", "variant" or "principal islands".

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

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

Attachment to Module 2

Sample Letter of Government Support

[This letter should be provided on official letterhead]

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

Attention: New gTLD Evaluation Process

Subject: Letter for support for [TLD requested]

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

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

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

[Government / public authority] further understands that, in the event of a dispute between [government/public authority] and the applicant, ICANN will comply with a legally binding order from a court in the jurisdiction of [government/public authority].

[Optional] This application is being submitted as a community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the application. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.

[Optional] I can advise that in the event that this application is successful [government/public authority] will enter into a separate agreement with the applicant. This agreement will outline the conditions under which we support them in the operation of the TLD, and circumstances under which we would withdraw that support. ICANN will not be a party to this agreement, and enforcement of this agreement lies fully with [government/public authority].

[Government / public authority] understands that the Geographic Names Panel engaged by ICANN will, among other things, conduct due diligence on the authenticity of this documentation. I would request that if additional information is required during this process, that [name and contact details] be contacted in the first instance.

Thank you for the opportunity to support this application.

Yours sincerely

Signature from relevant government/public authority

Attachment to Module 2

Evaluation Questions and Criteria

Since ICANN was founded in 1998 as a not-for-profit, multi-stakeholder organization, one of its key mandates has been to promote competition in the domain name market. ICANN's mission specifically calls for the corporation to maintain and build on processes that will ensure competition and consumer interests – without compromising Internet security and stability. This includes the consideration and implementation of new gTLDs. It is ICANN's goal to make the criteria and evaluation as objective as possible.

While new gTLDs are viewed by ICANN as important to fostering choice, innovation and competition in domain registration services, the decision to launch these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community.

Any public or private sector organization can apply to create and operate a new gTLD. However the process is not like simply registering or buying a second-level domain name. Instead, the application process is to evaluate and select candidates capable of running a registry, a business that manages top level domains such as, for example, .COM or .INFO. Any successful applicant will need to meet published operational and technical criteria in order to preserve Internet stability and interoperability.

I. Principles of the Technical and Financial New gTLD Evaluation Criteria

- Principles of conservatism. This is the first round of what is to be an ongoing process for the introduction of new TLDs, including Internationalized Domain Names. Therefore, the criteria in this round require applicants to provide a thorough and thoughtful analysis of the technical requirements to operate a registry and the proposed business model.
- The criteria and evaluation should be as objective as possible.
 - With that goal in mind, an important objective of the new TLD process is to diversify the namespace, with different registry business models and target audiences. In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. For example, the business model for a registry targeted to a small community need not possess the same robustness in funding and technical infrastructure as a registry intending to compete with large gTLDs. Therefore purely objective criteria such as a requirement for a certain amount of cash on hand will not provide for the flexibility to consider different business models. The process must provide for an objective evaluation framework, but allow for adaptation according to the differing models applicants will present. Within that framework, applicant responses will be evaluated against the criteria in light of the proposed model.
 - Therefore the criteria should be flexible: able to scale with the overall business approach, providing that the planned approach is consistent and coherent, and can withstand highs and lows.

- Criteria can be objective in areas of registrant protection, for example:
 - Providing for funds to continue operations in the event of a registry failure.
 - Adherence to data escrow, registry failover, and continuity planning requirements.
- The evaluation must strike the correct balance between establishing the business and technical competence of the applicant to operate a registry (to serve the interests of registrants), while not asking for the detailed sort of information or making the judgment that a venture capitalist would. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.
- New registries must be added in a way that maintains DNS stability and security. Therefore, ICANN asks several questions so that the applicant can demonstrate an understanding of the technical requirements to operate a registry. ICANN will ask the applicant to demonstrate actual operational technical compliance prior to delegation. This is in line with current prerequisites for the delegation of a TLD.
- Registrant protection is emphasized in both the criteria and the scoring. Examples of this include asking the applicant to:
 - Plan for the occurrence of contingencies and registry failure by putting in place financial resources to fund the ongoing resolution of names while a replacement operator is found or extended notice can be given to registrants,
 - Demonstrate a capability to understand and plan for business contingencies to afford some protections through the marketplace,
 - Adhere to DNS stability and security requirements as described in the technical section, and
 - Provide access to the widest variety of services.

II. Aspects of the Questions Asked in the Application and Evaluation Criteria

The technical and financial questions are intended to inform and guide the applicant in aspects of registry start-up and operation. The established registry operator should find the questions straightforward while inexperienced applicants should find them a natural part of planning.

Evaluation and scoring (detailed below) will emphasize:

- How thorough are the answers? Are they well thought through and do they provide a sufficient basis for evaluation?
- Demonstration of the ability to operate and fund the registry on an ongoing basis:
 - Funding sources to support technical operations in a manner that ensures stability and security and supports planned expenses,
 - Resilience and sustainability in the face of ups and downs, anticipation of contingencies,
 - Funding to carry on operations in the event of failure.

- Demonstration that the technical plan will likely deliver on best practices for a registry and identification of aspects that might raise DNS stability and security issues.
- Ensures plan integration, consistency and compatibility (responses to questions are not evaluated individually but in comparison to others):
 - Funding adequately covers technical requirements,
 - Funding covers costs,
 - Risks are identified and addressed, in comparison to other aspects of the plan.

III. Scoring

Evaluation

- The questions, criteria, scoring and evaluation methodology are to be conducted in accordance with the principles described earlier in section I. With that in mind, globally diverse evaluation panelists will staff evaluation panels. The diversity of evaluators and access to experts in all regions of the world will ensure application evaluations take into account cultural, technical and business norms in the regions from which applications originate.
- Evaluation teams will consist of two independent panels. One will evaluate the applications against the financial criteria. The other will evaluate the applications against the technical & operational criteria. Given the requirement that technical and financial planning be well integrated, the panels will work together and coordinate information transfer where necessary. Other relevant experts (e.g., technical, audit, legal, insurance, finance) in pertinent regions will provide advice as required.
- Precautions will be taken to ensure that no member of the Evaluation Teams will have any interest or association that may be viewed as a real or potential conflict of interest with an applicant or application. All members must adhere to the Code of Conduct and Conflict of Interest guidelines that are found in Module 2.
- Communications between the evaluation teams and the applicants will be through an online interface. During the evaluation, evaluators may pose a set of clarifying questions to an applicant, to which the applicant may respond through the interface.

Confidentiality: ICANN will post applications after the close of the application submission period. The application form notes which parts of the application will be posted.

Scoring

- Responses will be evaluated against each criterion. A score will be assigned according to the scoring schedule linked to each question or set of questions. In several questions, 1 point is the maximum score that may be awarded. In several other questions, 2 points are awarded for a response that exceeds requirements, 1 point is awarded for a response that meets requirements and 0 points are awarded for a response that fails to meet requirements. Each question must receive at least a score of "1," making each a "pass/fail" question.
- In the Continuity question in the financial section(see Question #50), up to 3 points are awarded if an applicant provides, at the application stage, a financial instrument that will guarantee ongoing registry operations in the event of a business failure. This extra

point can serve to guarantee passing the financial criteria for applicants who score the minimum passing score for each of the individual criteria. The purpose of this weighting is to reward applicants who make early arrangements for the protection of registrants and to accept relatively riskier business plans where registrants are protected.

- There are 21 Technical & Operational questions. Each question has a criterion and scoring associated with it. The scoring for each is 0, 1, or 2 points as described above. One of the questions (IDN implementation) is optional. Other than the optional questions, all Technical & Operational criteria must be scored a 1 or more or the application will fail the evaluation.
- The total technical score must be equal to or greater than 22 for the application to pass. That means the applicant can pass by:
 - Receiving a 1 on all questions, including the optional question, and a 2 on at least one mandatory question; or
 - Receiving a 1 on all questions, excluding the optional question and a 2 on at least two mandatory questions.

This scoring methodology requires a minimum passing score for each question and a slightly higher average score than the per question minimum to pass.

- There are six Financial questions and six sets of criteria that are scored by rating the answers to one or more of the questions. For example, the question concerning registry operation costs requires consistency between the technical plans (described in the answers to the Technical & Operational questions) and the costs (described in the answers to the costs question).
- The scoring for each of the Financial criteria is 0, 1 or 2 points as described above with the exception of the Continuity question, for which up to 3 points are possible. All questions must receive at least a 1 or the application will fail the evaluation.
- The total financial score on the six criteria must be 8 or greater for the application to pass. That means the applicant can pass by:
 - Scoring a 3 on the continuity criteria, or
 - Scoring a 2 on any two financial criteria.
- Applications that do not pass Initial Evaluation can enter into an extended evaluation process as described in Module 2. The scoring is the same.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Applicant Information	1	Full legal name of the Applicant (the established entity that would enter into a Registry Agreement with ICANN)	Y	Responses to Questions 1 - 12 are required for a complete application. Responses are not scored.			
	2	Address of the principal place of business of the Applicant. This address will be used for contractual purposes. No Post Office boxes are allowed.	Y				
	3	Phone number for the Applicant's principal place of business.	Y				
	4	Fax number for the Applicant's principal place of business.	Y				
	5	Website or URL, if applicable.	Y				
Primary Contact for this Application	6	Name	Y	The primary contact is the individual designated with the primary responsibility for management of the application, including responding to tasks in the TLD Application System (TAS) during the various application phases. Both contacts listed should also be prepared to receive inquiries from the public.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Secondary Contact for this Application	7	Name	Y	The secondary contact is listed in the event the primary contact is unavailable to continue with the application process.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		Email address	Y				
Proof of Legal Establishment	8	(a) Legal form of the Applicant. (e.g., partnership, corporation, non-profit institution).	Y				
		(b) State the specific national or other jurisdiction that defines the type of entity identified in 8(a).	Y	In the event of questions regarding proof of establishment, the applicant may be asked for additional details, such as the specific national or other law applying to this type of entity			
		(c) Attach evidence of the applicant's establishment as the type of entity identified in Question 8(a) above, in accordance with the applicable laws identified in Question 8(b).	Y	Applications without valid proof of legal establishment will not be evaluated further. Supporting documentation for proof of legal establishment should be submitted in the original language.			
	9	(a) If the applying entity is publicly traded, provide the exchange and symbol.	Y				
		(b) If the applying entity is a subsidiary, provide the parent company.	Y				
		(c) If the applying entity is a joint venture, list all joint venture partners.	Y				
	10	Business ID, Tax ID, VAT registration number, or equivalent of the Applicant.	N				
Applicant Background	11	(a) Enter the full name, date and country of birth, contact information (permanent residence), and position of all directors (i.e., members of the applicant's Board of Directors, if applicable).	Partial	<p>Applicants should be aware that the names and positions of the individuals listed in response to this question will be published as part of the application. The contact information listed for individuals is for identification purposes only and will not be published as part of the application.</p> <p>Background checks may be conducted on individuals named in the applicant's response to question 11. Any material misstatement or misrepresentation (or omission of material information) may cause the application to be rejected.</p> <p>The applicant certifies that it has obtained permission for the posting of the names and positions of individuals included in this application.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(b) Enter the full name, date and country of birth, contact information (permanent residence), and position of all officers and partners. Officers are high-level management officials of a corporation or business, for example, a CEO, vice president, secretary, chief financial officer. Partners would be listed in the context of a partnership or other such form of legal entity.	Partial				
		(c) Enter the full name and contact information of all shareholders holding at least 15% of shares, and percentage held by each. For a shareholder entity, enter the principal place of business. For a shareholder individual, enter the date and country of birth and contact information (permanent residence).	Partial				
		(d) For an applying entity that does not have directors, officers, partners, or shareholders, enter the full name, date and country of birth, contact information (permanent residence), and position of all individuals having overall legal or executive responsibility for the applying entity.	Partial				
		(e) Indicate whether the applicant or any of the individuals named above: <ul style="list-style-type: none"> i. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that is the substantive equivalent of any of these; ii. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of funds of others; iii. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities; iv. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative; 	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>v. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;</p> <p>vi. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;</p> <p>vii. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;</p> <p>viii. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;</p> <p>ix. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols);</p> <p>x. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xi. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xii. is the subject of a disqualification imposed by ICANN and in effect at the time of this application.</p> <p>If any of the above events have occurred, please provide details.</p>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(f) Indicate whether the applicant or any of the individuals named above have been involved in any decisions indicating that the applicant or individual named in the application was engaged in cybersquatting, as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or equivalent legislation.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(g) Disclose whether the applicant or any of the individuals named above has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made. Provide an explanation related to each such instance.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(h) Provide an explanation for any additional background information that may be found concerning the applicant or any individual named in the application, which may affect eligibility, including any criminal convictions not identified above.	N				
Evaluation Fee	12	(a) Enter the confirmation information for payment of the evaluation fee (e.g., wire transfer confirmation number).	N	<p>The evaluation fee is paid in the form of a deposit at the time of user registration, and submission of the remaining amount at the time the full application is submitted. The information in question 12 is required for each payment.</p> <p>The full amount in USD must be received by ICANN. Applicant is responsible for all transaction fees and exchange rate fluctuation.</p> <p>Fedwire is the preferred wire mechanism; SWIFT is also acceptable. ACH is not recommended as these funds will take longer to clear and could affect timing of the application processing.</p>			
		(b) Payer name	N				
		(c) Payer address	N				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(d) Wiring bank	N				
		(e) Bank address	N				
		(f) Wire date	N				
Applied-for gTLD string	13	Provide the applied-for gTLD string. If applying for an IDN, provide the U-label.	Y	Responses to Questions 13-17 are not scored, but are used for database and validation purposes. The U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character.			
	14	(a) If applying for an IDN, provide the A-label (beginning with "xn--").	Y				
		(b) If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.	Y				
		(c) If an IDN, provide the language of the label (both in English and as referenced by ISO-639-1).	Y				
		(d) If an IDN, provide the script of the label (both in English and as referenced by ISO 15924).	Y				
		(e) If an IDN, list all code points contained in the U-label according to Unicode form.	Y	For example, the string "HELLO" would be listed as U+0048 U+0065 U+006C U+006C U+0066.			
	15	(a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include: <ol style="list-style-type: none"> 1. the applied-for gTLD string relevant to the tables, 2. the script or language designator (as defined in BCP 47), 3. table version number, 4. effective date (DD Month YYYY), and 5. contact name, email address, and phone number. <p>Submission of IDN tables in a standards-based format is encouraged.</p>	Y	In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string. IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second level (see question 44). IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.			
		(b) Describe the process used for development of the IDN tables submitted, including consultations and sources used.	Y				
		(c) List any variants to the applied-for gTLD string according to the relevant IDN tables.	Y	Variant TLD strings will not be delegated as a result of this application. Variant strings will be checked for consistency and, if the application is approved, will be entered on a Declared IDN Variants List to allow for future allocation once a variant management mechanism is established for the top level. Inclusion of variant TLD strings in this application is for information only and confers no right or claim to these strings upon the applicant.			
	16	Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.	Y				
	17	OPTIONAL. Provide a representation of the label according to the International Phonetic Alphabet (http://www.langsci.ucl.ac.uk/ipa/).	Y	If provided, this information will be used as a guide to ICANN in communications regarding the application.			
Mission/Purpose	18	(a) Describe the mission/purpose of your proposed gTLD.	Y	The information gathered in response to Question 18 is intended to inform the post-launch review of the New gTLD Program, from the perspective of assessing the relative costs and benefits achieved in the expanded gTLD space. For the application to be considered complete, answers to this section must be fulsome and sufficiently quantitative and detailed to inform future study on plans vs. results.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<p>The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of Commitments. This will include consideration of the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.</p> <p>The information gathered in this section will be one source of input to help inform this review. This information is not used as part of the evaluation or scoring of the application, except to the extent that the information may overlap with questions or evaluation areas that are scored.</p> <p>An applicant wishing to designate this application as community-based should ensure that these responses are consistent with its responses for question 20 below.</p>			
		(b) How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?	Y	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> i. What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation? ii. What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation? iii. What goals does your proposed gTLD have in terms of user experience? iv. Provide a complete description of the applicant's intended registration policies in support of the goals listed above. v. Will your proposed gTLD impose any measures for 			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<p>protecting the privacy or confidential information of registrants or users? If so, please describe any such measures.</p> <p>Describe whether and in what ways outreach and communications will help to achieve your projected benefits.</p>			
	18	(c) What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?	Y	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> i. How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis? ii. Explain any cost benefits for registrants you intend to implement (e.g., advantageous pricing, introductory discounts, bulk registration discounts). iii. Note that the Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Additionally, the Registry Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans. 			
Community-based Designation	19	Is the application for a community-based TLD?	Y	There is a presumption that the application is a standard application (as defined in the Applicant Guidebook) if this question is left unanswered.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				The applicant's designation as standard or community-based cannot be changed once the application is submitted.			
	20	(a) Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> • How the community is delineated from Internet users generally. Such descriptions may include, but are not limited to, the following: membership, registration, or licensing processes, operation in a particular industry, use of a language. • How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required. • When the community was established, including the date(s) of formal organization, if any, as well as a description of community activities to date. • The current estimated size of the community, both as to membership and geographic extent. 		<p>Responses to Question 20 will be regarded as firm commitments to the specified community and reflected in the Registry Agreement, provided the application is successful.</p> <p>Responses are not scored in the Initial Evaluation. Responses may be scored in a community priority evaluation, if applicable. Criteria and scoring methodology for the community priority evaluation are described in Module 4 of the Applicant Guidebook.</p>	
		(b) Explain the applicant's relationship to the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> • Relations to any community organizations. • Relations to the community and its constituent parts/groups. • Accountability mechanisms of the applicant to the community. 			
		(c) Provide a description of the community-based purpose of the applied-for gTLD.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> • Intended registrants in the TLD. • Intended end-users of the TLD. • Related activities the applicant has carried out or intends to carry out in service of this purpose. • Explanation of how the purpose is of a lasting nature. 			
		(d) Explain the relationship between the applied-for gTLD string and the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> • relationship to the established name, if any, of the community. 			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<ul style="list-style-type: none"> relationship to the identification of community members. any connotations the string may have beyond the community. 			
		(e) Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set.	Y	<p>Descriptions should include proposed policies, if any, on the following:</p> <ul style="list-style-type: none"> Eligibility: who is eligible to register a second-level name in the gTLD, and how will eligibility be determined. Name selection: what types of second-level names may be registered in the gTLD. Content/Use: what restrictions, if any, the registry operator will impose on how a registrant may use its registered name. Enforcement: what investigation practices and mechanisms exist to enforce the policies above, what resources are allocated for enforcement, and what appeal mechanisms are available to registrants. 			
		(f) Attach any written endorsements for the application from established institutions representative of the community identified in 20(a). An applicant may submit written endorsements by multiple institutions, if relevant to the community.	Y	<p>At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement support for the application, and the supply the contact information of the entity providing the endorsement.</p> <p>Endorsements from institutions not mentioned in the response to 20(b) should be accompanied by a clear description of each such institution's relationship to the community.</p> <p>Endorsements presented as supporting documentation for this question should be submitted in the original language.</p>			

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Geographic Names	21	(a) Is the application for a geographic name?	Y	<p>An applied-for gTLD string is considered a geographic name requiring government support if it is: (a) the capital city name of a country or territory listed in the ISO 3166-1 standard; (b) a city name, where it is clear from statements in the application that the applicant intends to use the gTLD for purposes associated with the city name; (c) a sub-national place name listed in the ISO 3166-2 standard; or (d) a name listed as a UNESCO region or appearing on the "Composition of macro geographic (continental) or regions, geographic sub-regions, and selected economic and other groupings" list. See Module 2 for complete definitions and criteria.</p> <p>An application for a country or territory name, as defined in the Applicant Guidebook, will not be approved.</p>			
		(b) If a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities.	N	<p>See the documentation requirements in Module 2 of the Applicant Guidebook.</p> <p>Documentation presented in response to this question should be submitted in the original language.</p>			
Protection of Geographic Names	22	Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names.	Y	<p>Applicants should consider and describe how they will incorporate Governmental Advisory Committee (GAC) advice in their management of second-level domain name registrations. See "Principles regarding New gTLDs" at https://gacweb.icann.org/display/GACADV/New+gTLDs.</p> <p>For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain. See the Dot Info Circular at https://gacweb.icann.org/display/GACADV/New+gTLDs.</p> <p>Proposed measures will be posted for public comment as part of the application. However, note that procedures for release of geographic names at the second level</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				must be separately approved according to Specification 5 of the Registry Agreement. That is, approval of a gTLD application does not constitute approval for release of any geographic names under the Registry Agreement. Such approval must be granted separately by ICANN.			
Registry Services	23	<p>Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns.</p> <p>The following registry services are customary services offered by a registry operator:</p> <ul style="list-style-type: none"> A. Receipt of data from registrars concerning registration of domain names and name servers. B. Dissemination of TLD zone files. C. Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois service). D. Internationalized Domain Names, where offered. E. DNS Security Extensions (DNSSEC). <p>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.</p> <p>Additional proposed registry services that are unique to the registry must also be described.</p>	Y	<p>Registry Services are defined as the following: (1) operations of the Registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the Registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the Registry Agreement; and (2) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy; (3) any other products or services that only a Registry Operator is capable of providing, by reason of its designation as the Registry Operator. A full definition of Registry Services can be found at http://www.icann.org/en/registries/rsep/rsep.html.</p> <p>Security: For purposes of this Applicant Guidebook, an effect on security by the proposed Registry Service means (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with applicable standards.</p> <p>Stability: For purposes of this Applicant Guidebook, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and</p>		<p>Responses are not scored. A preliminary assessment will be made to determine if there are potential security or stability issues with any of the applicant's proposed Registry Services. If any such issues are identified, the application will be referred for an extended review. See the description of the Registry Services review process in Module 2 of the Applicant Guidebook. Any information contained in the application may be considered as part of the Registry Services review. If its application is approved, applicant may engage in only those registry services defined in the application, unless a new request is submitted to ICANN in accordance with the Registry Agreement.</p>	

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				authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning.			
Demonstration of Technical & Operational Capability (External)	24	<p>Shared Registration System (SRS) Performance: describe</p> <ul style="list-style-type: none"> the plan for operation of a robust and reliable SRS. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. SRS must include the EPP interface to the registry, as well as any other interfaces intended to be provided, if they are critical to the functioning of the registry. Please refer to the requirements in Specification 6 (section 1.2) and Specification 10 (SLA Matrix) attached to the Registry Agreement; and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> A high-level SRS system description; Representative network diagram(s); Number of servers; Description of interconnectivity with other registry systems; Frequency of synchronization between servers; and Synchronization scheme (e.g., hot standby, cold standby). 	Y	<p>The questions in this section (24-44) are intended to give applicants an opportunity to demonstrate their technical and operational capabilities to run a registry. In the event that an applicant chooses to outsource one or more parts of its registry operations, the applicant should still provide the full details of the technical arrangements.</p> <p>Note that the resource plans provided in this section assist in validating the technical and operational plans as well as informing the cost estimates in the Financial section below.</p> <p>Questions 24-30(a) are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are outward-facing, i.e., interactions with registrars, registrants, and various DNS users. Responses to these questions will be published to allow review by affected parties.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> a plan for operating a robust and reliable SRS, one of the five critical registry functions; scalability and performance consistent with the overall business approach, and planned size of the registry; a technical plan that is adequately resourced in the planned costs detailed in the financial section; and evidence of compliance with Specification 6 (section 1.2) to the Registry Agreement. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> An adequate description of SRS that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Details of a well-developed plan to operate a robust and reliable SRS; SRS plans are sufficient to result in compliance with Specification 6 and Specification 10 to the Registry Agreement; SRS is consistent with the technical, operational and financial approach described in the application; and Demonstrates that adequate technical resources are already on hand, or committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		A complete answer is expected to be no more than 5 pages. (As a guide, one page contains approximately 4000 characters).					
	25	<p>Extensible Provisioning Protocol (EPP): provide a detailed description of the interface with registrars, including how the applicant will comply with EPP in RFCs 3735 (if applicable), and 5730-5734.</p> <p>If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.</p> <p>Describe resourcing plans (number and description of personnel roles allocated to this area).</p> <p>A complete answer is expected to be no more than 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be no more than 5 pages per EPP extension.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) if applicable, a well-documented implementation of any proprietary EPP extensions; and</p> <p>(6) if applicable, how proprietary EPP extensions are consistent with the registration lifecycle as described in Question 27.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of EPP that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Sufficient evidence that any proprietary EPP extensions are compliant with RFCs and provide all necessary functionalities for the provision of registry services;</p> <p>(3) EPP interface is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates that technical resources are already on hand, or committed or readily available.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	26	<p>Whois: describe</p> <ul style="list-style-type: none"> • how the applicant will comply with Whois specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement; • how the Applicant's Whois service will comply with RFC 3912; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer should include, but is not limited to:</p>	Y	The Registry Agreement (Specification 4) requires provision of Whois lookup services for all names registered in the TLD. This is a minimum requirement. Provision for Searchable Whois as defined in the scoring column is a requirement for achieving a score of 2 points.	0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements, (one of the five critical registry functions);</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the</p>	<p>2 - exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <p>(1) A Searchable Whois service: Whois service includes web-based search capabilities by domain name, registrant name, postal address, contact names, registrar IDs, and Internet Protocol addresses without arbitrary limit. Boolean search capabilities may be offered. The service shall include appropriate precautions to avoid abuse of this feature (e.g., limiting access to legitimate authorized users), and the</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> • A high-level Whois system description; • Relevant network diagram(s); • IT and infrastructure resources (e.g., servers, switches, routers and other components); • Description of interconnectivity with other registry systems; and • Frequency of synchronization between servers. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Provision for Searchable Whois capabilities; and • A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions. <p>A complete answer is expected to be no more than 5 pages.</p>				<p>planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) evidence of compliance with Specifications 4 and 10 to the Registry Agreement; and</p> <p>(6) if applicable, a well-documented implementation of Searchable Whois.</p>	<p>application demonstrates compliance with any applicable privacy laws or policies.</p> <p>1 - meets requirements: Response includes</p> <p>(1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Evidence that Whois services are compliant with RFCs, Specifications 4 and 10 to the Registry Agreement, and any other contractual requirements including all necessary functionalities for user interface;</p> <p>(3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	27	<p>Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:</p> <ul style="list-style-type: none"> • explain the various registration states as well as the criteria and procedures that are used to change state; • describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply; • clearly explain any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; and • describe resourcing plans for this aspect of the criteria (number and 	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of registration lifecycles and states;</p> <p>(2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and</p> <p>(3) the ability to comply with relevant RFCs.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Details of a fully developed registration life cycle with definition of various registration states, transition between the states, and trigger points;</p> <p>(3) A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and</p> <p>(4) Demonstrates an adequate level of</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>description of personnel roles allocated to this area).</p> <p>The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state.</p> <p>If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>resources that are already on hand or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	28	<p>Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> • An implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller; • Policies for handling complaints regarding abuse; • Proposed measures for removal of orphan glue records for names removed from the zone when provided with evidence in written form that the glue is present in connection with malicious conduct (see Specification 6); and • Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as</p>	Y	<p>Note that, while orphan glue often supports correct and ordinary operation of the DNS, registry operators will be required to take action to remove orphan glue records (as defined at http://www.icann.org/en/committees/security/sac048.pdf) when provided with evidence in written form that such records are present in connection with malicious conduct.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) Comprehensive abuse policies, which include clear definitions of what constitutes abuse in the TLD, and procedures that will effectively minimize potential for abuse in the TLD; (2) Plans are adequately resourced in the planned costs detailed in the financial section; (3) Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and (4) When executed in accordance with the Registry Agreement, plans will result in compliance with contractual requirements. 	<p>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (1) Details of measures to promote Whois accuracy, using measures specified here or other measures commensurate in their effectiveness; and (2) Measures from at least one additional area to be eligible for 2 points as described in the question. <p>1 - meets requirements Response includes:</p> <ol style="list-style-type: none"> (1) An adequate description of abuse prevention and mitigation policies and procedures that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Details of well-developed abuse policies and procedures; (3) Plans are sufficient to result in compliance with contractual requirements; (4) Plans are consistent with the technical, operational, and financial approach described in the application, and any commitments made to registrants; and (5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>described below.</p> <ul style="list-style-type: none"> • Measures to promote Whois accuracy (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: <ul style="list-style-type: none"> ○ Authentication of registrant information as complete and accurate at time of registration. Measures to accomplish this could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means. ○ Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and ○ If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA will continue to apply to all ICANN-accredited registrars. • A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners; • Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by 					<p>carry out this function. 0 – fails requirements Does not meet all the requirements to score 1.</p>

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		<p>registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:</p> <ul style="list-style-type: none"> ○ Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests; ○ Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and ○ Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted. <p>A complete answer is expected to be no more than 20 pages.</p>					
	29	<p>Rights Protection Mechanisms: Applicants must describe how their registry will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> • A description of how the registry operator will implement safeguards against allowing unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies), and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer a Sunrise period and a Trademark Claims service during the required time periods, and implement decisions rendered under the URS on an ongoing basis; and • A description of resourcing plans for the 	Y		0-2	<p>Complete answer describes mechanisms designed to:</p> <ul style="list-style-type: none"> (1) prevent abusive registrations, and (2) identify and address the abusive use of registered names on an ongoing basis. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ul style="list-style-type: none"> (1) Identification of rights protection as a core objective, supported by a well-developed plan for rights protection; and (2) Mechanisms for providing effective protections that exceed minimum requirements (e.g., RPMs in addition to those required in the registry agreement). <p>1 - meets requirements: Response includes</p> <ul style="list-style-type: none"> (1) An adequate description of RPMs that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) A commitment from the applicant to implement of rights protection mechanisms sufficient to comply with minimum requirements in Specification 7; (3) Plans that are sufficient to result in compliance with contractual requirements;

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>(4) Mechanisms that are consistent with the technical, operational, and financial approach described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	30	<p>(a) Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> • indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities; • description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided); • list of commitments made to registrants concerning security levels. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001). <p>A summary of the above should be no more than 20 pages. Note that the complete security policy for the registry is required to be submitted in accordance with 30(b).</p>	Y	<p>Criterion 5 calls for security levels to be appropriate for the use and level of trust associated with the TLD string, such as, for example, financial services oriented TLDs. "Financial services" are activities performed by financial institutions, including: 1) the acceptance of deposits and other repayable funds; 2) lending; 3) payment and remittance services; 4) insurance or reinsurance services; 5) brokerage services; 6) investment services and activities; 7) financial leasing; 8) issuance of guarantees and commitments; 9) provision of financial advice; 10) portfolio management and advice; or 11) acting as a financial clearinghouse. Financial services is used as an example only; other strings with exceptional potential to cause harm to consumers would also be expected to deploy appropriate levels of security.</p>	0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed description of processes and solutions deployed to manage logical security across infrastructure and systems, monitoring and detecting threats and security vulnerabilities and taking appropriate steps to resolve them;</p> <p>(2) security capabilities are consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) security measures are consistent with any commitments made to registrants regarding security levels; and</p> <p>(5) security measures are appropriate for the applied-for gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to provide a commensurate level of security).</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <p>(1) Evidence of highly developed and detailed security capabilities, with various baseline security levels, independent benchmarking of security metrics, robust periodic security monitoring, and continuous enforcement; and</p> <p>(2) an independent assessment report is provided demonstrating effective security controls are either in place or have been designed, and are commensurate with the applied-for gTLD string. (This could be ISO 27001 certification or other well-established and recognized industry certifications for the registry operation. If new independent standards for demonstration of effective security controls are established, such as the High Security Top Level Domain (HSTLD) designation, this could also be included. An illustrative example of an independent standard is the proposed set of requirements described in http://www.icann.org/en/correspondence/aba-bits-to-beckstrom-crocker-20dec11-en.pdf.)</p> <p>1 - meets requirements: Response includes:</p>

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							(1) Adequate description of security policies and procedures that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) A description of adequate security capabilities, including enforcement of logical access control, threat analysis, incident response and auditing. Ad-hoc oversight and governance and leading practices being followed; (3) Security capabilities consistent with the technical, operational, and financial approach as described in the application, and any commitments made to registrants; (4) Demonstrates that an adequate level of resources are on hand, committed or readily available to carry out this function; and (5) Proposed security measures are commensurate with the nature of the applied-for gTLD string. 0 - fails requirements: Does not meet all the requirements to score 1.
Demonstration of Technical & Operational Capability (Internal)	30	(b) Security Policy: provide the complete security policy and procedures for the proposed registry, including but not limited to: <ul style="list-style-type: none"> • system (data, server, application / services) and network access control, ensuring systems are maintained in a secure fashion, including details of how they are monitored, logged and backed up; • resources to secure integrity of updates between registry systems and nameservers, and between nameservers, if any; • independent assessment reports demonstrating security capabilities (submitted as attachments), if any; • provisioning and other measures that mitigate risks posed by denial of service attacks; • computer and network incident response 	N	Questions 30(b) – 44 are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are internal to the infrastructure and operations of the registry. To allow the applicant to provide full details and safeguard proprietary information, responses to these questions will not be published.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>policies, plans, and processes;</p> <ul style="list-style-type: none"> plans to minimize the risk of unauthorized access to its systems or tampering with registry data; intrusion detection mechanisms, a threat analysis for the proposed registry, the defenses that will be deployed against those threats, and provision for periodic threat analysis updates; details for auditing capability on all network access; physical security approach; identification of department or group responsible for the registry's security organization; background checks conducted on security personnel; description of the main security threats to the registry operation that have been identified; and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). 					
	31	<p>Technical Overview of Proposed Registry: provide a technical overview of the proposed registry.</p> <p>The technical plan must be adequately resourced, with appropriate expertise and allocation of costs. The applicant will provide financial descriptions of resources in the next section and those resources must be reasonably related to these technical requirements.</p> <p>The overview should include information on the estimated scale of the registry's technical operation, for example, estimates for the number of registration transactions and DNS queries per month should be provided for the first two years of operation.</p> <p>In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions.</p>	N	To the extent this answer is affected by the applicant's intent to outsource various registry operations, the applicant should describe these plans (e.g., taking advantage of economies of scale or existing facilities). However, the response must include specifying the technical plans, estimated scale, and geographic dispersion as required by the question.	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of technical aspects of registry requirements; an adequate level of resiliency for the registry's technical operations; consistency with planned or currently deployed technical/operational solutions; consistency with the overall business approach and planned size of the registry; adequate resourcing for technical plan in the 	<p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Technical plans consistent with the technical, operational, and financial approach as described in the application; Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.</p> <p>This high-level summary should not repeat answers to questions below. Answers should include a visual diagram(s) to highlight dataflows, to provide context for the overall technical infrastructure. Detailed diagrams for subsequent questions should be able to map back to this high-level diagram(s). The visual diagram(s) can be supplemented with documentation, or a narrative, to explain how all of the Technical & Operational components conform.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				planned costs detailed in the financial section; and (6) consistency with subsequent technical questions.	
	32	<p>Architecture: provide documentation for the system and network architecture that will support registry operations for the proposed scale of the registry. System and network architecture documentation must clearly demonstrate the applicant's ability to operate, manage, and monitor registry systems. Documentation should include multiple diagrams or other components including but not limited to:</p> <ul style="list-style-type: none"> • Detailed network diagram(s) showing the full interplay of registry elements, including but not limited to SRS, DNS, Whois, data escrow, and registry database functions; • Network and associated systems necessary to support registry operations, including: <ul style="list-style-type: none"> ▪ Anticipated TCP / IP addressing scheme, ▪ Hardware (i.e., servers, routers, networking components, virtual machines and key characteristics (CPU and RAM, Disk space, internal network connectivity, and make and model)), ▪ Operating system and versions, and ▪ Software and applications (with version information) necessary to support registry operations, management, and monitoring • General overview of capacity planning, including bandwidth allocation plans; • List of providers / carriers; and • Resourcing plans for the initial 	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed and coherent network architecture; (2) architecture providing resiliency for registry systems; (3) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and (4) a technical plan that is adequately resourced in the planned costs detailed in the financial section. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> (1) Evidence of highly developed and detailed network architecture that is able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for initial registry startup; and (2) Evidence of a highly available, robust, and secure infrastructure. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) An adequate description of the architecture that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Plans for network architecture describe all necessary elements; (3) Descriptions demonstrate adequate network architecture providing robustness and security of the

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include evidence of a network architecture design that greatly reduces the risk profile of the proposed registry by providing a level of scalability and adaptability (e.g., protection against DDoS attacks) that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>registry;</p> <p>(4) Bandwidth and SLA are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	33	<p>Database Capabilities: provide details of database capabilities including but not limited to:</p> <ul style="list-style-type: none"> • database software; • storage capacity (both in raw terms [e.g., MB, GB] and in number of registrations / registration transactions); • maximum transaction throughput (in total and by type of transaction); • scalability; • procedures for object creation, editing, and deletion, and user and credential management; • high availability; • change management procedures; • reporting capabilities; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A registry database data model can be included to provide additional clarity to this response.</p> <p>Note: Database capabilities described should be in reference to registry services and not necessarily related support functions such as Personnel or Accounting, unless such services are inherently intertwined with the delivery of registry services.</p> <p>To be eligible for a score of 2, answers must also</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of database capabilities to meet the registry technical requirements;</p> <p>(2) database capabilities consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <p>(1) Highly developed and detailed description of database capabilities that are able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for registry startup; and</p> <p>(2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices.</p> <p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of database capabilities that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for database capabilities</p>

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		<p>include evidence of database capabilities that greatly reduce the risk profile of the proposed registry by providing a level of scalability and adaptability that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate database capabilities, with database throughput, scalability, and database operations with limited operational governance;</p> <p>(4) Database capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates that an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	34	<p>Geographic Diversity: provide a description of plans for geographic diversity of:</p> <p>a. name servers, and</p> <p>b. operations centers.</p> <p>Answers should include, but are not limited to:</p> <ul style="list-style-type: none"> the intended physical locations of systems, primary and back-up operations centers (including security attributes), and other infrastructure; any registry plans to use Anycast or other topological and geographical diversity measures, in which case, the configuration of the relevant service must be included; resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also include evidence of a geographic diversity plan that greatly reduces the risk profile of the proposed registry by ensuring the continuance of all vital business functions (as identified in the applicant's continuity plan in Question 39) in the event of a natural or other disaster) at the principal place of business or point of presence.</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) geographic diversity of nameservers and operations centers;</p> <p>(2) proposed geo-diversity measures are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <p>(1) Evidence of highly developed measures for geo-diversity of operations, with locations and functions to continue all vital business functions in the event of a natural or other disaster at the principal place of business or point of presence; and</p> <p>(2) A high level of availability, security, and bandwidth.</p> <p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of Geographic Diversity that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans provide adequate geo-diversity of name servers and operations to continue critical registry functions in the event of a temporary outage at the principal place of business or point of presence;</p> <p>(3) Geo-diversity plans are consistent</p>

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		A complete answer is expected to be no more than 5 pages.					with technical, operational, and financial approach as described in the application; and (4) Demonstrates adequate resources that are on hand, or committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	35	<p>DNS Service: describe the configuration and operation of nameservers, including how the applicant will comply with relevant RFCs.</p> <p>All name servers used for the new gTLD must be operated in compliance with the DNS protocol specifications defined in the relevant RFCs, including but not limited to: 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472.</p> <ul style="list-style-type: none"> Provide details of the intended DNS Service including, but not limited to: A description of the DNS services to be provided, such as query rates to be supported at initial operation, and reserve capacity of the system. Describe how your nameserver update methods will change at various scales. Describe how DNS performance will change at various scales. RFCs that will be followed – describe how services are compliant with RFCs and if these are dedicated or shared with any other functions (capacity/performance) or DNS zones. The resources used to implement the services - describe complete server hardware and software, including network bandwidth and addressing plans for servers. Also include resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). Demonstrate how the system will 	N	<p>Note that the use of DNS wildcard resource records as described in RFC 4592 or any other method or technology for synthesizing DNS resource records or using redirection within the DNS by the registry is prohibited in the Registry Agreement.</p> <p>Also note that name servers for the new gTLD must comply with IANA Technical requirements for authoritative name servers: http://www.iana.org/procedures/nameserver-requirements.html.</p>	0-1	<p>Complete answer demonstrates:</p> <p>(1) adequate description of configurations of nameservers and compliance with respective DNS protocol-related RFCs;</p> <p>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) evidence of compliance with Specification 6 to the Registry Agreement; and</p> <p>(5) evidence of complete knowledge and understanding of requirements for DNS service, one of the five critical registry functions.</p>	<p>1 - meets requirements: Response includes:</p> <p>(1) Adequate description of DNS service that that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Plans are sufficient to result in compliance with DNS protocols (Specification 6, section 1.1) and required performance specifications Specification 10, Service Level Matrix;</p> <p>(3) Plans are consistent with technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>function - describe how the proposed infrastructure will be able to deliver the performance described in Specification 10 (section 2) attached to the Registry Agreement.</p> <p>Examples of evidence include:</p> <ul style="list-style-type: none"> • Server configuration standard (i.e., planned configuration). • Network addressing and bandwidth for query load and update propagation. • Headroom to meet surges. <p>A complete answer is expected to be no more than 10 pages.</p>					
	36	<p>IPv6 Reachability: provide a description of plans for providing IPv6 transport including, but not limited to:</p> <ul style="list-style-type: none"> • How the registry will support IPv6 access to Whois, Web-based Whois and any other Registration Data Publication Service as described in Specification 6 (section 1.5) to the Registry Agreement. • How the registry will comply with the requirement in Specification 6 for having at least two nameservers reachable over IPv6. • List all services that will be provided over IPv6, and describe the IPv6 connectivity and provider diversity that will be used. • Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages.</p>	N	IANA nameserver requirements are available at http://www.iana.org/procedures/nameserver-requirements.html .	0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) evidence of compliance with Specification 6 to the Registry Agreement.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of IPv6 reachability that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate implementation plan addressing requirements for IPv6 reachability, indicating IPv6 reachability allowing IPv6 transport in the network over two independent IPv6 capable networks in compliance to IPv4 IANA specifications, and Specification 10;</p> <p>(3) IPv6 plans consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	37	<p>Data Backup Policies & Procedures: provide</p> <ul style="list-style-type: none"> • details of frequency and procedures for backup of data, • hardware, and systems used for backup, data format, • data backup features, • backup testing procedures, • procedures for retrieval of data/rebuild of database, • storage controls and procedures, and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages.</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) detailed backup and retrieval processes deployed;</p> <p>(2) backup and retrieval process and frequency are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of backup policies and procedures that substantially demonstrate the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) A description of leading practices being or to be followed;</p> <p>(3) Backup procedures consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	38	<p>Data Escrow: describe</p> <ul style="list-style-type: none"> • how the applicant will comply with the data escrow requirements documented in the Registry Data Escrow Specification (Specification 2 of the Registry Agreement); and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of data escrow, one of the five critical registry functions;</p> <p>(2) compliance with Specification 2 of the Registry Agreement;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) the escrow arrangement is consistent with the overall business approach and size/scope of the registry.</p>	<p>1 – meets requirements: Response includes</p> <p>(1) Adequate description of a Data Escrow process that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Data escrow plans are sufficient to result in compliance with the Data Escrow Specification (Specification 2 to the Registry Agreement);</p> <p>(3) Escrow capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p>0 – fails requirements: Does not meet all the requirements to score a 1.</p>

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	39	<p>Registry Continuity: describe how the applicant will comply with registry continuity obligations as described in Specification 6 (section 3) to the registry agreement. This includes conducting registry operations using diverse, redundant servers to ensure continued operation of critical functions in the case of technical failure.</p> <p>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>The response should include, but is not limited to, the following elements of the business continuity plan:</p> <ul style="list-style-type: none"> • Identification of risks and threats to compliance with registry continuity obligations; • Identification and definitions of vital business functions (which may include registry services beyond the five critical registry functions) versus other registry functions and supporting operations and technology; • Definitions of Recovery Point Objectives and Recovery Time Objective; and • Descriptions of testing plans to promote compliance with relevant obligations. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • A highly detailed plan that provides for leading practice levels of availability; and • Evidence of concrete steps such as a contract with a backup provider (in addition to any currently designated service operator) or a maintained hot site. <p>A complete answer is expected to be no more than 15 pages.</p>	N	<p>For reference, applicants should review the ICANN gTLD Registry Continuity Plan at http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf.</p> <p>A Recovery Point Objective (RPO) refers to the point in time to which data should be recovered following a business disruption or disaster. The RPO allows an organization to define a window of time before a disruption or disaster during which data may be lost and is independent of the time it takes to get a system back on-line. If the RPO of a company is two hours, then when a system is brought back on-line after a disruption/disaster, all data must be restored to a point within two hours before the disaster.</p> <p>A Recovery Time Objective (RTO) is the duration of time within which a process must be restored after a business disruption or disaster to avoid what the entity may deem as unacceptable consequences. For example, pursuant to the draft Registry Agreement DNS service must not be down for longer than 4 hours. At 4 hours ICANN may invoke the use of an Emergency Back End Registry Operator to take over this function. The entity may deem this to be an unacceptable consequence therefore they may set their RTO to be something less than 4 hours and would build continuity plans accordingly.</p> <p>Vital business functions are functions that are critical to the success of the operation. For example, if a registry operator provides an additional service beyond the five critical registry functions, that it deems as central to its TLD, or supports an operation that is central to the TLD, this might be identified as a vital business function.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed description showing plans for compliance with registry continuity obligations; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) evidence of compliance with Specification 6 to the Registry Agreement. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (1) Highly developed and detailed processes for maintaining registry continuity; and (2) Evidence of concrete steps, such as a contract with a backup service provider or a maintained hot site. <p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> (1) Adequate description of a Registry Continuity plan that substantially demonstrates capability and knowledge required to meet this element; (2) Continuity plans are sufficient to result in compliance with requirements (Specification 6); (3) Continuity plans are consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	40	<p>Registry Transition: provide a Service Migration plan (as described in the Registry Transition Processes) that could be followed in the event</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of a registry

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>that it becomes necessary to permanently transition the proposed gTLD to a new operator. The plan must take into account, and be consistent with the vital business functions identified in the previous question.</p> <p>Elements of the plan may include, but are not limited to:</p> <ul style="list-style-type: none"> • Preparatory steps needed for the transition of critical registry functions; • Monitoring during registry transition and efforts to minimize any interruption to critical registry functions during this time; and • Contingency plans in the event that any part of the registry transition is unable to move forward according to the plan. <p>A complete answer is expected to be no more than 10 pages.</p>				<p>understanding of the Registry Transition Processes; and (2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry.</p>	<p>transition plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate registry transition plan with appropriate monitoring during registry transition; and</p> <p>(3) Transition plan is consistent with the technical, operational, and financial approach as described in the application.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	41	<p>Failover Testing: provide</p> <ul style="list-style-type: none"> • a description of the failover testing plan, including mandatory annual testing of the plan. Examples may include a description of plans to test failover of data centers or operations to alternate sites, from a hot to a cold facility, registry data escrow testing, or other mechanisms. The plan must take into account and be consistent with the vital business functions identified in Question 39; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>The failover testing plan should include, but is not limited to, the following elements:</p> <ul style="list-style-type: none"> • Types of testing (e.g., walkthroughs, takedown of sites) and the frequency of testing; • How results are captured, what is done 	N		0-1	<p>Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of a failover testing plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate failover testing plan with an appropriate level of review and analysis of failover testing results;</p> <p>(3) Failover testing plan is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</p> <p>0 - fails requirements Does not meet all the requirements to score a 1.</p>

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		<p>with the results, and with whom results are shared;</p> <ul style="list-style-type: none"> • How test plans are updated (e.g., what triggers an update, change management processes for making updates); • Length of time to restore critical registry functions; • Length of time to restore all operations, inclusive of critical registry functions; and • Length of time to migrate from one site to another. <p>A complete answer is expected to be no more than 10 pages.</p>					
	42	<p>Monitoring and Fault Escalation Processes: provide</p> <ul style="list-style-type: none"> • a description of the proposed (or actual) arrangements for monitoring critical registry systems (including SRS, database systems, DNS servers, Whois service, network connectivity, routers and firewalls). This description should explain how these systems are monitored and the mechanisms that will be used for fault escalation and reporting, and should provide details of the proposed support arrangements for these registry systems. • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Meeting the fault tolerance / monitoring guidelines described • Evidence of commitment to provide a 24x7 fault response team. <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) consistency with the commitments made to registrants and registrars regarding system maintenance. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> (1) Evidence showing highly developed and detailed fault tolerance/monitoring and redundant systems deployed with real-time monitoring tools / dashboard (metrics) deployed and reviewed regularly; (2) A high level of availability that allows for the ability to respond to faults through a 24x7 response team. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of monitoring and fault escalation processes that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Evidence showing adequate fault tolerance/monitoring systems planned with an appropriate level of monitoring and limited periodic review being performed; (3) Plans are consistent with the technical, operational, and financial approach described in the application; and (4) Demonstrates an adequate level of resources that are on hand,

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							committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	43	<p>DNSSEC: Provide</p> <ul style="list-style-type: none"> The registry's DNSSEC policy statement (DPS), which should include the policies and procedures the proposed registry will follow, for example, for signing the zone file, for verifying and accepting DS records from child domains, and for generating, exchanging, and storing keying material; Describe how the DNSSEC implementation will comply with relevant RFCs, including but not limited to: RFCs 4033, 4034, 4035, 5910, 4509, 4641, and 5155 (the latter will only be required if Hashed Authenticated Denial of Existence will be offered); and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages. Note, the DPS is required to be submitted as part of the application</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of this aspect of registry technical requirements, one of the five critical registry functions; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) an ability to comply with relevant RFCs. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) An adequate description of DNSSEC that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Evidence that TLD zone files will be signed at time of launch, in compliance with required RFCs, and registry offers provisioning capabilities to accept public key material from registrants through the SRS ; (3) An adequate description of key management procedures in the proposed TLD, including providing secure encryption key management (generation, exchange, and storage); (4) Technical plan is consistent with the technical, operational, and financial approach as described in the application; and (5) Demonstrates an adequate level of resources that are already on hand, committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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	44	<p>OPTIONAL. IDNs:</p> <ul style="list-style-type: none"> State whether the proposed registry will support the registration of IDN labels in the TLD, and if so, how. For example, explain which characters will be supported, and provide the associated IDN Tables with variant characters identified, along with a corresponding registration policy. This includes public interfaces to the databases such as Whois and EPP. Describe how the IDN implementation will comply with RFCs 5809-5893 as well as the ICANN IDN Guidelines at http://www.icann.org/en/topics/idn/implementation-guidelines.htm. Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 10 pages plus attachments.</p>	N	<p>IDNs are an optional service at time of launch. Absence of IDN implementation or plans will not detract from an applicant's score. Applicants who respond to this question with plans for implementation of IDNs at time of launch will be scored according to the criteria indicated here.</p> <p>IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.</p>	0-1	<p>IDNs are an optional service. Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan that is adequately resourced in the planned costs detailed in the financial section; (3) consistency with the commitments made to registrants and the technical, operational, and financial approach described in the application; (4) issues regarding use of scripts are settled and IDN tables are complete and publicly available; and (5) ability to comply with relevant RFCs.</p>	<p>1 - meets requirements for this optional element: Response includes</p> <ol style="list-style-type: none"> Adequate description of IDN implementation that substantially demonstrates the applicant's capability and knowledge required to meet this element; An adequate description of the IDN procedures, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, and periodic monitoring of IDN operations; Evidence of ability to resolve rendering and known IDN issues or spoofing attacks; IDN plans are consistent with the technical, operational, and financial approach as described in the application; and Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
Demonstration of Financial Capability	45	<p>Financial Statements: provide</p> <ul style="list-style-type: none"> audited or independently certified financial statements for the most recently completed fiscal year for the applicant, and audited or unaudited financial statements for the most recently ended interim financial period for the applicant for which this information may be released. <p>For newly-formed applicants, or where financial statements are not audited, provide:</p> <ul style="list-style-type: none"> the latest available unaudited financial statements; and an explanation as to why audited or independently certified financial statements are not available. <p>At a minimum, the financial statements should be provided for the legal entity listed as the applicant.</p>	N	<p>The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry.</p> <p>Supporting documentation for this question should be submitted in the original language.</p>	0-1	<p>Audited or independently certified financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB) or nationally recognized accounting standards (e.g., GAAP). This will include a balance sheet and income statement reflecting the applicant's financial position and results of operations, a statement of shareholders equity/partner capital, and a cash flow statement. In the event the applicant is an entity newly formed for the purpose of applying for a gTLD and with little to no operating history</p>	<p>1 - meets requirements: Complete audited or independently certified financial statements are provided, at the highest level available in the applicant's jurisdiction. Where such audited or independently certified financial statements are not available, such as for newly-formed entities, the applicant has provided an explanation and has provided, at a minimum, unaudited financial statements.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Financial statements are used in the analysis of projections and costs.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> • balance sheet; • income statement; • statement of shareholders equity/partner capital; • cash flow statement, and • letter of auditor or independent certification, if applicable. 				(less than one year), the applicant must submit, at a minimum, pro forma financial statements including all components listed in the question. Where audited or independently certified financial statements are not available, applicant has provided an adequate explanation as to the accounting practices in its jurisdiction and has provided, at a minimum, unaudited financial statements.	
	46	<p>Projections Template: provide financial projections for costs and funding using Template 1, Most Likely Scenario (attached).</p> <p>Note, if certain services are outsourced, reflect this in the relevant cost section of the template.</p> <p>The template is intended to provide commonality among TLD applications and thereby facilitate the evaluation process.</p> <p>A complete answer is expected to be no more than 10 pages in addition to the template.</p>	N		0-1	<p>Applicant has provided a thorough model that demonstrates a sustainable business (even if break-even is not achieved through the first three years of operation).</p> <p>Applicant's description of projections development is sufficient to show due diligence.</p>	<p>1 - meets requirements:</p> <ol style="list-style-type: none"> (1) Financial projections adequately describe the cost, funding and risks for the application (2) Demonstrates resources and plan for sustainable operations; and (3) Financial assumptions about the registry operations, funding and market are identified, explained, and supported. <p>0 - fails requirements: Does not meet all of the requirements to score a 1.</p>
	47	<p>Costs and capital expenditures: in conjunction with the financial projections template, describe and explain:</p> <ul style="list-style-type: none"> • the expected operating costs and capital expenditures of setting up and operating the proposed registry; • any functions to be outsourced, as indicated in the cost section of the template, and the reasons for outsourcing; • any significant variances between years in any category of expected costs; and • a description of the basis / key assumptions including rationale for the costs provided in the projections template. This may include an 	N	This question is based on the template submitted in question 46.	0-2	<p>Costs identified are consistent with the proposed registry services, adequately fund technical requirements, and are consistent with proposed mission/purpose of the registry. Costs projected are reasonable for a registry of size and scope described in the application. Costs identified include the funding costs (interest expenses and fees) related to the continued operations instrument described in Question 50 below.</p>	<p>2 - exceeds requirements: Response meets all of the attributes for a score of 1 and:</p> <ol style="list-style-type: none"> (1) Estimated costs and assumptions are conservative and consistent with an operation of the registry volume/scope/size as described by the applicant; (2) Estimates are derived from actual examples of previous or existing registry operations or equivalent; and (3) Conservative estimates are based on those experiences and describe a range of anticipated costs and use the high end of those estimates.

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		<p>executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made.</p> <p>As described in the Applicant Guidebook, the information provided will be considered in light of the entire application and the evaluation criteria. Therefore, this answer should agree with the information provided in Template 1 to: 1) maintain registry operations, 2) provide registry services described above, and 3) satisfy the technical requirements described in the Demonstration of Technical & Operational Capability section. Costs should include both fixed and variable costs.</p> <p>To be eligible for a score of two points, answers must demonstrate a conservative estimate of costs based on actual examples of previous or existing registry operations with similar approach and projections for growth and costs or equivalent. Attach reference material for such examples.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>Key assumptions and their rationale are clearly described and may include, but are not limited to:</p> <ul style="list-style-type: none"> • Key components of capital expenditures; • Key components of operating costs, unit operating costs, headcount, number of technical/operating/equipment units, marketing, and other costs; and • Costs of outsourcing, if any. 	<p>1 - meets requirements:</p> <p>(1) Cost elements are reasonable and complete (i.e., cover all of the aspects of registry operations: registry services, technical requirements and other aspects as described by the applicant);</p> <p>(2) Estimated costs and assumptions are consistent and defensible with an operation of the registry volume/scope/size as described by the applicant; and</p> <p>(3) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe anticipated ranges in projected costs. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	48	<p>(a) Funding and Revenue: Funding can be derived from several sources (e.g., existing capital or proceeds/revenue from operation of the proposed registry).</p> <p>Describe:</p> <p>I) How existing funds will provide resources for both: a) start-up of operations, and b) ongoing operations;</p> <p>II) the revenue model including projections for transaction volumes and price (if the applicant does not intend to rely on registration revenue in order to cover the costs of the registry's</p>	N	Supporting documentation for this question should be submitted in the original language.	0-2	<p>Funding resources are clearly identified and adequately provide for registry cost projections. Sources of capital funding are clearly identified, held apart from other potential uses of those funds and available. The plan for transition of funding sources from available capital to revenue from operations (if applicable) is described.</p>	<p>2 - exceeds requirements:</p> <p>Response meets all the attributes for a score of 1 and</p> <p>(1) Existing funds (specifically all funds required for start-up) are quantified, on hand, segregated in an account available only to the applicant for purposes of the application only, ;</p> <p>(2) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is segregated and</p>

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		<p>operation, it must clarify how the funding for the operation will be developed and maintained in a stable and sustainable manner);</p> <p>III) outside sources of funding (the applicant must, where applicable, provide evidence of the commitment by the party committing the funds). Secured vs unsecured funding should be clearly identified, including associated sources of funding (i.e., different types of funding, level and type of security/collateral, and key items) for each type of funding;</p> <p>IV) Any significant variances between years in any category of funding and revenue; and</p> <p>V) A description of the basis / key assumptions including rationale for the funding and revenue provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made; and</p> <p>VI) Assurances that funding and revenue projections cited in this application are consistent with other public and private claims made to promote the business and generate support. To be eligible for a score of 2 points, answers must demonstrate:</p> <p>I) A conservative estimate of funding and revenue; and</p> <p>II) Ongoing operations that are not dependent on projected revenue.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>Outside sources of funding are documented and verified. Examples of evidence for funding sources include, but are not limited to:</p> <ul style="list-style-type: none"> • Executed funding agreements; • A letter of credit; • A commitment letter; or • A bank statement. <p>Funding commitments may be conditional on the approval of the application. Sources of capital funding required to sustain registry operations on an on-going basis are identified. The projected revenues are consistent with the size and projected penetration of the target markets.</p> <p>Key assumptions and their rationale are clearly described and address, at a minimum:</p> <ul style="list-style-type: none"> • Key components of the funding plan and their key terms; and • Price and number of registrations. 	<p>earmarked for this purpose only in an amount adequate for three years operation;</p> <p>(3) If ongoing operations are to be at least partially resourced from revenues, assumptions made are conservative and take into consideration studies, reference data, or other steps taken to develop the response and validate any assumptions made; and</p> <p>(4) Cash flow models are prepared which link funding and revenue assumptions to projected actual business activity.</p> <p>1 - meets requirements:</p> <p>(1) Assurances provided that materials provided to investors and/or lenders are consistent with the projections and assumptions included in the projections templates;</p> <p>(2) Existing funds (specifically all funds required for start-up) are quantified, committed, identified as available to the applicant;</p> <p>(3) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is quantified and its sources identified in an amount adequate for three years operation;</p> <p>(4) If ongoing operations are to be at least partially resourced from revenues, assumptions made are reasonable and are directly related to projected business volumes, market size and penetration; and</p> <p>(5) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

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		<p>(b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	49	<p>(a) Contingency Planning: describe your contingency planning:</p> <ul style="list-style-type: none"> Identify any projected barriers/risks to implementation of the business approach described in the application and how they affect cost, funding, revenue, or timeline in your planning; Identify the impact of any particular regulation, law or policy that might impact the Registry Services offering; and Describe the measures to mitigate the key risks as described in this question. <p>A complete answer should include, for each contingency, a clear description of the impact to projected revenue, funding, and costs for the 3-year period presented in Template 1 (Most Likely Scenario).</p> <p>To be eligible for a score of 2 points, answers must demonstrate that action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Contingencies and risks are identified, quantified, and included in the cost, revenue, and funding analyses. Action plans are identified in the event contingencies occur. The model is resilient in the event those contingencies occur. Responses address the probability and resource impact of the contingencies identified.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and:</p> <ol style="list-style-type: none"> Action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur. <p>1 - meets requirements:</p> <ol style="list-style-type: none"> Model adequately identifies the key risks (including operational, business, legal, jurisdictional, financial, and other relevant risks); Response gives consideration to probability and resource impact of contingencies identified; and If resources are not available to fund contingencies in the existing plan, funding sources and a plan for obtaining them are identified. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, describe:</p> <ul style="list-style-type: none"> how on-going technical requirements will be met; and what alternative funding can be reasonably raised at a later time. <p>Provide an explanation if you do not believe there is any chance of reduced funding.</p>	N				

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		<p>Complete a financial projections template (Template 2, Worst Case Scenario)</p> <p>A complete answer is expected to be no more than 10 pages, in addition to the template.</p>					
		<p>(c) Describe your contingency planning where activity volumes so significantly exceed the high projections that material deviation from the implementation model are required. In particular, how will on-going technical requirements be met?</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	50	<p>(a) Provide a cost estimate for funding critical registry functions on an annual basis, and a rationale for these cost estimates commensurate with the technical, operational, and financial approach described in the application.</p> <p>The critical functions of a registry which must be supported even if an applicant's business and/or funding fails are:</p> <p>(1) DNS resolution for registered domain names</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(2) Operation of the Shared Registration System</p> <p>Applicants should consider ranges of volume of daily EPP transactions (e.g., 0-200K, 200K-2M, 2M+), the incremental costs associated with</p>	N	<p>Registrant protection is critical and thus new gTLD applicants are requested to provide evidence indicating that the critical functions will continue to be performed even if the registry fails. Registrant needs are best protected by a clear demonstration that the basic registry functions are sustained for an extended period even in the face of registry failure. Therefore, this section is weighted heavily as a clear, objective measure to protect and serve registrants.</p> <p>The applicant has two tasks associated with adequately making this demonstration of continuity for critical registry functions. First, costs for maintaining critical registrant protection functions are to be estimated (Part a). In evaluating the application, the evaluators will adjudge whether the estimate is reasonable given the systems architecture and overall business approach described elsewhere in the application.</p> <p>The Continuing Operations Instrument (COI) is invoked by ICANN if necessary to pay for an Emergency Back End Registry Operator (EBERO) to maintain the five critical registry functions for a period of three to five years. Thus, the cost estimates are tied to the cost for a third party to provide the functions, not</p>	0-3	<p>Figures provided are based on an accurate estimate of costs. Documented evidence or detailed plan for ability to fund on-going critical registry functions for registrants for a period of three years in the event of registry failure, default or until a successor operator can be designated. Evidence of financial wherewithal to fund this requirement prior to delegation. This requirement must be met prior to or concurrent with the execution of the Registry Agreement.</p>	<p>3 - exceeds requirements: Response meets all the attributes for a score of 1 and: (1) Financial instrument is secured and in place to provide for on-going operations for at least three years in the event of failure.</p> <p>1 - meets requirements: (1) Costs are commensurate with technical, operational, and financial approach as described in the application; and (2) Funding is identified and instrument is described to provide for on-going operations of at least three years in the event of failure.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

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		<p>increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(3) Provision of Whois service</p> <p>Applicants should consider ranges of volume of daily Whois queries (e.g., 0-100K, 100k-1M, 1M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics for both web-based and port-43 services.</p> <p>(4) Registry data escrow deposits</p> <p>Applicants should consider administration, retention, and transfer fees as well as daily deposit (e.g., full or incremental) handling. Costs may vary depending on the size of the files in escrow (i.e., the size of the registry database).</p> <p>(5) Maintenance of a properly signed zone in accordance with DNSSEC requirements.</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>List the estimated annual cost for each of these functions (specify currency used).</p> <p>A complete answer is expected to be no more than 10 pages.</p>		<p>to the applicant's actual in-house or subcontracting costs for provision of these functions.</p> <p>Refer to guidelines at http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm regarding estimation of costs. However, the applicant must provide its own estimates and explanation in response to this question.</p>			
		<p>(b) Applicants must provide evidence as to how the funds required for performing these critical registry functions will be available and guaranteed to fund registry operations (for the protection of registrants in the new gTLD) for a</p>	N	<p>Second (Part b), methods of securing the funds required to perform those functions for at least three years are to be described by the applicant in accordance with the criteria below. Two types of instruments will fulfill</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement:</p> <p><u>(i) Irrevocable standby letter of credit (LOC)</u> issued by a reputable financial institution.</p> <ul style="list-style-type: none"> • The amount of the LOC must be equal to or greater than the amount required to fund the registry operations specified above for at least three years. In the event of a draw upon the letter of credit, the actual payout would be tied to the cost of running those functions. • The LOC must name ICANN or its designee as the beneficiary. Any funds paid out would be provided to the designee who is operating the required registry functions. • The LOC must have a term of at least five years from the delegation of the TLD. The LOC may be structured with an annual expiration date if it contains an evergreen provision providing for annual extensions, without amendment, for an indefinite number of periods until the issuing bank informs the beneficiary of its final expiration or until the beneficiary releases the LOC as evidenced in writing. If the expiration date occurs prior to the fifth anniversary of the delegation of the TLD, applicant will be required to obtain a replacement instrument. • The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated). • The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee. • Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions. If not yet executed, the Applicant will be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement. • The LOC must contain at least the following required elements: <ul style="list-style-type: none"> ○ Issuing bank and date of issue. ○ Beneficiary: ICANN / 4676 Admiralty 		<p>this requirement. The applicant must identify which of the two methods is being described. The instrument is required to be in place at the time of the execution of the Registry Agreement.</p> <p>Financial Institution Ratings: The instrument must be issued or held by a financial institution with a rating beginning with "A" (or the equivalent) by any of the following rating agencies: A.M. Best, Dominion Bond Rating Service, Egan-Jones, Fitch Ratings, Kroll Bond Rating Agency, Moody's, Morningstar, Standard & Poor's, and Japan Credit Rating Agency.</p> <p>If an applicant cannot access a financial institution with a rating beginning with "A," but a branch or subsidiary of such an institution exists in the jurisdiction of the applying entity, then the instrument may be issued by the branch or subsidiary or by a local financial institution with an equivalent or higher rating to the branch or subsidiary.</p> <p>If an applicant cannot access any such financial institutions, the instrument may be issued by the highest-rated financial institution in the national jurisdiction of the applying entity, if accepted by ICANN.</p> <p>Execution by ICANN: For any financial instruments that contemplate ICANN being a party, upon the written request of the applicant, ICANN may (but is not obligated to) execute such agreement prior to submission of the applicant's application if the agreement is on terms acceptable to ICANN. ICANN encourages applicants to deliver a written copy of any such agreement (only if it requires ICANN's signature) to ICANN as soon as possible to facilitate ICANN's review. If the financial instrument requires ICANN's signature, then the applicant will receive 3 points for question 50 (for the instrument being "secured and in place") only if ICANN executes the agreement prior to submission of the application. ICANN will determine, in</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee.</p> <ul style="list-style-type: none"> ○ Applicant's complete name and address. ○ LOC identifying number. ○ Exact amount in USD. ○ Expiry date. ○ Address, procedure, and required forms whereby presentation for payment is to be made. ○ Conditions: <ul style="list-style-type: none"> ▪ Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit. ▪ All payments must be marked with the issuing bank name and the bank's standby letter of credit number. ▪ LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument. ▪ The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590), or to an alternative standard that has been demonstrated to be reasonably equivalent. <p>(ii) <u>A deposit into an irrevocable cash escrow account held by a reputable financial institution.</u></p> <ul style="list-style-type: none"> • The amount of the deposit must be equal to or greater than the amount required to fund registry operations for at least three years. • Cash is to be held by a third party financial institution which will not allow the funds to be commingled with the Applicant's operating funds or other funds and may only be accessed by ICANN or its designee if certain conditions are met. • The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated). • The escrow agreement relating to the escrow account will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee. • The escrow agreement must have a term 		<p>its sole discretion, whether to execute and become a party to a financial instrument.</p> <p>The financial instrument should be submitted in the original language.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>of five years from the delegation of the TLD.</p> <ul style="list-style-type: none"> The funds in the deposit escrow account are not considered to be an asset of ICANN. Any interest earnings less bank fees are to accrue to the deposit, and will be paid back to the applicant upon liquidation of the account to the extent not used to pay the costs and expenses of maintaining the escrow. The deposit plus accrued interest, less any bank fees in respect of the escrow, is to be returned to the applicant if the funds are not used to fund registry functions due to a triggering event or after five years, whichever is greater. The Applicant will be required to provide ICANN an explanation as to the amount of the deposit, the institution that will hold the deposit, and the escrow agreement for the account at the time of submitting an application. Applicant should attach evidence of deposited funds in the escrow account, or evidence of provisional arrangement for deposit of funds. Evidence of deposited funds and terms of escrow agreement must be provided to ICANN prior to or concurrent with the execution of the Registry Agreement. 					

Instructions: TLD Applicant – Financial Projections

The application process requires the applicant to submit two cash basis Financial Projections.

The first projection (Template 1) should show the Financial Projections associated with the Most Likely scenario expected. This projection should include the forecasted registration volume, registration fee, and all costs and capital expenditures expected during the start-up period and during the first three years of operations. Template 1 relates to Question 46 (Projections Template) in the application.

We also ask that applicants show as a separate projection (Template 2) the Financial Projections associated with a realistic Worst Case scenario. Template 2 relates to Question 49 (Contingency Planning) in the application.

For each Projection prepared, please include Comments and Notes on the bottom of the projection (in the area provided) to provide those reviewing these projections with information regarding:

1. Assumptions used, significant variances in Operating Cash Flows and Capital Expenditures from year-to-year;
2. How you plan to fund operations;
3. Contingency planning

As you complete Template 1 and Template 2, please reference data points and/or formulas used in your calculations (where appropriate).

Section I – Projected Cash inflows and outflows

Projected Cash Inflows

Lines A and B. Provide the number of forecasted registrations and the registration fee for years 1, 2, and 3. Leave the *Start-up* column blank. The start-up period is for cash costs and capital expenditures only; there should be no cash projections input to this column.

Line C. Multiply lines A and B to arrive at the *Registration Cash Inflow* for line C.

Line D. Provide projected cash inflows from any other revenue source for years 1, 2, and 3. For any figures provided on line D, please disclose the source in the *Comments/Notes* box of Section I. Note, do not include funding in Line D as that is covered in Section VI.

Line E. Add lines C and D to arrive at the total cash inflow.

Projected Operating Cash Outflows

Start up costs - For all line items (F thru L) Please describe the total period of time this start-up cost is expected to cover in the *Comments/Notes* box.

Line F. Provide the projected labor costs for marketing, customer support, and technical support for start-up, year 1, year 2, and year 3. Note, other labor costs should be put in line *L (Other Costs)* and specify the type of labor and associated projected costs in the *Comments/Notes* box of this section.

Line G. *Marketing Costs* represent the amount spent on advertising, promotions, and other marketing activities. This amount should not include labor costs included in Marketing Labor (line *F*).

Lines H through K. Provide projected costs for facilities, G&A, interests and taxes, and Outsourcing for start-up as well as for years 1, 2, and 3. Be sure to list the type of activities that are being outsourced. You may combine certain activities from the same provider as long as an appropriate description of the services being combined is listed in the *Comments/Notes* box.

Line L. Provide any other projected operating costs for start-up, year 1, year 2, year 3. Be sure to specify the type of cost in the *Comments/Notes* box.

Line M. Add lines *F* through *L* to arrive at the total costs for line *M*.

Line N. Subtract line *E* from line *M* to arrive at the projected net operation number for line *N*.

Section IIa – Breakout of Fixed and Variable Operating Cash Outflows

Line A. Provide the projected variable operating cash outflows including labor and other costs that are not fixed in nature. Variable operating cash outflows are expenditures that fluctuate in relationship with increases or decreases in production or level of operations.

Line B. Provide the projected fixed operating cash outflows. Fixed operating cash outflows are expenditures that do not generally fluctuate in relationship with increases or decreases in production or level of operations. Such costs are generally necessary to be incurred in order to operate the base line operations of the organization or are expected to be incurred based on contractual commitments.

Line C – Add lines *A* and *B* to arrive at total Fixed and Variable Operating Cash Outflows for line *C*. This must equal Total Operating Cash Outflows from Section I, Line *M*.

Section IIb – Breakout of Critical Registry Function Operating Cash Outflows

Lines A – E. Provide the projected cash outflows for the five critical registry functions. If these functions are outsourced, the component of the outsourcing fee representing these functions must be separately identified and provided. These costs are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50.

Line F. If there are other critical registry functions based on the applicant's registry business model then the projected cash outflow for this function must be provided with a description added to the *Comment/Notes* box. This projected cash outflow may also be included in the 3-year reserve.

Line G. Add lines *A* through *F* to arrive at the Total Critical Registry Function Cash Outflows.

Section III – Projected Capital Expenditures

Lines A through C. Provide projected hardware, software, and furniture & equipment capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Provide any projected capital expenditures as a result of outsourcing. This should be included for start-up and years 1, 2, and 3. Specify the type of expenditure and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section III.

Line E – Please describe “other” capital expenditures in the *Comments/Notes* box.

Line F. Add lines A through E to arrive at the Total Capital Expenditures.

Section IV – Projected Assets & Liabilities

Lines A through C. Provide projected cash, account receivables, and other current assets for start-up as well as for years 1, 2, and 3. For *Other Current Assets*, specify the type of asset and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Add lines A, B, C to arrive at the Total Current Assets.

Lines E through G. Provide projected accounts payable, short-term debt, and other current liabilities for start-up as well as for years 1, 2, and 3. For *Other Current Liabilities*, specify the type of liability and describe the total period of time the start-up up cost is expected to cover in the *Comments/Notes* box.

Line H. Ad lines E through G to arrive at the total current liabilities.

Lines I through K. Provide the projected fixed assets (PP&E), the 3-year reserve, and long-term assets for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line L. Ad lines I through K to arrive at the total long-term assets.

Line M. Provide the projected long-term debt for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box

Section V – Projected Cash Flow

Cash flow is driven by *Projected Net Operations* (Section I), *Projected Capital Expenditures* (Section III), and *Projected Assets & Liabilities* (Section IV).

Line A. Provide the projected net operating cash flows for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line B. Provide the projected capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section V.

Lines C through F. Provide the projected change in non-cash current assets, total current liabilities, debt adjustments, and other adjustments for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line G. Add lines A through F to arrive at the projected net cash flow for line H.

Section VI – Sources of Funds

Lines A & B. Provide projected funds from debt and equity at start-up. Describe the sources of debt and equity funding as well as the total period of time the start-up is expected to cover in the *Comments/Notes* box. Please also provide evidence the funding (e.g., letter of commitment).

Line C. Add lines A and B to arrive at the total sources of funds for line C.

General Comments – Regarding Assumptions Used, Significant Variances Between Years, etc.

Provide explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding.

General Comments – Regarding how the Applicant Plans to Fund Operations

Provide general comments explaining how you will fund operations. Funding should be explained in detail in response to question 48.

General Comments – Regarding Contingencies

Provide general comments to describe your contingency planning. Contingency planning should be explained in detail in response to question 49.

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

In local currency (unless noted otherwise)

Sec.	Reference / Formula	Live / Operational			
		Start-up Costs	Year 1	Year 2	Year 3
I) Projected Cash Inflows and Outflows					
A) Forecasted registration volume		-	62,000	81,600	105,180
B) Registration Fee		\$ -	\$ 5.00	\$ 5.50	\$ 6.05
C) Registration cash inflows	A * B	-	310,000	448,800	636,339
D) Other cash inflows		-	35,000	48,000	62,000
E) Total Cash Inflows		-	345,000	496,800	698,339

Projected Operating Cash Outflows					
F) Labor:					
i) Marketing Labor		25,000	66,000	72,000	81,000
ii) Customer Support Labor		5,000	68,000	71,000	74,000
iii) Technical Labor		32,000	45,000	47,000	49,000
G) Marketing		40,000	44,000	26,400	31,680
H) Facilities		7,000	10,000	12,000	14,400
I) General & Administrative		14,000	112,000	122,500	136,000
J) Interest and Taxes		27,500	29,000	29,800	30,760
K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
i) Hot site maintenance		5,000	7,500	7,500	7,500
ii) Partial Registry Functions		32,000	37,500	41,000	43,000
iii) (list type of activities being outsourced)		-	-	-	-
iv) (list type of activities being outsourced)		-	-	-	-
v) (list type of activities being outsourced)		-	-	-	-
vi) (list type of activities being outsourced)		-	-	-	-
L) Other Operating Costs		12,200	18,000	21,600	25,920
M) Total Operating Cash Outflows		199,700	437,000	450,800	493,260
N) Projected Net Operating Cash flow	E - M	(199,700)	(92,000)	46,000	205,079

Ia) Break out of Fixed and Variable Operating Cash Outflows					
A) Total Variable Operating Costs					
		92,000	195,250	198,930	217,416
B) Total Fixed Operating Costs					
		107,700	241,750	251,870	275,844
C) Total Operating Cash Outflows	= Sec. I) M CHECK	199,700	437,000	450,800	493,260

Ib) Break out of Critical Registry Function Operating Cash Outflows					
A) Operation of SRS					
			5,000	5,500	6,050
B) Provision of Whois					
			6,000	6,600	7,260
C) DNS Resolution for Registered Domain Names					
			7,000	7,700	8,470
D) Registry Data Escrow					
			8,000	8,800	9,680
E) Maintenance of Zone in accordance with DNSSEC					
			9,000	9,900	10,890
F) Other					
G) Total Critical Function Cash Outflows			35,000	38,500	42,350

III) Projected Capital Expenditures					
A) Hardware					
		98,000	21,000	16,000	58,000
B) Software					
		32,000	18,000	24,000	11,000
C) Furniture & Other Equipment					
		43,000	22,000	14,000	16,000
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)					
i)		-	-	-	-
ii)		-	-	-	-
iii)		-	-	-	-
iv)		-	-	-	-
v)		-	-	-	-
vi)		-	-	-	-
E) Other Capital Expenditures					
F) Total Capital Expenditures		173,000	61,000	54,000	85,000

IV) Projected Assets & Liabilities					
A) Cash					
		668,300	474,300	413,300	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	579,300	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
K) Other Long-term Assets					
		359,000	420,000	474,000	559,000
L) Total Long-term Assets		359,000	420,000	474,000	559,000
M) Total Long-term Debt		1,000,000	1,000,000	1,000,000	1,000,000

V) Projected Cash flow (excl. 3-year Reserve)					
A) Net operating cash flows					
	= Sec. I) N	(199,700)	(92,000)	46,000	205,079
B) Capital expenditures					
	= Sec. III) FE	(173,000)	(61,000)	(54,000)	(85,000)
C) Change in Non Cash Current Assets					
	= Sec. IV) (B+C): Prior Yr - Cur Yr	n/a	(110,000)	(56,000)	(74,000)
D) Change in Total Current Liabilities					
	= Sec. IV) H: Cur Yr - Prior Yr	41,000	69,000	3,000	12,300
E) Debt Adjustments					
	= Sec. IV) F and M: Cur Yr - Prior Yr	n/a	-	-	-
F) Other Adjustments					
G) Projected Net Cash flow		(331,700)	(194,000)	(61,000)	58,379

VI) Sources of funds					
A) Debt:					
i) On-hand at time of application					
		1,000,000			
ii) Contingent and/or committed but not yet on-hand					
B) Equity:					
i) On-hand at time of application					
ii) Contingent and/or committed but not yet on-hand					
C) Total Sources of funds		1,000,000			

Comments / Notes

Provide name of local currency used.

Registration was forecasted based on recent market surveys which we have attached and discussed below. We do not anticipate significant increases in Registration Fees subsequent to year 3.

Other cash inflows represent advertising monies expected from display ads on our website.

Costs are further detailed and explained in response to question 47.

Provide a list and associated cost for each outsourced function:
Outsourcing hot site to ABC Company, cost based on number of servers hosted and customer support
Outsourced certain registry and other functions to ABC registry (applicant should list outsourced functions). Costs for each year are based on expected domains under management

Variable Costs:
-Start Up equals all labor plus 75% of marketing.
-Years 1 through 3 equal 75% of all labor plus 50% of Marketing, and 30% of G&A and Other Operating Costs
Fixed Costs: equals Total Costs less Variable Costs

Check that I) C equals I) N.

Note: these are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50

Commensurate with Question 24
Commensurate with Question 26
Commensurate with Question 35
Commensurate with Question 38
Commensurate with Question 43

-Hardware & Software have a useful life of 3 years
-Furniture & other equipment have a useful life of 5 years

List and describe each identifiable type of outsourcing.

Should equal amount calculated for Question 50

Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest will be paid as incurred and is reflected in Sec. I) J.

The \$41k in Start Up Costs represents an offset of the Accounts Payable reflected in the Projected balance sheet. Subsequent years are based on changes in Current Liabilities where Prior Year is subtracted from the Current year.

See below for comments on funding. Revenues are further detailed and explained in response to question 48.

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

We expect the number of registrations to grow at approximately 30% per year with an increase in the registration fee of \$1 per year for the first three years. These volume assumptions are based on the attached (i) market data and (ii) published benchmark registry growth. Fee assumptions are aligned with the growth plan and anticipated demand based on the registration curve. We anticipate our costs will increase at a controlled pace over the first three years except for marketing costs which will be higher in the start-up and first year as we establish our brand name and work to increase registrations. Operating costs are supported by the attached (i) benchmark report for a basket of similar registries and (ii) a build-up of costs based on our current operations. Our capital expenditures will be greatest in the start-up phase and then our need to invest in computer hardware and software will level off after the start-up period. Capital expenses are based on contract drafts and discussions held with vendors. We have included and referenced the hardware costs to support the estimates. Our investment in Furniture and Equipment will be greatest in the start-up period as we build our infrastructure and then decrease in the following periods. Start-up: Our start-up phase is anticipated to comprise [X] months in line with benchmark growth curves indicated by prior start-ups and published market data. Our assumptions were derived from the attached support.

Comments regarding how the Applicant plans to Fund operations:

We have recently negotiated a line of credit with XYZ Bank (a copy of the fully executed line of credit agreement has been included with our application) and this funding will allow us to purchase necessary equipment and pay for employees and other Operating Costs during our start-up period and the first few years of operations. We expect that our business operation will be self funded (i.e., revenue from operations will cover all anticipated costs and capital expenditures) by the second half of our second year in operation; we also expect to become profitable with positive cash flow in year three.

General Comments regarding contingencies:

Although we expect to be cash flow positive by the end of year 2, the recently negotiated line of credit will cover our operating costs for the first 4 years of operation if necessary. We have also entered into an agreement with XYZ Co. to assume our registrants should our business model not have the ability to sustain itself in future years. Agreement with XYZ Co. has been included with our application. A full description of risks and a range of potential outcomes and impacts are included in our responses to Question 49. These responses have quantified the impacts of certain probabilities and our negotiated funding and action plans as shown, are adequate to fund our business operations.

Template 1 - Financial Projections: Most Likely						Comments / Notes
In local currency (unless noted otherwise)						Provide name of local currency used.
Sec.	Reference / Formula	Live / Operational				
		Start-up Costs	Year 1	Year 2	Year 3	
I) Projected Cash inflows and outflows						
A)	Forecasted registration volume					
B)	Registration fee					
C)	Registration cash inflows					
D)	Other cash inflows					
	E) Total Cash Inflows					
Projected Operating Cash Outflows						
F) Labor:						
i)	Marketing Labor					
ii)	Customer Support Labor					
iii)	Technical Labor					
G)	Marketing					
H)	Facilities					
I)	General & Administrative					
J)	Interest and Taxes					
K)	Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
i)	(list type of activities being outsourced)					
ii)	(list type of activities being outsourced)					
iii)	(list type of activities being outsourced)					
iv)	(list type of activities being outsourced)					
v)	(list type of activities being outsourced)					
vi)	(list type of activities being outsourced)					
L)	Other Operating costs					
	M) Total Operating Cash Outflows					
	N) Projected Net Operating Cash flow					
IIa) Break out of Fixed and Variable Operating Cash Outflows						
A)	Total Variable Operating Costs					
B)	Total Fixed Operating Costs					
	C) Total Operating Cash Outflows					
		CHECK				
IIb) Break out of Critical Function Operating Cash Outflows						
A)	Operation of SRS					
B)	Provision of Whois					
C)	DNS Resolution for Registered Domain Names					
D)	Registry Data Escrow					
E)	Maintenance of Zone in accordance with DNSSEC					
	G) Total Critical Registry Function Cash Outflows					
	H) 3-year Total					
III) Projected Capital Expenditures						
A)	Hardware					
B)	Software					
C)	Furniture & Other Equipment					
D)	Outsourcing Capital Expenditures, if any (list the type of capital expenditures)					
i)						
ii)						
iii)						
iv)						
v)						
vi)						
E)	Other Capital Expenditures					
	F) Total Capital Expenditures					
IV) Projected Assets & Liabilities						
A) Cash						
B) Accounts receivable						
C) Other current assets						
	D) Total Current Assets					
E) Accounts payable						
F) Short-term Debt						
G) Other Current Liabilities						
	H) Total Current Liabilities					
I) Total Property, Plant & Equipment (PP&E)						
J) 3-year Reserve						
K) Other Long-term Assets						
	L) Total Long-term Assets					
M) Total Long-term Debt						
V) Projected Cash flow (excl. 3-year Reserve)						
A) Net operating cash flows						
B) Capital expenditures						
C) Change in Non Cash Current Assets						
D) Change in Total Current Liabilities						
E) Debt Adjustments						
F) Other Adjustments						
	G) Projected Net Cash flow					
VI) Sources of funds						
A) Debt:						
i) On-hand at time of application						
ii) Contingent and/or committed but not yet on-hand						
B) Equity:						
i) On-hand at time of application						
ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds					
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):						
Comments regarding how the Applicant plans to Fund operations:						
General Comments regarding contingencies:						

Template 2 - Financial Projections: Worst Case						Comments / Notes	
In local currency (unless noted otherwise)			Live / Operational				Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3		
I)	Projected Cash inflows and outflows						
	A) Forecasted registration volume						
	B) Registration fee						
	C) Registration cash inflows						
	D) Other cash inflows						
	E) Total Cash Inflows						
	Projected Operating Cash Outflows						
	F) Labor:						
	i) Marketing Labor						
	ii) Customer Support Labor						
	iii) Technical Labor						
	G) Marketing						
	H) Facilities						
	I) General & Administrative						
	J) Interest and Taxes						
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
	i) (list type of activities being outsourced)						
	ii) (list type of activities being outsourced)						
	iii) (list type of activities being outsourced)						
	iv) (list type of activities being outsourced)						
	v) (list type of activities being outsourced)						
	vi) (list type of activities being outsourced)						
	L) Other Operating costs						
	M) Total Operating Cash Outflows						
	N) Projected Net Operating Cash flow						
IIa)	Break out of Fixed and Variable Operating Cash Outflows						
	A) Total Variable Operating Costs						
	B) Total Fixed Operating Costs						
	C) Total Operating Cash Outflows						
		CHECK					
IIb)	Break out of Critical Function Operating Cash Outflows						
	A) Operation of SRS						
	B) Provision of Whois						
	C) DNS Resolution for Registered Domain Names						
	D) Registry Data Escrow						
	E) Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows						
	H) 3-year Total						
III)	Projected Capital Expenditures						
	A) Hardware						
	B) Software						
	C) Furniture & Other Equipment						
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
	i)						
	ii)						
	iii)						
	iv)						
	v)						
	vi)						
	E) Other Capital Expenditures						
	F) Total Capital Expenditures						
IV)	Projected Assets & Liabilities						
	A) Cash						
	B) Accounts receivable						
	C) Other current assets						
	D) Total Current Assets						
	E) Accounts payable						
	F) Short-term Debt						
	G) Other Current Liabilities						
	H) Total Current Liabilities						
	I) Total Property, Plant & Equipment (PP&E)						
	J) 3-year Reserve						
	K) Other Long-term Assets						
	L) Total Long-term Assets						
	M) Total Long-term Debt						
V)	Projected Cash flow (excl. 3-year Reserve)						
	A) Net operating cash flows						
	B) Capital expenditures						
	C) Change in Non Cash Current Assets	n/a					
	D) Change in Total Current Liabilities						
	E) Debt Adjustments	n/a					
	F) Other Adjustments						
	G) Projected Net Cash flow						
VI)	Sources of funds						
	A) Debt:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	B) Equity:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds						
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):							
Comments regarding how the Applicant plans to Fund operations:							
General Comments regarding contingencies:							



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 3

4 June 2012

Module 3

Objection Procedures

This module describes two types of mechanisms that may affect an application:

- I. The procedure by which ICANN's Governmental Advisory Committee may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.
- II. The dispute resolution procedure triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

3.1 *GAC Advice on New gTLDs*

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

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns

raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

- I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.
- II. The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.
- III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

3.2 *Public Objection and Dispute Resolution Process*

The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts.

A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.

As described in section 3.1 above, ICANN's Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to the grounds for objection enumerated in the public objection and dispute resolution process.

3.2.1 *Grounds for Objection*

A formal objection may be filed on any one of the following four grounds:

String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.

Legal Rights Objection – The applied-for gTLD string infringes the existing legal rights of the objector.

Limited Public Interest Objection – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

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

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see

<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

3.2.2 *Standing to Object*

Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round. In the case where an IDN ccTLD Fast Track request has been submitted before the public posting of gTLD applications received, and the Fast Track requestor wishes to file a string confusion objection to a gTLD application, the Fast Track requestor will be granted standing.
Legal rights	Rightsholders
Limited public interest	No limitations on who may file – however, subject to a “quick look” designed for early conclusion of frivolous and/or abusive objections
Community	Established institution associated with a clearly delineated community

3.2.2.1 *String Confusion Objection*

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation.

In the case where an existing TLD operator successfully asserts string confusion with an applicant, the application will be rejected.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible

outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures). If an objection by one gTLD applicant to another gTLD application is unsuccessful, the applicants may both move forward in the process without being considered in direct contention with one another.

3.2.2.2 Legal Rights Objection

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

An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name¹:

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.

3.2.2.3 Limited Public Interest Objection

Anyone may file a Limited Public Interest Objection. Due to the inclusive standing base, however, objectors are subject to a "quick look" procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.

A Limited Public Interest objection would be manifestly unfounded if it did not fall within one of the categories that have been defined as the grounds for such an objection (see subsection 3.5.3).

A Limited Public Interest objection that is manifestly unfounded may also be an abuse of the right to object. An objection may be framed to fall within one of the

¹ See also <http://www.iana.org/domains/int/policy/>.

accepted categories for Limited Public Interest objections, but other facts may clearly show that the objection is abusive. For example, multiple objections filed by the same or related parties against a single applicant may constitute harassment of the applicant, rather than a legitimate defense of legal norms that are recognized under general principles of international law. An objection that attacks the applicant, rather than the applied-for string, could be an abuse of the right to object.²

The quick look is the Panel's first task, after its appointment by the DRSP and is a review on the merits of the objection. The dismissal of an objection that is manifestly unfounded and/or an abuse of the right to object would be an Expert Determination, rendered in accordance with Article 21 of the New gTLD Dispute Resolution Procedure.

In the case where the quick look review does lead to the dismissal of the objection, the proceedings that normally follow the initial submissions (including payment of the full advance on costs) will not take place, and it is currently contemplated that the filing fee paid by the applicant would be refunded, pursuant to Procedure Article 14(e).

3.2.2.4 Community Objection

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. To qualify for standing for a community objection, the objector must prove both of the following:

² The jurisprudence of the European Court of Human Rights offers specific examples of how the term "manifestly ill-founded" has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides: "The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application." The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court's website <http://www.echr.coe.int>.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. E.g., Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility of an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: *Décision sur la recevabilité de la requête no 65831/01 présentée par Roger Garaudy contre la France* (2003); *Décision sur la recevabilité de la requête no 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal* (2004).

The jurisprudence of the European Court of Human Rights also provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR Article 35(3). See, for example, *Décision partielle sur la recevabilité de la requête no 61164/00 présentée par Gérard Duringer et autres contre la France et de la requête no 18589/02 contre la France* (2003).

It is an established institution – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

It has an ongoing relationship with a clearly delineated community – Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

3.2.3 Dispute Resolution Service Providers

To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.

- The International Centre for Dispute Resolution has agreed to administer disputes brought pursuant to string confusion objections.
- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed to administer disputes brought pursuant to legal rights objections.

- The International Center of Expertise of the International Chamber of Commerce has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest³ followed by dialogue with those candidates who responded. The call for expressions of interest specified several criteria for providers, including established services, subject matter expertise, global capacity, and operational capabilities. An important aspect of the selection process was the ability to recruit panelists who will engender the respect of the parties to the dispute.

3.2.4 Options in the Event of Objection

Applicants whose applications are the subject of an objection have the following options:

The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;

The applicant can file a response to the objection and enter the dispute resolution process (refer to Section 3.2); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

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

3.2.5 Independent Objector

A formal objection to a gTLD application may also be filed by the Independent Objector (IO). The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet.

In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of Limited Public Interest and Community.

³ See <http://www.icann.org/en/announcements/announcement-21dec07.htm>.

Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest.

Mandate and Scope - The IO may file objections against “highly objectionable” gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Limited Public Interest objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2).

The IO may file a Limited Public Interest objection against an application even if a Community objection has been filed, and vice versa.

The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed.

Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.

The IO may consider public comment when making an independent assessment whether an objection is warranted. The IO will have access to application comments received during the comment period.

In light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.

Selection – The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant. The Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant.

Although recommendations for IO candidates from the community are welcomed, the IO must be and remain independent and unaffiliated with any of the gTLD applicants. The various rules of ethics for judges and international arbitrators provide models for the IO to declare and maintain his/her independence.

The IO's (renewable) tenure is limited to the time necessary to carry out his/her duties in connection with a single round of gTLD applications.

Budget and Funding – The IO's budget would comprise two principal elements: (a) salaries and operating expenses, and (b) dispute resolution procedure costs – both of which should be funded from the proceeds of new gTLD applications.

As an objector in dispute resolution proceedings, the IO is required to pay filing and administrative fees, as well as advance payment of costs, just as all other objectors are required to do. Those payments will be refunded by the DRSP in cases where the IO is the prevailing party.

In addition, the IO will incur various expenses in presenting objections before DRSP panels that will not be refunded, regardless of the outcome. These expenses include the fees and expenses of outside counsel (if retained) and the costs of legal research or factual investigations.

3.3 Filing Procedures

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

- Objections; and
- Responses to objections.

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

Note that the rules and procedures of each DRSP specific to each objection ground must also be followed. See <http://newgtlds.icann.org/en/program-status/objection-dispute-resolution>.

3.3.1 Objection Filing Procedures

The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. Should an applicant wish to file a formal objection to another gTLD application, it would follow these same procedures.

- All objections must be filed electronically with the appropriate DRSP by the posted deadline date.

Objections will not be accepted by the DRSPs after this date.

- All objections must be filed in English.
- Each objection must be filed separately. An objector wishing to object to several applications must file a separate objection and pay the accompanying filing fees for each application that is the subject of an objection. If an objector wishes to object to an application on more than one ground, the objector must file separate objections and pay the accompanying filing fees for each objection ground.

Each objection filed by an objector must include:

- The name and contact information of the objector.
- A statement of the objector's basis for standing; that is, why the objector believes it meets the standing requirements to object.
- A description of the basis for the objection, including:
 - A statement giving the specific ground upon which the objection is being filed.
 - A detailed explanation of the validity of the objection and why it should be upheld.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

An objector must provide copies of all submissions to the DRSP associated with the objection proceedings to the applicant.

The DRSP will publish, and regularly update a list on its website identifying all objections as they are filed. ICANN will post on its website a notice of all objections filed once the objection filing period has closed.

3.3.2 Objection Filing Fees

At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will

dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

Funding from ICANN for objection filing fees, as well as for advance payment of costs (see subsection 3.4.7 below) is available to the At-Large Advisory Committee (ALAC). Funding for ALAC objection filing and dispute resolution fees is contingent on publication by ALAC of its approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require: bottom-up development of potential objections, discussion and approval of objections at the Regional At-Large Organization (RALO) level, and a process for consideration and approval of the objection by the At-Large Advisory Committee.

Funding from ICANN for objection filing fees, as well as for advance payment of costs, is available to individual national governments in the amount of USD 50,000 with the guarantee that a minimum of one objection per government will be fully funded by ICANN where requested. ICANN will develop a procedure for application and disbursement of funds.

Funding available from ICANN is to cover costs payable to the dispute resolution service provider and made directly to the dispute resolution service provider; it does not cover other costs such as fees for legal advice.

3.3.3 Response Filing Procedures

Upon notification that ICANN has published the list of all objections filed (refer to subsection 3.3.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, an applicant responding to several objections must file a separate response and pay the accompanying filing fee to respond to each objection.
- Responses must be filed electronically.

Each response filed by an applicant must include:

- The name and contact information of the applicant.

- A point-by-point response to the claims made by the objector.
- Any copies of documents that it considers to be a basis for the response.

Responses are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

Each applicant must provide copies of all submissions to the DRSP associated with the objection proceedings to the objector.

3.3.4 Response Filing Fees

At the time an applicant files its response, it is required to pay a filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded, which will result in the objector prevailing.

3.4 Objection Processing Overview

The information below provides an overview of the process by which DRSPs administer dispute proceedings that have been initiated. For comprehensive information, please refer to the New gTLD Dispute Resolution Procedure (included as an attachment to this module).

3.4.1 Administrative Review

Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's right to submit a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for filing an objection.

3.4.2 Consolidation of Objections

Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections. The DRSP shall endeavor to decide upon

consolidation prior to issuing its notice to applicants that the response should be filed and, where appropriate, shall inform the parties of the consolidation in that notice.

An example of a circumstance in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable.

3.4.3 *Mediation*

The parties to a dispute resolution proceeding are encouraged—but not required—to participate in mediation aimed at settling the dispute. Each DRSP has experts who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel constituted to issue an expert determination in the related dispute.

There are no automatic extensions of time associated with the conduct of negotiations or mediation. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. Absent exceptional circumstances, the parties must limit their requests for extension to 30 calendar days.

The parties are free to negotiate without mediation at any time, or to engage a mutually acceptable mediator of their own accord.

3.4.4 Selection of Expert Panels

A panel will consist of appropriately qualified experts appointed to each proceeding by the designated DRSP. Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.

There will be one expert in proceedings involving a string confusion objection.

There will be one expert, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes in proceedings involving an existing legal rights objection.

There will be three experts recognized as eminent jurists of international reputation, with expertise in relevant fields as appropriate, in proceedings involving a Limited Public Interest objection.

There will be one expert in proceedings involving a community objection.

Neither the experts, the DRSP, ICANN, nor their respective employees, directors, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

3.4.5 Adjudication

The panel may decide whether the parties shall submit any written statements in addition to the filed objection and response, and may specify time limits for such submissions.

In order to achieve the goal of resolving disputes rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the panel may require a party to produce additional evidence.

Disputes will usually be resolved without an in-person hearing. The panel may decide to hold such a hearing only in extraordinary circumstances.

3.4.6 Expert Determination

The DRSPs' final expert determinations will be in writing and will include:

- A summary of the dispute and findings;

- An identification of the prevailing party; and
- The reasoning upon which the expert determination is based.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.

3.4.7 Dispute Resolution Costs

Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while Limited Public Interest and community objection proceedings will involve hourly rates charged by the panelists.

Within ten (10) calendar days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant. Each party must make its advance payment within ten (10) calendar days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DSRP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

3.5 Dispute Resolution Principles (Standards)

Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

3.5.1 String Confusion Objection

A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

3.5.2 Legal Rights Objection

In interpreting and giving meaning to GNSO Recommendation 3 (“Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law”), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s registered or unregistered trademark or service mark (“mark”) or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector’s mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector’s mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.
2. Whether the objector's acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.
7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.
8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

In the case where a legal rights objection has been filed by an IGO, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO;
2. Historical coexistence of the IGO and the applicant's use of a similar name or acronym. Factors considered may include:
 - a. Level of global recognition of both entities;
 - b. Length of time the entities have been in existence;
 - c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6^{ter} of the Paris Convention for the Protection of Industrial Property.
3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym;
4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide; and
5. Whether the applicant's intended use of the applied-for gTLD would create a likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

3.5.3 Limited Public Interest Objection

An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)

- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a Limited Public Interest objection.

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;
- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of

discrimination that violate generally accepted legal norms recognized under principles of international law;

- Incitement to or promotion of child pornography or other sexual abuse of children; or
- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

3.5.4 Community Objection

The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. Each of these tests is described in further detail below.

Community – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;
- The level of formal boundaries around the community and what persons or entities are considered to form the community;

- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

Substantial Opposition – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
 - Regional
 - Subsectors of community
 - Leadership of community
 - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

Targeting – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be

balanced by a panel to determine this include but are not limited to:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

Detriment – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

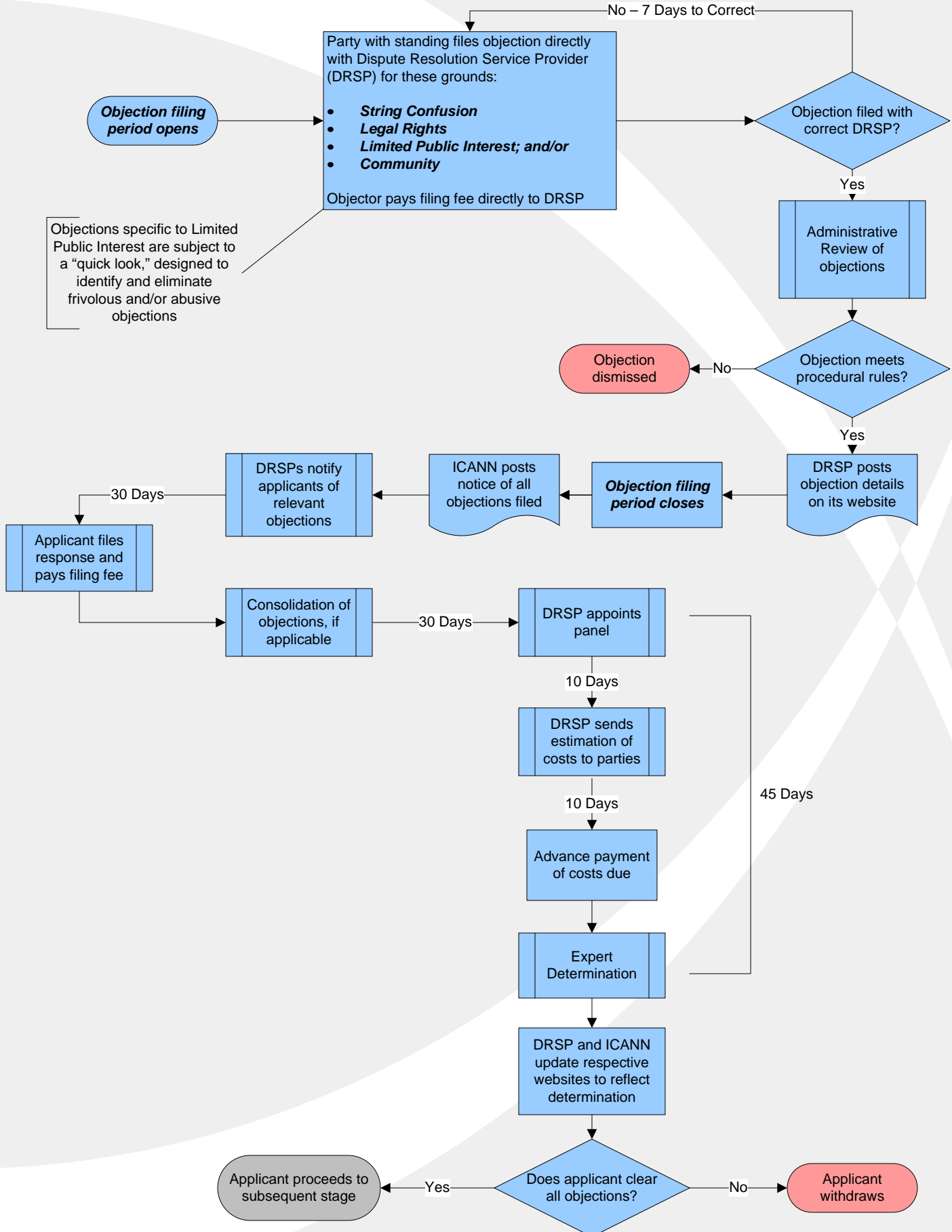
Factors that could be used by a panel in making this determination include but are not limited to:

- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

The objector must meet all four tests in the standard for the objection to prevail.

DRAFT - New gTLD Program – Objection and Dispute Resolution



Attachment to Module 3

New gTLD Dispute Resolution Procedure

These Procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP). Each of the DRSPs has a specific set of rules that will also apply to such proceedings.

NEW gTLD DISPUTE RESOLUTION PROCEDURE

Article 1. ICANN's New gTLD Program

- (a) The Internet Corporation for Assigned Names and Numbers ("ICANN") has implemented a program for the introduction of new generic Top-Level Domain Names ("gTLDs") in the internet. There will be a succession of rounds, during which applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN.
- (b) The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the "Procedure").
- (c) Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider ("DRSP") in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.

Article 2. Definitions

- (a) The "Applicant" or "Respondent" is an entity that has applied to ICANN for a new gTLD and that will be the party responding to the Objection.
- (b) The "Objector" is one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted.
- (c) The "Panel" is the panel of Experts, comprising one or three "Experts," that has been constituted by a DRSP in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) The "Expert Determination" is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (e) The grounds upon which an objection to a new gTLD may be filed are set out in full in Module 3 of the Applicant Guidebook. Such grounds are identified in this Procedure, and are based upon the Final Report on the Introduction of New Generic Top-Level Domains, dated 7 August 2007, issued by the ICANN Generic Names Supporting Organization (GNSO), as follows:
 - (i) "String Confusion Objection" refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.
 - (ii) "Existing Legal Rights Objection" refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others

that are recognized or enforceable under generally accepted and internationally recognized principles of law.

- (iii) "Limited Public Interest Objection" refers to the objection that the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law.
 - (iv) "Community Objection" refers to the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.
- (f) "DRSP Rules" are the rules of procedure of a particular DRSP that have been identified as being applicable to objection proceedings under this Procedure.

Article 3. Dispute Resolution Service Providers

The various categories of disputes shall be administered by the following DRSPs:

- (a) String Confusion Objections shall be administered by the International Centre for Dispute Resolution.
- (b) Existing Legal Rights Objections shall be administered by the Arbitration and Mediation Center of the World Intellectual Property Organization.
- (c) Limited Public Interest Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.
- (d) Community Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

Article 4. Applicable Rules

- (a) All proceedings before the Panel shall be governed by this Procedure and by the DRSP Rules that apply to a particular category of objection. The outcome of the proceedings shall be deemed an Expert Determination, and the members of the Panel shall act as experts.
- (b) The applicable DRSP Rules are the following:
 - (i) For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN's New gTLD Program.
 - (ii) For an Existing Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution.
 - (iii) For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
 - (iv) For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
- (c) In the event of any discrepancy between this Procedure and the applicable DRSP Rules, this Procedure shall prevail.

- (d) The place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings.
- (e) In all cases, the Panel shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its position.

Article 5. Language

- (a) The language of all submissions and proceedings under this Procedure shall be English.
- (b) Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.

Article 6. Communications and Time Limits

- (a) All communications by the Parties with the DRSPs and Panels must be submitted electronically. A Party that wishes to make a submission that is not available in electronic form (e.g., evidentiary models) shall request leave from the Panel to do so, and the Panel, in its sole discretion, shall determine whether to accept the non-electronic submission.
- (b) The DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings.
- (c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day that it is transmitted in accordance with paragraphs (a) and (b) of this Article.
- (d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (a) and (b) of this Article prior to or on the day of the expiration of the time limit.
- (e) For the purpose of calculating a period of time under this Procedure, such period shall begin to run on the day following the day when a notice or other communication is received.
- (f) Unless otherwise stated, all time periods provided in the Procedure are calculated on the basis of calendar days

Article 7. Filing of the Objection

- (a) A person wishing to object to a new gTLD for which an application has been submitted may file an objection ("Objection"). Any Objection to a proposed new gTLD must be filed before the published closing date for the Objection Filing period.
- (b) The Objection must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Applicant.
- (c) The electronic addresses for filing Objections (the specific addresses shall be made available once they are created by providers):
 - (i) A String Confusion Objection must be filed at: [●].

- (ii) An Existing Legal Rights Objection must be filed at: [●].
 - (iii) A Limited Public Interest Objection must be filed at: [●].
 - (iv) A Community Objection must be filed at: [●].
- (d) All Objections must be filed separately:
- (i) An Objector who wishes to object to an application on more than one ground must file separate objections with the appropriate DRSP(s).
 - (ii) An Objector who wishes to object to more than one gTLD must file separate objections to each gTLD with the appropriate DRSP(s).
- (e) If an Objection is filed with the wrong DRSP, that DRSP shall promptly notify the Objector of the error and that DRSP shall not process the incorrectly filed Objection. The Objector may then cure the error by filing its Objection with the correct DRSP within seven (7) days of receipt of the error notice, failing which the Objection shall be disregarded. If the Objection is filed with the correct DRSP within seven (7) days of receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

Article 8. Content of the Objection

- (a) The Objection shall contain, *inter alia*, the following information:
- (i) The names and contact information (address, telephone number, email address, etc.) of the Objector;
 - (ii) A statement of the Objector's basis for standing; and
 - (iii) A description of the basis for the Objection, including:
 - (aa) A statement of the ground upon which the Objection is being filed, as stated in Article 2(e) of this Procedure;
 - (bb) An explanation of the validity of the Objection and why the objection should be upheld.
- (b) The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.
- (c) At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

Article 9. Administrative Review of the Objection

- (a) The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within

fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

- (b) If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.
- (c) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.
- (d) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.
- (e) Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (iii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

Article 10. ICANN's Dispute Announcement

- (a) Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.
- (b) ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

Article 11. Response to the Objection

- (a) Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).
- (b) The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the transmission of the notice by the DRSP pursuant to Article 11(a).
- (c) The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.

- (d) The Response shall contain, inter alia, the following information:
 - (i) The names and contact information (address, telephone number, email address, etc.) of the Applicant; and
 - (ii) A point-by-point response to the statements made in the Objection.
- (e) The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.
- (f) At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be deemed to be in default, any Response disregarded and the Objection shall be deemed successful.
- (g) If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.
- (g) If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

Article 12. Consolidation of Objections

- (a) The DRSP is encouraged, whenever possible and practicable, and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.
- (b) If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, which decision must be made within 14 days of the notice given by the DRSP pursuant to Article 11(a), the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.
- (c) In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. The DRSP's determination on consolidation shall be final and not subject to appeal.
- (d) Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

Article 13. The Panel

- (a) The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.
- (b) Number and specific qualifications of Expert(s):
 - (i) There shall be one Expert in proceedings involving a String Confusion Objection.
 - (ii) There shall be one Expert or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.
 - (iii) There shall be three Experts recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a Limited Public Interest Objection.
 - (iv) There shall be one Expert in proceedings involving a Community Objection.
- (c) All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.
- (d) The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.
- (e) Unless required by a court of law or authorized in writing by the parties, an Expert shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

Article 14. Costs

- (a) Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").
- (b) Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Parties shall be credited against the amounts due for this advance payment of Costs.
- (c) The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.
- (d) Failure to make an advance payment of Costs:
 - (i) If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.

- (ii) If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.
- (e) Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

Article 15. Representation and Assistance

- (a) The parties may be represented or assisted by persons of their choice.
- (b) Each party or party representative shall communicate the name, contact information and function of such persons to the DRSP and the other party (or parties in case of consolidation).

Article 16. Negotiation and Mediation

- (a) The parties are encouraged, but not required, to participate in negotiations and/or mediation at any time throughout the dispute resolution process aimed at settling their dispute amicably.
- (b) Each DRSP shall be able to propose, if requested by the parties, a person who could assist the parties as mediator.
- (c) A person who acts as mediator for the parties shall not serve as an Expert in a dispute between the parties under this Procedure or any other proceeding under this Procedure involving the same gTLD.
- (d) The conduct of negotiations or mediation shall not, *ipso facto*, be the basis for a suspension of the dispute resolution proceedings or the extension of any deadline under this Procedure. Upon the joint request of the parties, the DRSP or (after it has been constituted) the Panel may grant the extension of a deadline or the suspension of the proceedings. Absent exceptional circumstances, such extension or suspension shall not exceed thirty (30) days and shall not delay the administration of any other Objection.
- (e) If, during negotiations and/or mediation, the parties agree on a settlement of the matter referred to the DRSP under this Procedure, the parties shall inform the DRSP, which shall terminate the proceedings, subject to the parties' payment obligation under this Procedure having been satisfied, and inform ICANN and the parties accordingly.

Article 17. Additional Written Submissions

- (a) The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.
- (b) The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

Article 18. Evidence

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

Article 19. Hearings

- (a) Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing.
- (b) The Panel may decide, on its own initiative or at the request of a party, to hold a hearing only in extraordinary circumstances.
- (c) In the event that the Panel decides to hold a hearing:
 - (i) The Panel shall decide how and where the hearing shall be conducted.
 - (ii) In order to expedite the proceedings and minimize costs, the hearing shall be conducted by videoconference if possible.
 - (iii) The hearing shall be limited to one day, unless the Panel decides, in exceptional circumstances, that more than one day is required for the hearing.
 - (iv) The Panel shall decide whether the hearing will be open to the public or conducted in private.

Article 20. Standards

- (a) For each category of Objection identified in Article 2(e), the Panel shall apply the standards that have been defined by ICANN.
- (b) In addition, the Panel may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.
- (c) The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.

Article 21. The Expert Determination

- (a) The DRSP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel. In specific circumstances such as consolidated cases and in consultation with the DRSP, if significant additional documentation is requested by the Panel, a brief extension may be allowed.
- (b) The Panel shall submit its Expert Determination in draft form to the DRSP's scrutiny as to form before it is signed, unless such scrutiny is specifically excluded by the applicable DRSP Rules. The modifications proposed by the DRSP to the Panel, if any, shall address only the form of the Expert Determination. The signed Expert Determination shall be communicated to the DRSP, which in turn will communicate that Expert Determination to the Parties and ICANN.
- (c) When the Panel comprises three Experts, the Expert Determination shall be made by a majority of the Experts.

- (d) The Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel shall be limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination, of its advance payment(s) of Costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.
- (e) The Expert Determination shall state the date when it is made, and it shall be signed by the Expert(s). If any Expert fails to sign the Expert Determination, it shall be accompanied by a statement of the reason for the absence of such signature.
- (f) In addition to providing electronic copies of its Expert Determination, the Panel shall provide a signed hard copy of the Expert Determination to the DRSP, unless the DRSP Rules provide for otherwise.
- (g) Unless the Panel decides otherwise, the Expert Determination shall be published in full on the DRSP's website.

Article 22. Exclusion of Liability

In addition to any exclusion of liability stipulated by the applicable DRSP Rules, neither the Expert(s), nor the DRSP and its employees, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

Article 23. Modification of the Procedure

- (a) ICANN may from time to time, in accordance with its Bylaws, modify this Procedure.
- (b) The version of this Procedure that is applicable to a dispute resolution proceeding is the version that was in effect on the day when the relevant application for a new gTLD is submitted.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 4

4 June 2012

Module 4

String Contention Procedures

This module describes situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.

4.1 String Contention

String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

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

4.1.1 Identification of Contention Sets

Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. That is, two or more applicants whose applied-for strings or designated variants are variant strings according to an IDN table submitted to ICANN would be considered in direct contention with one another. For example, if one applicant applies for string A and another applies for string B, and strings A and B are variant TLD strings as defined in Module 1, then the two applications are in direct contention.

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. The example that follows explains direct and indirect contention in greater detail.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.

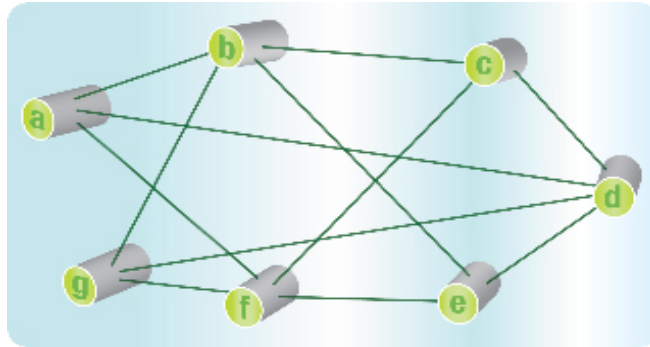


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While preliminary contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process stages have concluded. This is because any application excluded through those processes might modify a contention set identified earlier.

A contention set may be augmented, split into two sets, or eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding. The composition of a contention set may also be modified as some applications may be voluntarily withdrawn throughout the process.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

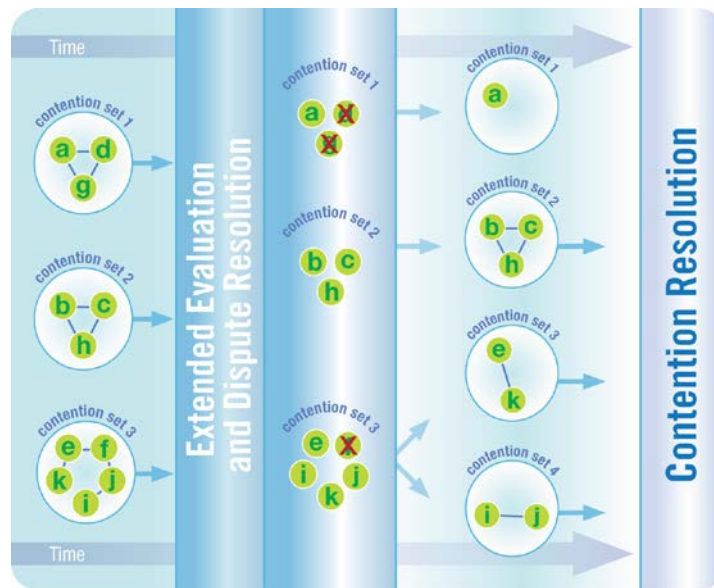


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through community priority evaluation or by other means, depending on the circumstances. In the string contention resolution stage, ICANN addresses each contention set to achieve an unambiguous resolution.

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

4.1.2 *Impact of String Confusion Dispute Resolution Proceedings on Contention Sets*

If an applicant files a string confusion objection against another application (refer to Module 3), and the panel finds that user confusion is probable (that is, finds in favor of the objector), the two applications will be placed in direct contention with each other. Thus, the outcome of a dispute resolution proceeding based on a string confusion objection would be a new contention set structure for the relevant applications, augmenting the original contention set.

If an applicant files a string confusion objection against another application, and the panel finds that string

confusion does not exist (that is, finds in favor of the responding applicant), the two applications will not be considered in direct contention with one another.

A dispute resolution outcome in the case of a string confusion objection filed by another applicant will not result in removal of an application from a previously established contention set.

4.1.3 Self-Resolution of String Contention

Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications. An applicant may not resolve string contention by selecting a new string or by replacing itself with a joint venture. It is understood that applicants may seek to establish joint ventures in their efforts to resolve string contention. However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the remaining application. Accordingly, new joint ventures must take place in a manner that does not materially change the application, to avoid being subject to re-evaluation.

4.1.4 Possible Contention Resolution Outcomes

An application that has successfully completed all previous stages and is no longer part of a contention set due to changes in the composition of the contention set (as described in subsection 4.1.1) or self-resolution by applicants in the contention set (as described in subsection 4.1.3) may proceed to the next stage.

An application that prevails in a contention resolution procedure, either community priority evaluation or auction, may proceed to the next stage.

In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, consider a case where string A is in contention with B, and B is in contention with C, but C is not in contention with A. If A wins the contention resolution procedure, B is eliminated but C can proceed since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

4.2 Community Priority Evaluation

Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process.

The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.

4.2.1 Eligibility for Community Priority Evaluation

As described in subsection 1.2.3 of Module 1, all applicants are required to identify whether their application type is:

- Community-based; or
- Standard.

Applicants designating their applications as community-based are also asked to respond to a set of questions in the application form to provide relevant information if a community priority evaluation occurs.

Only community-based applicants are eligible to participate in a community priority evaluation.

At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher.

Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.

4.2.2 Community Priority Evaluation Procedure

Community priority evaluations for each eligible contention set will be performed by a community priority panel appointed by ICANN to review these applications. The panel's role is to determine whether any of the community-based applications fulfills the community priority criteria. Standard applicants within the contention set, if any, will not participate in the community priority evaluation.

If a single community-based application is found to meet the community priority criteria (see subsection 4.2.3 below), that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as follows:

- In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.
- In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.

If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.

Results of each community priority evaluation will be posted when completed.

Applicants who are eliminated as a result of a community priority evaluation are eligible for a partial refund of the gTLD evaluation fee (see Module 1).

4.2.3 Community Priority Evaluation Criteria

The Community Priority Panel will review and score the one or more community-based applications having elected the community priority evaluation against four criteria as listed below.

The scoring process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). This calls for a holistic approach, taking multiple criteria into account, as reflected in the process. The scoring will be performed by a panel and be based on information provided in the application plus other relevant information available (such as public information regarding the community represented). The panel may also perform independent research, if deemed necessary to reach informed scoring decisions.

It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.

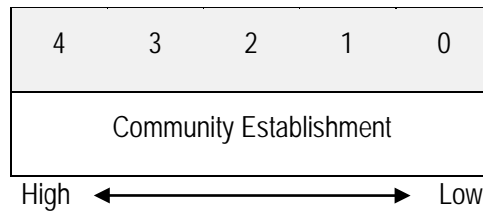
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any “double-counting” - any negative aspect found in assessing an application for one criterion

should only be counted there and should not affect the assessment for other criteria.

An application must score at least 14 points to prevail in a community priority evaluation. The outcome will be determined according to the procedure described in subsection 4.2.2.

Criterion #1: Community Establishment (0-4 points)

A maximum of 4 points is possible on the Community Establishment criterion:



As measured by:

A. Delineation (2)

2	1	0
Clearly delineated, organized, and pre-existing community.	Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.	Insufficient delineation and pre-existence for a score of 1.

B. Extension (2)

2	1	0
Community of considerable size and longevity.	Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.	Community of neither considerable size nor longevity.

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied-for string is not

considered here, but taken into account when scoring Criterion #2, "Nexus between Proposed String and Community.")

Criterion 1 Definitions

- "Community" - Usage of the expression "community" has evolved considerably from its Latin origin – "communitas" meaning "fellowship" – while still implying more of cohesion than a mere commonality of interest. Notably, as "community" is used throughout the application, there should be:
(a) an awareness and recognition of a community among its members; (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.
- "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.
- "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.
- "Extension" relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.
- "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size."

- "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

Criterion 1 Guidelines

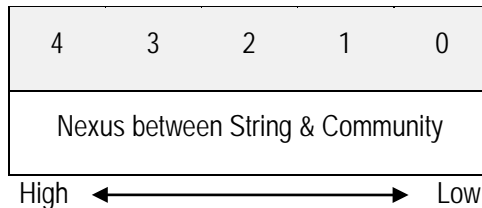
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."

With respect to "Delineation," if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.

Criterion #2: Nexus between Proposed String and Community (0-4 points)

A maximum of 4 points is possible on the Nexus criterion:



As measured by:

A. Nexus (3)

3	2	0
The string matches the name of the community or is a well-known short-form or abbreviation of the community	String identifies the community, but does not qualify for a score of 3.	String nexus does not fulfill the requirements for a score of 2.

3	2	0
---	---	---

name.

B. Uniqueness (1)

1	0
---	---

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

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

Criterion 2 Definitions

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

Criterion 2 Guidelines

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

With respect to "Nexus," for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for ".TENNIS") then it would not qualify for a 2.

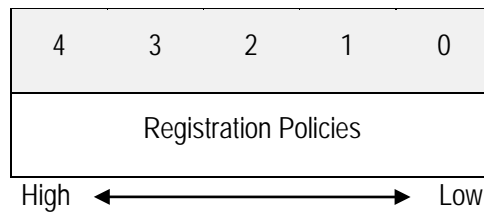
With respect to "Uniqueness," "significant meaning" relates to the public in general, with consideration of the community language context added.

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

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

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

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



As measured by:

A. Eligibility (1)

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

B. Name selection (1)

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

C. Content and use (1)

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

D. Enforcement (1)

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

This section evaluates the applicant's registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants, i.e. those desiring to register second-level domain names under the registry.

Criterion 3 Definitions

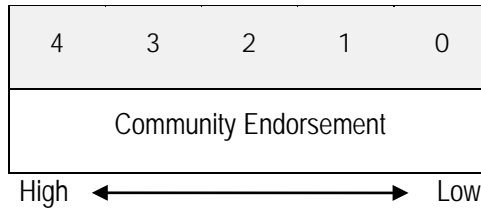
- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the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

Criterion 3 Guidelines

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

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

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



As measured by:

A. Support (2)

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

B. Opposition (2)

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

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

Criterion 4 Definitions

- "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by

the community members as representative of the community.

- "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

Criterion 4 Guidelines

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

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

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

To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.

When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed

in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for “Opposition.” To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.

4.3 Auction: Mechanism of Last Resort

It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

An auction will not take place to resolve contention in the case where the contending applications are for geographic names (as defined in Module 2). In this case, the applications will be suspended pending resolution by the applicants.

An auction will take place, where contention has not already been resolved, in the case where an application for a geographic name is in a contention set with applications for similar strings that have not been identified as geographic names.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching the auction stage. However, there is a possibility that significant funding will accrue to ICANN as a result of one or more auctions.¹

¹ The purpose of an auction is to resolve contention in a clear, objective manner. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

4.3.1 Auction Procedures

An auction of two or more applications within a contention set is conducted as follows. The auctioneer successively increases the prices associated with applications within the contention set, and the respective applicants indicate their willingness to pay these prices. As the prices rise, applicants will successively choose to exit from the auction. When a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude. At the auction's conclusion, the applicants with remaining applications will pay the resulting prices and proceed toward delegation. This procedure is referred to as an "ascending-clock auction."

This section provides applicants an informal introduction to the practicalities of participation in an ascending-clock auction. It is intended only as a general introduction and is only preliminary. The detailed set of Auction Rules will be available prior to the commencement of any auction proceedings. If any conflict arises between this module and the auction rules, the auction rules will prevail.

For simplicity, this section will describe the situation where a contention set consists of two or more applications for identical strings.

All auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based software system designed especially for auction. The auction software system will be compatible with current versions of most prevalent browsers, and will not require the local installation of any additional software.

Auction participants ("bidders") will receive instructions for access to the online auction site. Access to the site will be password-protected and bids will be encrypted through SSL. If a bidder temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described

The amount of funding resulting from auctions, if any, will not be known until all relevant applications have completed this step. Thus, a detailed mechanism for allocation of these funds is not being created at present. However, a process can be pre-established to enable community consultation in the event that such funds are collected. This process will include, at a minimum, publication of data on any funds collected, and public comment on any proposed models.

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

The auction will be carried out in a series of auction rounds, as illustrated in Figure 4-3. The sequence of events is as follows:

1. For each auction round, the auctioneer will announce in advance: (1) the start-of-round price, (2) the end-of-round price, and (3) the starting and ending times of the auction round. In the first auction round, the start-of-round price for all bidders in the auction will be USD 0. In later auction rounds, the start-of-round price will be its end-of-round price from the previous auction round.



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

2. During each auction round, bidders will be required to submit a bid or bids representing their willingness to pay within the range of intermediate prices between the start-of-round and end-of-round prices. In this way a bidder indicates its willingness to stay in the auction at all prices through and including the end-of-auction round price, or its wish to exit the auction at a price less than the end-of-auction round price, called the exit bid.
3. Exit is irrevocable. If a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round.

4. Bidders may submit their bid or bids at any time during the auction round.
5. Only bids that comply with all aspects of the auction rules will be considered valid. If more than one valid bid is submitted by a given bidder within the time limit of the auction round, the auctioneer will treat the last valid submitted bid as the actual bid.
6. At the end of each auction round, bids become the bidders' legally-binding offers to secure the relevant gTLD strings at prices up to the respective bid amounts, subject to closure of the auction in accordance with the auction rules. In later auction rounds, bids may be used to exit from the auction at subsequent higher prices.
7. After each auction round, the auctioneer will disclose the aggregate number of bidders remaining in the auction at the end-of-round prices for the auction round, and will announce the prices and times for the next auction round.
 - Each bid should consist of a single price associated with the application, and such price must be greater than or equal to the start-of-round price.
 - If the bid amount is strictly less than the end-of-round price, then the bid is treated as an exit bid at the specified amount, and it signifies the bidder's binding commitment to pay up to the bid amount if its application is approved.
 - If the bid amount is greater than or equal to the end-of-round price, then the bid signifies that the bidder wishes to remain in the auction at all prices in the current auction round, and it signifies the bidder's binding commitment to pay up to the end-of-round price if its application is approved. Following such bid, the application cannot be eliminated within the current auction round.
 - To the extent that the bid amount exceeds the end-of-round price, then the bid is also treated as a proxy bid to be carried forward to the next auction round. The bidder will be permitted to change the proxy bid amount in the next auction round, and the amount of the proxy bid will not constrain the bidder's ability to submit any valid bid amount in the next auction round.

- No bidder is permitted to submit a bid for any application for which an exit bid was received in a prior auction round. That is, once an application has exited the auction, it may not return.
 - If no valid bid is submitted within a given auction round for an application that remains in the auction, then the bid amount is taken to be the amount of the proxy bid, if any, carried forward from the previous auction round or, if none, the bid is taken to be an exit bid at the start-of-round price for the current auction round.
8. This process continues, with the auctioneer increasing the price range for each given TLD string in each auction round, until there is one remaining bidder at the end-of-round price. After an auction round in which this condition is satisfied, the auction concludes and the auctioneer determines the clearing price. The last remaining application is deemed the successful application, and the associated bidder is obligated to pay the clearing price.

Figure 4-4 illustrates how an auction for five contending applications might progress.

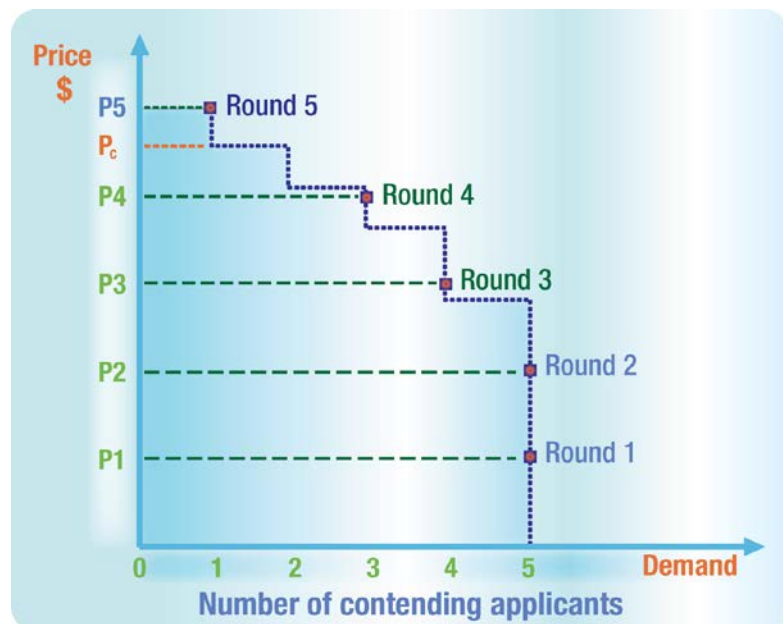


Figure 4-4 – Example of an auction for five mutually-contending applications.

- Before the first auction round, the auctioneer announces the end-of-round price P_1 .
- During Auction round 1, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_1 . Since the aggregate demand exceeds one, the auction proceeds to Auction round 2. The auctioneer discloses that five contending applications remained at P_1 and announces the end-of-round price P_2 .
- During Auction round 2, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_2 . The auctioneer discloses that five contending applications remained at P_2 and announces the end-of-round price P_3 .
- During Auction round 3, one of the bidders submits an exit bid at slightly below P_3 , while the other four bidders submit bids of at least P_3 . The auctioneer discloses that four contending applications remained at P_3 and announces the end-of-round price P_4 .
- During Auction round 4, one of the bidders submits an exit bid midway between P_3 and P_4 , while the other three remaining bidders submit bids of at least P_4 . The auctioneer discloses that three contending applications remained at P_4 and announces the end-of-auction round price P_5 .
- During Auction round 5, one of the bidders submits an exit bid at slightly above P_4 , and one of the bidders submits an exit bid at P_c midway between P_4 and P_5 . The final bidder submits a bid greater than P_c . Since the aggregate demand at P_5 does not exceed one, the auction concludes in Auction round 5. The application associated with the highest bid in Auction round 5 is deemed the successful application. The clearing price is P_c , as this is the lowest price at which aggregate demand can be met.

To the extent possible, auctions to resolve multiple string contention situations will be conducted simultaneously.

4.3.1.1 Currency

For bids to be comparable, all bids in the auction will be submitted in any integer (whole) number of US dollars.

4.3.1.2 Fees

A bidding deposit will be required of applicants participating in the auction, in an amount to be determined. The bidding deposit must be transmitted by wire transfer to a specified bank account specified by ICANN or its auction provider at a major international bank, to be received in advance of the auction date. The amount of the deposit will determine a bidding limit for each bidder: the bidding deposit will equal 10% of the bidding limit; and the bidder will not be permitted to submit any bid in excess of its bidding limit.

In order to avoid the need for bidders to pre-commit to a particular bidding limit, bidders may be given the option of making a specified deposit that will provide them with unlimited bidding authority for a given application. The amount of the deposit required for unlimited bidding authority will depend on the particular contention set and will be based on an assessment of the possible final prices within the auction.

All deposits from non-defaulting losing bidders will be returned following the close of the auction.

4.3.2 Winning Bid Payments

Any applicant that participates in an auction will be required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction, including that its bids are legally binding commitments to pay the amount bid if it wins (i.e., if its application is approved), and to enter into the prescribed registry agreement with ICANN— together with a specified penalty for defaulting on payment of its winning bid or failing to enter into the required registry agreement.

The winning bidder in any auction will be required to pay the full amount of the final price within 20 business days of the end of the auction. Payment is to be made by wire transfer to the same international bank account as the bidding deposit, and the applicant's bidding deposit will be credited toward the final price.

In the event that a bidder anticipates that it would require a longer payment period than 20 business days due to verifiable government-imposed currency restrictions, the bidder may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all bidders within the same contention set.

Any winning bidder for whom the full amount of the final price is not received within 20 business days of the end of an auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that receipt of full payment is imminent.

Any winning bidder for whom the full amount of the final price is received within 20 business days of the end of an auction retains the obligation to execute the required registry agreement within 90 days of the end of auction. Such winning bidder who does not execute the agreement within 90 days of the end of the auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that execution of the registry agreement is imminent.

4.3.3 Post-Default Procedures

Once declared in default, any winning bidder is subject to immediate forfeiture of its position in the auction and assessment of default penalties. After a winning bidder is declared in default, the remaining bidders will receive an offer to have their applications accepted, one at a time, in descending order of their exit bids. In this way, the next bidder would be declared the winner subject to payment of its last bid price. The same default procedures and penalties are in place for any runner-up bidder receiving such an offer.

Each bidder that is offered the relevant gTLD will be given a specified period—typically, four business days—to respond as to whether it wants the gTLD. A bidder who responds in the affirmative will have 20 business days to submit its full payment. A bidder who declines such an offer cannot revert on that statement, has no further obligations in this context and will not be considered in default.

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

² If bidders were given the option of making a specified deposit that provided them with unlimited bidding authority for a given application and if the winning bidder utilized this option, then the penalty for defaulting on a winning bid will be the lesser of the following: (1) 10% of the defaulting bid, or (2) the specified deposit amount that provided the bidder with unlimited bidding authority.

4.4 Contention Resolution and Contract Execution

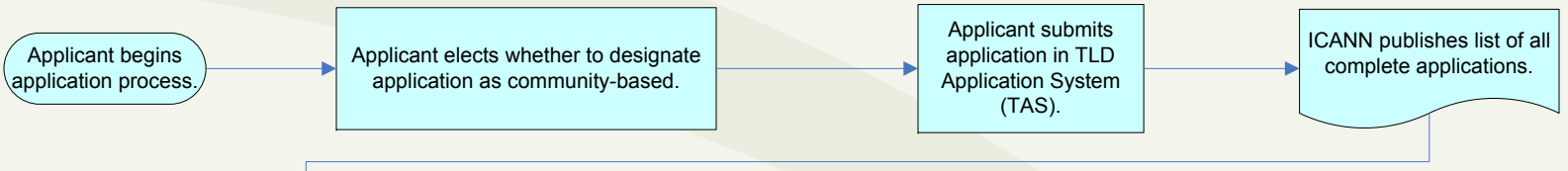
An applicant that has been declared the winner of a contention resolution process will proceed by entering into the contract execution step. (Refer to section 5.1 of Module 5.)

If a winner of the contention resolution procedure has not executed a contract within 90 calendar days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time. If the winning applicant can demonstrate that it is working diligently and in good faith toward successful completion of the steps necessary for entry into the registry agreement, ICANN may extend the 90-day period at its discretion. Runner-up applicants have no claim of priority over the winning application, even after what might be an extended period of negotiation.

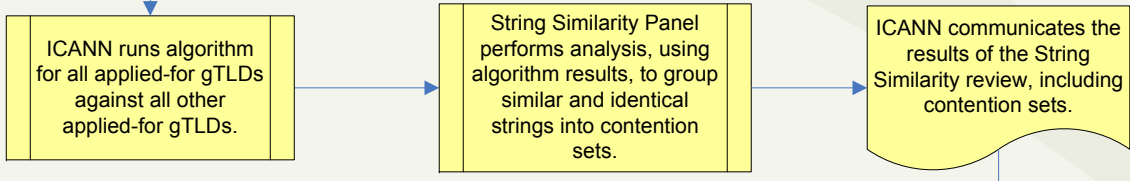
DRAFT - New gTLD Program - String Contention



Application/
Admin Check



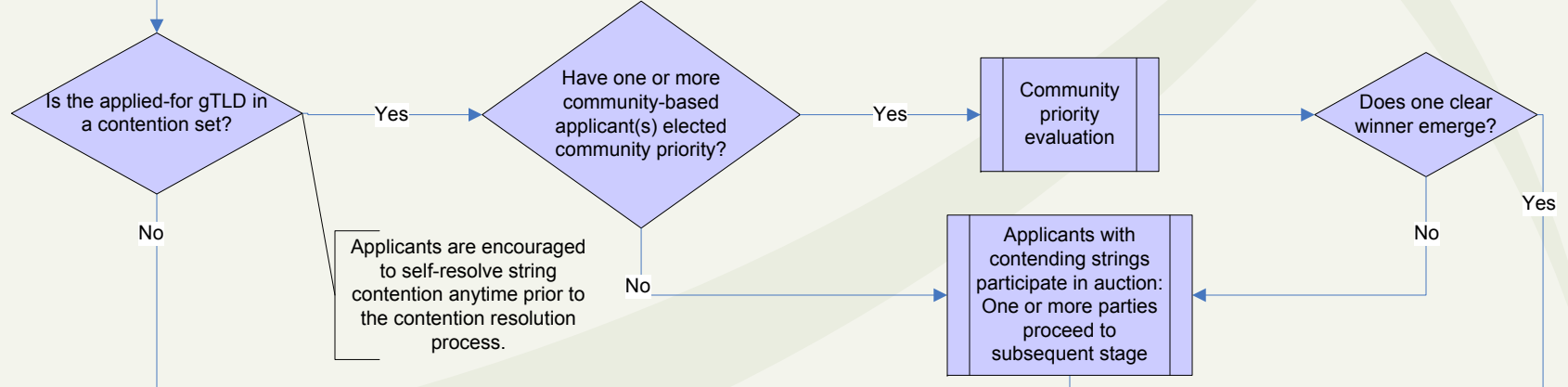
Initial Evaluation (IE)
String Review



IE + EE
+ Dispute Res

IE, Extended Evaluation (EE), and Dispute Resolution continue. Some applications may not pass certain elements of the review process, **which may alter the contention sets.**

String Contention



Transition to
Delegation

Applicant enters Transition to Delegation phase



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 5

4 June 2012

Module 5

Transition to Delegation

This module describes the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.

5.1 Registry Agreement

All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN before proceeding to delegation.

After the close of each stage in the process, ICANN will send a notification to those successful applicants that are eligible for execution of a registry agreement at that time.

To proceed, applicants will be asked to provide specified information for purposes of executing the registry agreement:

1. Documentation of the applicant's continued operations instrument (see Specification 8 to the agreement).
2. Confirmation of contact information and signatory to the agreement.
3. Notice of any material changes requested to the terms of the agreement.
4. The applicant must report: (i) any ownership interest it holds in any registrar or reseller of registered names, (ii) if known, any ownership interest that a registrar or reseller of registered names holds in the applicant, and (iii) if the applicant controls, is controlled by, or is under common control with any registrar or reseller of registered names. ICANN retains the right to refer an application to a competition authority prior to entry into the registry agreement if it is determined that the registry-registrar cross-ownership

arrangements might raise competition issues. For this purpose "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit additional updated documentation and information before entering into the registry agreement.

ICANN will begin processing registry agreements one month after the date of the notification to successful applicants. Requests will be handled in the order the complete information is received.

Generally, the process will include formal approval of the agreement without requiring additional Board review, so long as: the application passed all evaluation criteria; there are no material changes in circumstances; and there are no material changes to the base agreement. There may be other cases where the Board requests review of an application.

Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.

The registry agreement can be reviewed in the attachment to this module. Certain provisions in the agreement are labeled as applicable to governmental and intergovernmental entities only. Private entities, even if supported by a government or IGO, would not ordinarily be eligible for these special provisions.

All successful applicants are expected to enter into the agreement substantially as written. Applicants may request and negotiate terms by exception; however, this extends

the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement.

ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.

5.2 Pre-Delegation Testing

Each applicant will be required to complete pre-delegation technical testing as a prerequisite to delegation into the root zone. This pre-delegation test must be completed within the time period specified in the registry agreement.

The purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.

The test is also intended to indicate that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the requirements that follow.

The test elements cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance. At ICANN's discretion, aspects of the applicant's self-certification documentation can be audited either on-site at the services delivery point of the registry or elsewhere as determined by ICANN.

5.2.1 Testing Procedures

The applicant may initiate the pre-delegation test by submitting to ICANN the Pre-Delegation form and accompanying documents containing all of the following information:

- All name server names and IPv4/IPv6 addresses to be used in serving the new TLD data;
- If using anycast, the list of names and IPv4/IPv6 unicast addresses allowing the identification of each individual server in the anycast sets;
- If IDN is supported, the complete IDN tables used in the registry system;
- A test zone for the new TLD must be signed at test time and the valid key-set to be used at the time of testing must be provided to ICANN in the documentation, as well as the TLD DNSSEC Policy Statement (DPS);
- The executed agreement between the selected escrow agent and the applicant; and
- Self-certification documentation as described below for each test item.

ICANN will review the material submitted and in some cases perform tests in addition to those conducted by the applicant. After testing, ICANN will assemble a report with the outcome of the tests and provide that report to the applicant.

Any clarification request, additional information request, or other request generated in the process will be highlighted and listed in the report sent to the applicant.

ICANN may request the applicant to complete load tests considering an aggregated load where a single entity is performing registry services for multiple TLDs.

Once an applicant has met all of the pre-delegation testing requirements, it is eligible to request delegation of its applied-for gTLD.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

5.2.2 Test Elements: DNS Infrastructure

The first set of test elements concerns the DNS infrastructure of the new gTLD. In all tests of the DNS infrastructure, all requirements are independent of whether IPv4 or IPv6 is used. All tests shall be done both over IPv4 and IPv6, with reports providing results according to both protocols.

UDP Support -- The DNS infrastructure to which these tests apply comprises the complete set of servers and network infrastructure to be used by the chosen providers to deliver DNS service for the new gTLD to the Internet. The documentation provided by the applicant must include the results from a system performance test indicating available network and server capacity and an estimate of expected capacity during normal operation to ensure stable service as well as to adequately address Distributed Denial of Service (DDoS) attacks.

Self-certification documentation shall include data on load capacity, latency and network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries responded against an increasing number of queries per second generated from local (to the servers) traffic generators. The table shall include at least 20 data points and loads of UDP-based queries that will cause up to 10% query loss against a randomly selected subset of servers within the applicant's DNS infrastructure. Responses must either contain zone data or be NXDOMAIN or NODATA responses to be considered valid.

Query latency shall be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing information on the transit and peering arrangements for the DNS server locations, listing the AS numbers of the transit providers or peers at each point of presence and available bandwidth at those points of presence.

TCP support -- TCP transport service for DNS queries and responses must be enabled and provisioned for expected load. ICANN will review the capacity self-certification documentation provided by the applicant and will perform TCP reachability and transaction capability tests across a

randomly selected subset of the name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Self-certification documentation shall include data on load capacity, latency and external network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries that generated a valid (zone data, NODATA, or NXDOMAIN) response against an increasing number of queries per second generated from local (to the name servers) traffic generators. The table shall include at least 20 data points and loads that will cause up to 10% query loss (either due to connection timeout or connection reset) against a randomly selected subset of servers within the applicant's DNS infrastructure.

Query latency will be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing records of TCP-based DNS queries from nodes external to the network hosting the servers. These locations may be the same as those used for measuring latency above.

DNSSEC support -- Applicant must demonstrate support for EDNS(0) in its server infrastructure, the ability to return correct DNSSEC-related resource records such as DNSKEY, RRSIG, and NSEC/NSEC3 for the signed zone, and the ability to accept and publish DS resource records from second-level domain administrators. In particular, the applicant must demonstrate its ability to support the full life cycle of KSK and ZSK keys. ICANN will review the self-certification materials as well as test the reachability, response sizes, and DNS transaction capacity for DNS queries using the EDNS(0) protocol extension with the "DNSSEC OK" bit set for a randomly selected subset of all name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Load capacity, query latency, and reachability shall be documented as for UDP and TCP above.

5.2.3 Test Elements: Registry Systems

As documented in the registry agreement, registries must provide support for EPP within their Shared Registration System, and provide Whois service both via port 43 and a web interface, in addition to support for the DNS. This section details the requirements for testing these registry systems.

System performance -- The registry system must scale to meet the performance requirements described in Specification 10 of the registry agreement and ICANN will require self-certification of compliance. ICANN will review the self-certification documentation provided by the applicant to verify adherence to these minimum requirements.

Whois support -- Applicant must provision Whois services for the anticipated load. ICANN will verify that Whois data is accessible over IPv4 and IPv6 via both TCP port 43 and via a web interface and review self-certification documentation regarding Whois transaction capacity. Response format according to Specification 4 of the registry agreement and access to Whois (both port 43 and via web) will be tested by ICANN remotely from various points on the Internet over both IPv4 and IPv6.

Self-certification documents shall describe the maximum number of queries per second successfully handled by both the port 43 servers as well as the web interface, together with an applicant-provided load expectation.

Additionally, a description of deployed control functions to detect and mitigate data mining of the Whois database shall be documented.

EPP Support -- As part of a shared registration service, applicant must provision EPP services for the anticipated load. ICANN will verify conformance to appropriate RFCs (including EPP extensions for DNSSEC). ICANN will also review self-certification documentation regarding EPP transaction capacity.

Documentation shall provide a maximum Transaction per Second rate for the EPP interface with 10 data points corresponding to registry database sizes from 0 (empty) to the expected size after one year of operation, as determined by applicant.

Documentation shall also describe measures taken to handle load during initial registry operations, such as a land-rush period.

IPv6 support -- The ability of the registry to support registrars adding, changing, and removing IPv6 DNS records supplied by registrants will be tested by ICANN. If the registry supports EPP access via IPv6, this will be tested by ICANN remotely from various points on the Internet.

DNSSEC support -- ICANN will review the ability of the registry to support registrars adding, changing, and removing DNSSEC-related resource records as well as the registry's overall key management procedures. In particular, the applicant must demonstrate its ability to support the full life cycle of key changes for child domains. Inter-operation of the applicant's secure communication channels with the IANA for trust anchor material exchange will be verified.

The practice and policy document (also known as the DNSSEC Policy Statement or DPS), describing key material storage, access and usage for its own keys is also reviewed as part of this step.

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

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

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

5.3 *Delegation Process*

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

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

5.4 *Ongoing Operations*

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

5.4.1 *What is Expected of a Registry Operator*

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

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

A registry operator is obligated to:

Operate the TLD in a stable and secure manner. The registry operator is responsible for the entire technical operation of the TLD. As noted in RFC 1591¹:

"The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence. This includes keeping

¹ See <http://www.rfc-editor.org/rfc/rfc1591.txt>

the central IR² (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience.”

The registry operator is required to comply with relevant technical standards in the form of RFCs and other guidelines. Additionally, the registry operator must meet performance specifications in areas such as system downtime and system response times (see Specifications 6 and 10 of the registry agreement).

Comply with consensus policies and temporary policies.

gTLD registry operators are required to comply with consensus policies. Consensus policies may relate to a range of topics such as issues affecting interoperability of the DNS, registry functional and performance specifications, database security and stability, or resolution of disputes over registration of domain names.

To be adopted as a consensus policy, a policy must be developed by the Generic Names Supporting Organization (GNSO)³ following the process in Annex A of the ICANN Bylaws.⁴ The policy development process involves deliberation and collaboration by the various stakeholder groups participating in the process, with multiple opportunities for input and comment by the public, and can take significant time.

Examples of existing consensus policies are the Inter-Registrar Transfer Policy (governing transfers of domain names between registrars), and the Registry Services Evaluation Policy (establishing a review of proposed new registry services for security and stability or competition concerns), although there are several more, as found at <http://www.icann.org/en/general/consensus-policies.htm>.

gTLD registry operators are obligated to comply with both existing consensus policies and those that are developed in the future. Once a consensus policy has been formally adopted, ICANN will provide gTLD registry operators with notice of the requirement to implement the new policy and the effective date.

² IR is a historical reference to “Internet Registry,” a function now performed by ICANN.

³ <http://gns0.icann.org>

⁴ <http://www.icann.org/en/general/bylaws.htm#AnnexA>

In addition, the ICANN Board may, when required by circumstances, establish a temporary policy necessary to maintain the stability or security of registry services or the DNS. In such a case, all gTLD registry operators will be required to comply with the temporary policy for the designated period of time.

For more information, see Specification 1 of the registry agreement.

Implement start-up rights protection measures. The registry operator must implement, at a minimum, a Sunrise period and a Trademark Claims service during the start-up phases for registration in the TLD, as provided in the registry agreement. These mechanisms will be supported by the established Trademark Clearinghouse as indicated by ICANN.

The Sunrise period allows eligible rightsholders an early opportunity to register names in the TLD.

The Trademark Claims service provides notice to potential registrants of existing trademark rights, as well as notice to rightsholders of relevant names registered. Registry operators may continue offering the Trademark Claims service after the relevant start-up phases have concluded.

For more information, see Specification 7 of the registry agreement and the Trademark Clearinghouse model accompanying this module.

Implement post-launch rights protection measures. The registry operator is required to implement decisions made under the Uniform Rapid Suspension (URS) procedure, including suspension of specific domain names within the registry. The registry operator is also required to comply with and implement decisions made according to the Trademark Post-Delegation Dispute Resolution Policy (PDDRP).

The required measures are described fully in the URS and PDDRP procedures accompanying this module. Registry operators may introduce additional rights protection measures relevant to the particular gTLD.

Implement measures for protection of country and territory names in the new gTLD. All new gTLD registry operators are required to provide certain minimum protections for country and territory names, including an initial reservation requirement and establishment of applicable rules and

procedures for release of these names. The rules for release can be developed or agreed to by governments, the GAC, and/or approved by ICANN after a community discussion. Registry operators are encouraged to implement measures for protection of geographical names in addition to those required by the agreement, according to the needs and interests of each gTLD's particular circumstances. (See Specification 5 of the registry agreement).

Pay recurring fees to ICANN. In addition to supporting expenditures made to accomplish the objectives set out in ICANN's mission statement, these funds enable the support required for new gTLDs, including: contractual compliance, registry liaison, increased registrar accreditations, and other registry support activities. The fees include both a fixed component (USD 25,000 annually) and, where the TLD exceeds a transaction volume, a variable fee based on transaction volume. See Article 6 of the registry agreement.

Regularly deposit data into escrow. This serves an important role in registrant protection and continuity for certain instances where the registry or one aspect of the registry operations experiences a system failure or loss of data. (See Specification 2 of the registry agreement.)

Deliver monthly reports in a timely manner. A registry operator must submit a report to ICANN on a monthly basis. The report includes registrar transactions for the month and is used by ICANN for calculation of registrar fees. (See Specification 3 of the registry agreement.)

Provide Whois service. A registry operator must provide a publicly available Whois service for registered domain names in the TLD. (See Specification 4 of the registry agreement.)

Maintain partnerships with ICANN-accredited registrars. A registry operator creates a Registry-Registrar Agreement (RRA) to define requirements for its registrars. This must include certain terms that are specified in the Registry Agreement, and may include additional terms specific to the TLD. A registry operator must provide non-discriminatory access to its registry services to all ICANN-accredited registrars with whom it has entered into an RRA, and who are in compliance with the requirements. This includes providing advance notice of pricing changes to all

registrars, in compliance with the time frames specified in the agreement. (See Article 2 of the registry agreement.)

Maintain an abuse point of contact. A registry operator must maintain and publish on its website a single point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller. A registry operator must also take reasonable steps to investigate and respond to any reports from law enforcement, governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. (See Article 2 and Specification 6 of the registry agreement.)

Cooperate with contractual compliance audits. To maintain a level playing field and a consistent operating environment, ICANN staff performs periodic audits to assess contractual compliance and address any resulting problems. A registry operator must provide documents and information requested by ICANN that are necessary to perform such audits. (See Article 2 of the registry agreement.)

Maintain a Continued Operations Instrument. A registry operator must, at the time of the agreement, have in place a continued operations instrument sufficient to fund basic registry operations for a period of three (3) years. This requirement remains in place for five (5) years after delegation of the TLD, after which time the registry operator is no longer required to maintain the continued operations instrument. (See Specification 8 to the registry agreement.)

Maintain community-based policies and procedures. If the registry operator designated its application as community-based at the time of the application, the registry operator has requirements in its registry agreement to maintain the community-based policies and procedures it specified in its application. The registry operator is bound by the Registry Restrictions Dispute Resolution Procedure with respect to disputes regarding execution of its community-based policies and procedures. (See Article 2 to the registry agreement.)

Have continuity and transition plans in place. This includes performing failover testing on a regular basis. In the event that a transition to a new registry operator becomes necessary, the registry operator is expected to cooperate

by consulting with ICANN on the appropriate successor, providing the data required to enable a smooth transition, and complying with the applicable registry transition procedures. (See Articles 2 and 4 of the registry agreement.)

Make TLD zone files available via a standardized process.

This includes provision of access to the registry's zone file to credentialed users, according to established access, file, and format standards. The registry operator will enter into a standardized form of agreement with zone file users and will accept credential information for users via a clearinghouse. (See Specification 4 of the registry agreement.)

Implement DNSSEC. The registry operator is required to sign the TLD zone files implementing Domain Name System Security Extensions (DNSSEC) in accordance with the relevant technical standards. The registry must accept public key material from registrars for domain names registered in the TLD, and publish a DNSSEC Policy Statement describing key material storage, access, and usage for the registry's keys. (See Specification 6 of the registry agreement.)

5.4.2 What is Expected of ICANN

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

ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations. See <http://www.icann.org/en/compliance/> for more information on current contractual compliance activities.

ICANN's Bylaws require ICANN to act in an open and transparent manner, and to provide equitable treatment among registry operators. ICANN is responsible for maintaining the security and stability of the global Internet, and looks forward to a constructive and cooperative relationship with future gTLD registry operators in furtherance of this goal.

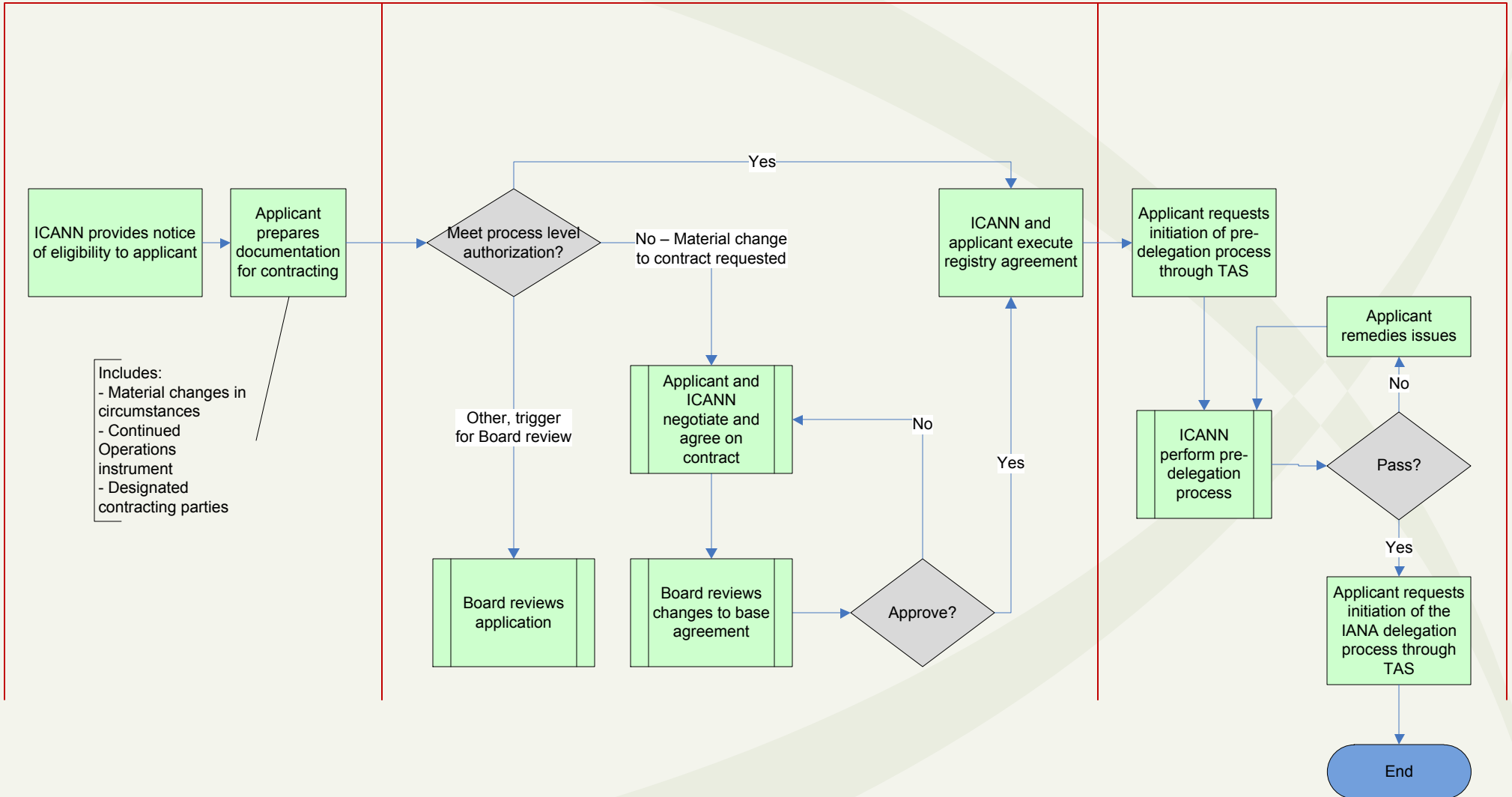
Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

Applicant Doc Prep 1 Month

Contracting – 1 day to 9 months

Pre-Delegation Testing – 1 to 12 months



New gTLD Agreement

This document contains the registry agreement associated with the Applicant Guidebook for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process).

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of _____ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and _____, a _____ (“Registry Operator”).

ARTICLE 1.

DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

1.1 Domain and Designation. The Top-Level Domain to which this Agreement applies is _____ (the “TLD”). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2 Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

1.3 Representations and Warranties.

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1 Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the specification at [*see specification 6*] (“Specification 6”) and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

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

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

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

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

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

2.7 Registry Interoperability and Continuity. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6.

2.8 Protection of Legal Rights of Third Parties. Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [*see specification 7*]* (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9 Registrars.

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided, that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10 Pricing for Registry Services.

(a) With respect to initial domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited

duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations (“Renewal Pricing”). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator’s obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11 Contractual and Operational Compliance Audits.

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12 Continued Operations Instrument. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [*see specification 8*].

2.13 Emergency Transition. Registry Operator agrees that in the event that any of the registry functions set forth in Section 6 of Specification 10 fails for a period longer than the emergency threshold for such function set forth in Section 6 of Specification 10, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at _____) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process,

provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

2.14 Registry Code of Conduct. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

2.15 Cooperation with Economic Studies. If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold any internal analyses or evaluations prepared by Registry Operator with respect to such data. Any data delivered to ICANN or its designee pursuant to this Section 2.15 shall be fully aggregated and anonymized by ICANN or its designee prior to any disclosure of such data to any third party.

2.16 Registry Performance Specifications. Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 10*]*. Registry Operator shall comply with such Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17 Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

2.18 [Note: For Community-Based TLDs Only] Obligations of Registry Operator to TLD Community. Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration

policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [*insert applicable URL*] with respect to disputes arising pursuant to this Section 2.18.]

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1 Open and Transparent. Consistent with ICANN’s expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2 Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3 TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4 Root-zone Information Publication. ICANN’s publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

3.5 Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

ARTICLE 4.

TERM AND TERMINATION

4.1 Term. The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the “Term”).

4.2 Renewal.

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

4.3 Termination by ICANN.

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

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

(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) *[Applicable to intergovernmental organizations or governmental entities only.]*
ICANN may terminate this Agreement pursuant to Section 7.14.

4.4 Termination by Registry Operator.

(a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

4.5 Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data

escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.

[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:

“Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN's designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator's consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.”]

4.6 Effect of Termination. Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this

Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

ARTICLE 5.

DISPUTE RESOLUTION

5.1 Cooperative Engagement. Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of communications by either party, must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.

5.2 Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

“Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the

arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless an another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.”]

5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

5.4 Specific Performance. Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

ARTICLE 6.

FEES

6.1 Registry-Level Fees. Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US\$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a “Transaction”), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period (the “Transaction Threshold”) and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator shall pay the Registry-

Level Fees on a quarterly basis by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

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

6.3 Variable Registry-Level Fee.

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

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

6.4 Adjustments to Fees. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be

adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

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

ARTICLE 7.

MISCELLANEOUS

7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

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

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

litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.”]

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

7.2 Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator’s sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN’s policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator’s cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [*Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.*]

7.3 Defined Terms. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

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

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

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

7.5 Change in Control; Assignment and Subcontracting. Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above, sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.

7.6 Amendments and Waivers.

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable

Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(b) If, within two (2) calendar years of the expiration of the Posting Period (the “Approval Period”), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”) and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which may be in electronic form.

(c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an “Exemption Request”). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement; provided, that any such conditions, alternatives or variations shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved

Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

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

(e) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (iv) an amendment to the length of the Term.

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

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

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

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

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

If to Registry Operator, addressed to:

[_____]
[_____]
[_____]

Telephone:
Facsimile:
Attention:

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

7.9 Entire Agreement. This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

7.10 English Language Controls. Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.11 Ownership Rights. Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

7.12 Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

7.13 Court Orders. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement.

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

7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.

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

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, "ICANN Requirements"), may conflict with or violate Applicable Law (hereinafter, a "Potential Conflict"), Registry Operator shall provide detailed notice (a "Notice") of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In

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

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

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

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
[_____] President and CEO

Date:

[Registry Operator]

By: _____
[_____] _____
[_____]

Date:

EXHIBIT A

Approved Services

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. Consensus Policies.

- 1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
 - 1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
 - 1.2.2. functional and performance specifications for the provision of Registry Services;
 - 1.2.3. Security and Stability of the registry database for the TLD;
 - 1.2.4. registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
 - 1.2.5. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
 - 1.2.6. restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:
 - 1.3.1. principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
 - 1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;
 - 1.3.3. reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
 - 1.3.4. maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.
- 1.4. In addition to the other limitations on Consensus Policies, they shall not:

- 1.4.1. prescribe or limit the price of Registry Services;
 - 1.4.2. modify the terms or conditions for the renewal or termination of the Registry Agreement;
 - 1.4.3. modify the limitations on Temporary Policies (defined below) or Consensus Policies;
 - 1.4.4. modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
 - 1.4.5. modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").
- 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
 - 2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
 - 2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2

DATA ESCROW REQUIREMENTS

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

PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
 - 1.1 “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday.
 - 1.2 “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).

2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
 - 2.1 Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
 - 2.2 The other six days of the week, the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.

3. **Escrow Format Specification.**
 - 3.1 **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see [1]. The aforementioned document describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. Registry Operator will use the draft version available at the time of signing the Agreement, if not already an RFC. Once the specification is published as an RFC, Registry Operator will implement that specification, no later than 180 days after. UTF-8 character encoding will be used.

 - 3.2 **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case base to represent that data. These “extension schemas” will be specified as described in [1]. Data related to the “extensions schemas” will be included in the deposit file described in section 3.1. ICANN and the respective Registry shall work together to agree on such new objects’ data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see [2]. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see [3], that are also royalty-free. The process to follow for a data file in original text format is:
- (1) The file should be compressed. The suggested algorithm for compression is ZIP as per RFC 4880.
 - (2) The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
 - (3) The file may be split as necessary if, once compressed and encrypted is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if split is not used, will be called a processed file in this section.
 - (4) A digital signature file will be generated for every processed file using the Registry's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 [2], and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
 - (5) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
 - (6) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in section 8.
5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:
- 5.1 {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
 - 5.2 {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
 - 5.3 {type} is replaced by:
 - (1) "full", if the data represents a Full Deposit;
 - (2) "diff", if the data represents a Differential Deposit;
 - (3) "thin", if the data represents a Bulk Registration Data Access file, as specified in section 3 of Specification 4;
 - 5.4 {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
 - 5.5 {rev} is replaced by the number of revision (or resend) of the file beginning with "0";
 - 5.6 {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".

6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry and ICANN will exchange keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in [1].
8. **Verification Procedure.**
 - (1) The signature file of each processed file is validated.
 - (2) If processed files are pieces of a bigger file, the latter is put together.
 - (3) Each file obtained in the previous step is then decrypted and uncompressed.
 - (4) Each data file contained in the previous step is then validated against the format defined in [1].
 - (5) If [1] includes a verification process, that will be applied at this step.
If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.
9. **References.**
 - [1] Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
 - [2] OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
 - [3] OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendment thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within ten business days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.
6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
 - 6.1 the Registry Agreement has expired without renewal, or been terminated; or
 - 6.2 ICANN failed, with respect to (a) any Full Deposit or (b) five Differential Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; (x) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (y) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent that the Deposit has been received; or
 - 6.3 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Differential Deposits within any calendar month and (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent of verification of a remediated version of such Full Deposit or Differential Deposit; or
 - 6.4 Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
 - 6.5 Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Registry Agreement; or
 - 6.6 a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**
 - 7.1 Within twenty-four hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a copy of the verification report generated for each Deposit. Reports will be delivered electronically, as specified from time to time by ICANN.
 - 7.2 If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent must notify, either by email, fax or phone, Registry Operator and ICANN of such nonconformity within twenty-four hours after receiving the non-conformant Deposit. Upon notification of such verification failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.
8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.
9. **Indemnity.** Registry Operator shall indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members, and stockholders ("Escrow Agent Indemnitees")

absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitees in connection with the Escrow Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees thereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, members, and stockholders). Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD to _____ with the following content. ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three months after the end of the month to which the reports relate.

1. Per-Registrar Transactions Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field Name	Description
01	registrar-name	registrar's full corporate name as registered with IANA
02	iana-id	http://www.iana.org/assignments/registrar-ids
03	total-domains	total domains under sponsorship
04	total-nameservers	total name servers registered for TLD
05	net-adds-1-yr	number of domains successfully registered with an initial term of one year (and not deleted within the add grace period)
06	net-adds-2-yr	number of domains successfully registered with an initial term of two years (and not deleted within the add grace period)
07	net-adds-3-yr	number of domains successfully registered with an initial term of three years (and not deleted within the add grace period)
08	net-adds-4-yr	number of domains successfully registered with an initial term of four years (and not deleted within the add grace period)
09	net-adds-5-yr	number of domains successfully registered with an initial term of five years (and not deleted within the add grace period)
10	net-adds-6-yr	number of domains successfully registered with an initial term of six years (and not deleted within the add grace period)
11	net-adds-7-yr	number of domains successfully registered with an initial term of seven years (and not deleted within the add grace period)

12	net-adds-8-yr	number of domains successfully registered with an initial term of eight years (and not deleted within the add grace period)
13	net-adds-9-yr	number of domains successfully registered with an initial term of nine years (and not deleted within the add grace period)
14	net-adds-10-yr	number of domains successfully registered with an initial term of ten years (and not deleted within the add grace period)
15	net-renews-1-yr	number of domains successfully renewed either automatically or by command with a new renewal period of one year (and not deleted within the renew grace period)
16	net-renews-2-yr	number of domains successfully renewed either automatically or by command with a new renewal period of two years (and not deleted within the renew grace period)
17	net-renews-3-yr	number of domains successfully renewed either automatically or by command with a new renewal period of three years (and not deleted within the renew grace period)
18	net-renews-4-yr	number of domains successfully renewed either automatically or by command with a new renewal period of four years (and not deleted within the renew grace period)
19	net-renews-5-yr	number of domains successfully renewed either automatically or by command with a new renewal period of five years (and not deleted within the renew grace period)
20	net-renews-6-yr	number of domains successfully renewed either automatically or by command with a new renewal period of six years (and not deleted within the renew grace period)
21	net-renews-7-yr	number of domains successfully renewed either automatically or by command with a new renewal period of seven years (and not deleted within the renew grace period)
22	net-renews-8-yr	number of domains successfully renewed either automatically or by command with a new renewal period of eight years (and not deleted within the renew grace period)
23	net-renews-9-yr	number of domains successfully renewed either

		automatically or by command with a new renewal period of nine years (and not deleted within the renew grace period)
24	net-renews-10-yr	number of domains successfully renewed either automatically or by command with a new renewal period of ten years (and not deleted within the renew grace period)
25	transfer-gaining-successful	transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically
26	transfer-gaining-nacked	transfers initiated by this registrar that were n'acked by the other registrar
27	transfer-losing-successful	transfers initiated by another registrar that this registrar ack'd – either by command or automatically
28	transfer-losing-nacked	transfers initiated by another registrar that this registrar n'acked
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed
30	transfer-disputed-lost	number of transfer disputes this registrar lost
31	transfer-disputed-nodecision	number of transfer disputes involving this registrar with a split or no decision
32	deleted-domains-grace	domains deleted within the add grace period
33	deleted-domains-nograce	domains deleted outside the add grace period
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2. Registry Functions Activity Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-activity-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars at the end of the reporting period
02	ramp-up-registrars	number of registrars that have received a password for access to OT&E at the end of the reporting period
03	pre-ramp-up-registrars	number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period
04	zfa-passwords	number of active zone file access passwords at the end of the reporting period
05	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
06	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
07	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
08	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
09	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
10	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
11	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
12	srs-dom-check	number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period
13	srs-dom-create	number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period
14	srs-dom-delete	number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period
15	srs-dom-info	number of SRS (EPP and any other interface) domain name “info” requests responded during the reporting period
16	srs-dom-renew	number of SRS (EPP and any other interface) domain name

		“renew” requests responded during the reporting period
17	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP “restore” requests responded during the reporting period
18	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP “restore” requests delivering a restore report responded during the reporting period
19	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name “transfer” requests to approve transfers responded during the reporting period
20	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name “transfer” requests to cancel transfers responded during the reporting period
21	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name “transfer” requests to query about a transfer responded during the reporting period
22	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name “transfer” requests to reject transfers responded during the reporting period
23	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name “transfer” requests to request transfers responded during the reporting period
24	srs-dom-update	number of SRS (EPP and any other interface) domain name “update” requests (not including RGP restore requests) responded during the reporting period
25	srs-host-check	number of SRS (EPP and any other interface) host “check” requests responded during the reporting period
26	srs-host-create	number of SRS (EPP and any other interface) host “create” requests responded during the reporting period
27	srs-host-delete	number of SRS (EPP and any other interface) host “delete” requests responded during the reporting period
28	srs-host-info	number of SRS (EPP and any other interface) host “info” requests responded during the reporting period
29	srs-host-update	number of SRS (EPP and any other interface) host “update” requests responded during the reporting period
30	srs-cont-check	number of SRS (EPP and any other interface) contact “check” requests responded during the reporting period
31	srs-cont-create	number of SRS (EPP and any other interface) contact “create” requests responded during the reporting period

32	srs-cont-delete	number of SRS (EPP and any other interface) contact “delete” requests responded during the reporting period
33	srs-cont-info	number of SRS (EPP and any other interface) contact “info” requests responded during the reporting period
34	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact “transfer” requests to approve transfers responded during the reporting period
35	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact “transfer” requests to cancel transfers responded during the reporting period
36	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact “transfer” requests to query about a transfer responded during the reporting period
37	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact “transfer” requests to reject transfers responded during the reporting period
38	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact “transfer” requests to request transfers responded during the reporting period
39	srs-cont-update	number of SRS (EPP and any other interface) contact “update” requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

SPECIFICATION 4

SPECIFICATION FOR REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services.** Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

1.4. Domain Name Data:

1.4.1. **Query format:** whois EXAMPLE.TLD

1.4.2. **Response format:**

Domain Name: EXAMPLE.TLD
Domain ID: D1234567-TLD
WHOIS Server: whois.example.tld
Referral URL: http://www.example.tld
Updated Date: 2009-05-29T20:13:00Z
Creation Date: 2000-10-08T00:45:00Z
Registry Expiry Date: 2010-10-08T00:44:59Z
Sponsoring Registrar: EXAMPLE REGISTRAR LLC
Sponsoring Registrar IANA ID: 5555555
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: serverUpdateProhibited
Registrant ID: 5372808-ERL
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX

Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET
Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234
Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Name Server: NS01.EXAMPLEREGISTRAR.TLD
Name Server: NS02.EXAMPLEREGISTRAR.TLD
DNSSEC: signedDelegation
DNSSEC: unsigned
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.5. Registrar Data:

1.5.1. **Query format:** whois "registrar Example Registrar, Inc."

1.5.2. **Response format:**

Registrar Name: Example Registrar, Inc.
Street: 1234 Admiralty Way
City: Marina del Rey
State/Province: CA
Postal Code: 90292
Country: US
Phone Number: +1.3105551212
Fax Number: +1.3105551213

Email: registrar@example.tld
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www.example-registrar.tld
Admin Contact: Joe Registrar
Phone Number: +1.3105551213
Fax Number: +1.3105551213
Email: joeregistrar@example-registrar.tld
Admin Contact: Jane Registrar
Phone Number: +1.3105551214
Fax Number: +1.3105551213
Email: janeregistrar@example-registrar.tld
Technical Contact: John Geek
Phone Number: +1.3105551215
Fax Number: +1.3105551216
Email: johngeek@example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.6. Nameserver Data:

1.6.1. **Query format:** whois "NS1.EXAMPLE.TLD" or whois "nameserver (IP Address)"

1.6.2. **Response format:**

Server Name: NS1.EXAMPLE.TLD
IP Address: 192.0.2.123
IP Address: 2001:0DB8::1
Registrar: Example Registrar, Inc.
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www.example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.8. **Searchability.** Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.8.1. Registry Operator will offer searchability on the web-based Directory Service.

1.8.2. Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.8.3. Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.8.4. Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.8.5. Search results will include domain names matching the search criteria.

1.8.6. Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

2. Zone File Access

2.1. Third-Party Access

2.1.1. **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user that will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider (the “CZDA Provider”). Registry Operator will provide access to zone file data per Section 2.1.3 and do so using the file format described in Section 2.1.4. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5.

2.1.2. **Credentialing Requirements.** Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address, and the Internet host machine name and IP address.

2.1.3. **Grant of Access.** Each Registry Operator will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry’s zone data archives. Registry Operator will grant the user a non-exclusive, non-transferable, limited right to access Registry Operator’s Zone File FTP server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using FTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4. **File Format Standard.** Registry Operator will provide zone files using a sub-format of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.
4. Use of /X and /DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.
16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5. Use of Data by User. Registry Operator will permit user to use the zone file for lawful purposes; provided that, (a) user takes all reasonable steps to protect against unauthorized access to and use and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.

2.1.6. Term of Use. Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

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

2.2 Co-operation

2.2.1. Assistance. Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

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

2.4 Emergency Operator Access. Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

3. Bulk Registration Data Access to ICANN

3.1. Periodic Access to Thin Registration Data. In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

3.1.1. Contents. Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), registrar id (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar repository object id (roid), hostname of registrar Whois server, and URL of registrar.

3.1.2. Format. The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

3.1.3. Access. Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

3.2. Exceptional Access to Thick Registration Data. In case of a registrar failure, de-accreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data within 2 business days. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1. of this Specification.

SPECIFICATION 5

SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES

Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve (i.e., Registry Operator shall not register, delegate, use or otherwise make available such labels to any third party, but may register such labels in its own name in order to withhold them from delegation or use) names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

1. **Example. The label “EXAMPLE”** shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations.
2. **Two-character labels.** All two-character labels shall be initially reserved. The reservation of a two-character label string may be released to the extent that Registry Operator reaches agreement with the government and country-code manager. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.
3. **Tagged Domain Names.** Labels may only include hyphens in the third and fourth position if they represent valid internationalized domain names in their ASCII encoding (for example "xn--ndk061n").
4. **Second-Level Reservations for Registry Operations.** The following names are reserved for use in connection with the operation of the registry for the TLD. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the TLD they shall be transferred as specified by ICANN: NIC, WWW, IRIS and WHOIS.
5. **Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:
 - 5.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union
<http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU>;
 - 5.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
 - 5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names may be released to the extent that Registry Operator reaches agreement with the applicable government(s), provided, further, that

Registry Operator may also propose release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN.

SPECIFICATION 6

REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

1. Standards Compliance

1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 4343, and 5966.

1.2. **EPP.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732, 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

1.3. **DNSSEC.** Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in “DPS-framework” (currently in draft format, see <http://tools.ietf.org/html/draft-ietf-dnsop-dnssec-dps-framework>) within 180 days after the “DPS-framework” becomes an RFC.

1.4. **IDN.** If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <<http://www.icann.org/en/topics/idn/implementation-guidelines.htm>>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

1.5. **IPv6.** Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry’s name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow “DNS IPv6 Transport Operational Guidelines” as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g. Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

2. Registry Services

2.1. **Registry Services.** “Registry Services” are, for purposes of the Registry Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. **Wildcard Prohibition.** For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

3. Registry Continuity

3.1. **High Availability.** Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

3.2. **Extraordinary Event.** Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within 24 hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of 48 hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity.** Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

4. Abuse Mitigation

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

4.2. **Malicious Use of Orphan Glue Records.** Registry Operators shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

5. Supported Initial and Renewal Registration Periods

5.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

5.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to any rights protection mechanisms (“RPMs”) that may be mandated from time to time by ICANN. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all ICANN mandated and independently developed RPMs in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements established by ICANN each of the mandatory RPMs set forth in the Trademark Clearinghouse (posted at [url to be inserted when final Trademark Clearinghouse is adopted]), which may be revised by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

- a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and
- b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6th) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld). The Continued Operations Instrument shall expressly state that ICANN may access the financial resources of the Continued Operations Instrument pursuant to Section 2.13 or Section 4.5 [*insert for government entity*: or Section 7.14] of the Registry Agreement.
2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an “Alternative Instrument”). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.
3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an alternative

instrument that (i) provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operation replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

SPECIFICATION 9

Registry Operator Code of Conduct

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”), to:
 - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
 - b. register domain names in its own right, except for names registered through an ICANN accredited registrar that are reasonably necessary for the management, operations and purpose of the TLD, provided, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Registry Agreement;
 - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running");
 - d. allow any Affiliated registrar to disclose user data to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions; or
 - e. disclose confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.
2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.
3. Registry Operator will conduct internal reviews at least once per calendar year to

ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.

4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1. Definitions

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime (≈ 98%)
	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

3. DNS

- 3.1. **DNS service availability.** Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from “**DNS tests**” to each of their public-DNS registered “**IP addresses**” to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.
- 3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “**DNS tests**” to a name server “**IP address**” during a given time, the name server “**IP address**” will be considered unavailable.
- 3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.4. **TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.5. **DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.
- 3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.
- 3.7. **DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding **SLR**, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.
- 3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP “**DNS test**” to each of the public-DNS registered “**IP addresses**” of the name servers of the domain

name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.

3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

4. **RDDS**

4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based-WHOIS query RTT**”.

4.5. **RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.

4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.

4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is

undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

5. **EPP**

5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.

5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one “**IP address**“ of the EPP servers of the TLD being monitored and make an “**EPP test**”; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an “**EPP test**” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. Emergency Thresholds

The following matrix presents the Emergency Thresholds that, if reached by any of the services mentioned above for a TLD, would cause the Emergency Transition of the Critical Functions as specified in Section 2.13. of this Agreement.

Critical Function	Emergency Threshold
DNS service (all servers)	4-hour downtime / week
DNSSEC proper resolution	4-hour downtime / week
EPP	24-hour downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour downtime / week
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.

7. Emergency Escalation

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6, ICANN’s emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator’s emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the

commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

7.2. **Emergency Escalation initiated by Registrars**

Registry Operator will maintain an emergency operations departments prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the Registry because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an Emergency Escalation to the emergency operations department of ICANN. ICANN then may initiate an Emergency Escalation with the Registry Operator as explained above.

7.3. **Notifications of Outages and Maintenance**

In the event that a Registry Operator plans maintenance, they will provide related notice to the ICANN emergency operations department, at least, 24 hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per their contractual obligations with ICANN, on services under SLA and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend Emergency Escalation services for the monitored services involved.

8. **Covenants of Performance Measurement**

8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for DNS and RDDS) or registrars (for EPP).

8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

TRADEMARK CLEARINGHOUSE
4 JUNE 2012

1. PURPOSE OF CLEARINGHOUSE

- 1.1 The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated, pertaining to the rights of trademark holders. ICANN will enter into an arms-length contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks.
- 1.2 The Clearinghouse will be required to separate its two primary functions: (i) authentication and validation of the trademarks in the Clearinghouse; and (ii) serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services. Whether the same provider could serve both functions or whether two providers will be determined in the tender process.
- 1.3 The Registry shall only need to connect with one centralized database to obtain the information it needs to conduct its Sunrise or Trademark Claims Services regardless of the details of the Trademark Clearinghouse Service Provider's contract(s) with ICANN.
- 1.4 Trademark Clearinghouse Service Provider may provide ancillary services, as long as those services and any data used for those services are kept separate from the Clearinghouse database.
- 1.5 The Clearinghouse database will be a repository of authenticated information and disseminator of the information to a limited number of recipients. Its functions will be performed in accordance with a limited charter, and will not have any discretionary powers other than what will be set out in the charter with respect to authentication and validation. The Clearinghouse administrator(s) cannot create policy. Before material changes are made to the Clearinghouse functions, they will be reviewed through the ICANN public participation model.
- 1.6 Inclusion in the Clearinghouse is not proof of any right, nor does it create any legal rights. Failure to submit trademarks into the Clearinghouse should not be perceived to be lack of vigilance by trademark holders or a waiver of any rights, nor can any negative influence be drawn from such failure.

2. SERVICE PROVIDERS

- 2.1 The selection of Trademark Clearinghouse Service Provider(s) will be subject to predetermined criteria, but the foremost considerations will be the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability

and security without interference with the integrity or timeliness of the registration process or registry operations.

- 2.2 Functions – Authentication/Validation; Database Administration. Public commentary has suggested that the best way to protect the integrity of the data and to avoid concerns that arise through sole-source providers would be to separate the functions of database administration and data authentication/validation.
 - 2.2.1 One entity will authenticate registrations ensuring the word marks qualify as registered or are court-validated word marks or word marks that are protected by statute or treaty. This entity would also be asked to ensure that proof of use of marks is provided, which can be demonstrated by furnishing a signed declaration and one specimen of current use.
 - 2.2.2 The second entity will maintain the database and provide Sunrise and Trademark Claims Services (described below).
- 2.3 Discretion will be used, balancing effectiveness, security and other important factors, to determine whether ICANN will contract with one or two entities - one to authenticate and validate, and the other to, administer in order to preserve integrity of the data.
- 2.4 Contractual Relationship.
 - 2.4.1 The Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services. ICANN may coordinate or specify interfaces used by registries and registrars, and provide some oversight or quality assurance function to ensure rights protection goals are appropriately met.
 - 2.4.2 The Trademark Clearinghouse Service Provider(s) (authenticator/validator and administrator) will be selected through an open and transparent process to ensure low costs and reliable, consistent service for all those utilizing the Clearinghouse services.
 - 2.4.3 The Service Provider(s) providing the authentication of the trademarks submitted into the Clearinghouse shall adhere to rigorous standards and requirements that would be specified in an ICANN contractual agreement.
 - 2.4.4 The contract shall include service level requirements, customer service availability (with the goal of seven days per week, 24 hours per day, 365 days per year), data escrow requirements, and equal access requirements for all persons and entities required to access the Trademark Clearinghouse database.

- 2.4.5 To the extent practicable, the contract should also include indemnification by Service Provider for errors such as false positives for participants such as Registries, ICANN, Registrants and Registrars.
- 2.5. Service Provider Requirements. The Clearinghouse Service Provider(s) should utilize regional marks authentication service providers (whether directly or through sub-contractors) to take advantage of local experts who understand the nuances of the trademark in question. Examples of specific performance criteria details in the contract award criteria and service-level-agreements are:
 - 2.5.1 provide 24 hour accessibility seven days a week (database administrator);
 - 2.5.2 employ systems that are technically reliable and secure (database administrator);
 - 2.5.3 use globally accessible and scalable systems so that multiple marks from multiple sources in multiple languages can be accommodated and sufficiently cataloged (database administrator and validator);
 - 2.5.4 accept submissions from all over the world - the entry point for trademark holders to submit their data into the Clearinghouse database could be regional entities or one entity;
 - 2.5.5 allow for multiple languages, with exact implementation details to be determined;
 - 2.5.6 provide access to the Registrants to verify and research Trademark Claims Notices;
 - 2.5.7 have the relevant experience in database administration, validation or authentication, as well as accessibility to and knowledge of the various relevant trademark laws (database administrator and authenticator); and
 - 2.5.8 ensure through performance requirements, including those involving interface with registries and registrars, that neither domain name registration timeliness, nor registry or registrar operations will be hindered (database administrator).

3. CRITERIA FOR TRADEMARK INCLUSION IN CLEARINGHOUSE

- 3.1 The trademark holder will submit to one entity – a single entity for entry will facilitate access to the entire Clearinghouse database. If regional entry points are used, ICANN will publish an information page describing how to locate regional submission points. Regardless of the entry point into the Clearinghouse, the authentication procedures established will be uniform.
- 3.2 The standards for inclusion in the Clearinghouse are:
 - 3.2.1 Nationally or regionally registered word marks from all jurisdictions.
 - 3.2.2 Any word mark that has been validated through a court of law or other judicial proceeding.

- 3.2.3 Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.
 - 3.2.4 Other marks that constitute intellectual property.
 - 3.2.5 Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.
- 3.3 The type of data supporting entry of a registered word mark into the Clearinghouse must include a copy of the registration or the relevant ownership information, including the requisite registration number(s), the jurisdictions where the registrations have issued, and the name of the owner of record.
- 3.4 Data supporting entry of a judicially validated word mark into the Clearinghouse must include the court documents, properly entered by the court, evidencing the validation of a given word mark.
- 3.5 Data supporting entry into the Clearinghouse of word marks protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.
- 3.6 Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any given registry operator chooses to provide.
- 3.7 Registrations that include top level extensions such as “icann.org” or “.icann” as the word mark will not be permitted in the Clearinghouse regardless of whether that mark has been registered or it has been otherwise validated or protected (e.g., if a mark existed for icann.org or .icann, neither will not be permitted in the Clearinghouse).
- 3.8 All mark holders seeking to have their marks included in the Clearinghouse will be required to submit a declaration, affidavit, or other sworn statement that the information provided is true and current and has not been supplied for an improper purpose. The mark holder will also be required to attest that it will keep the information supplied to the Clearinghouse current so that if, during the time the mark is included in the Clearinghouse, a registration gets cancelled or is transferred to another entity, or in the case of a court- or Clearinghouse-validated mark the holder abandons use of the mark, the mark holder has an affirmative obligation to notify the Clearinghouse. There will be penalties for failing to keep information current. Moreover, it is anticipated that there will be a process whereby registrations can be

removed from the Clearinghouse if it is discovered that the marks are procured by fraud or if the data is inaccurate.

- 3.9 As an additional safeguard, the data will have to be renewed periodically by any mark holder wishing to remain in the Clearinghouse. Electronic submission should facilitate this process and minimize the cost associated with it. The reason for periodic authentication is to streamline the efficiencies of the Clearinghouse and the information the registry operators will need to process and limit the marks at issue to the ones that are in use.

4. USE OF CLEARINGHOUSE DATA

- 4.1 All mark holders seeking to have their marks included in the Clearinghouse will have to consent to the use of their information by the Clearinghouse. However, such consent would extend only to use in connection with the stated purpose of the Trademark Clearinghouse Database for Sunrise or Trademark Claims services. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways without permission. There shall be no bar on the Trademark Clearinghouse Service Provider or other third party service providers providing ancillary services on a non-exclusive basis.
- 4.2 In order not to create a competitive advantage, the data in the Trademark Clearinghouse should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms if the mark holders agree. Accordingly, two licensing options will be offered to the mark holder: (a) a license to use its data for all required features of the Trademark Clearinghouse, with no permitted use of such data for ancillary services either by the Trademark Clearinghouse Service Provider or any other entity; or (b) license to use its data for the mandatory features of the Trademark Clearinghouse and for any ancillary uses reasonably related to the protection of marks in new gTLDs, which would include a license to allow the Clearinghouse to license the use and data in the Trademark Clearinghouse to competitors that also provide those ancillary services. The specific implementation details will be determined, and all terms and conditions related to the provision of such services shall be included in the Trademark Clearinghouse Service Provider's contract with ICANN and subject to ICANN review.
- 4.3 Access by a prospective registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant. Misuse of the data by the service providers would be grounds for immediate termination.

5. DATA AUTHENTICATION AND VALIDATION GUIDELINES

- 5.1 One core function for inclusion in the Clearinghouse would be to authenticate that the data meets certain minimum criteria. As such, the following minimum criteria are suggested:
- 5.1.1 An acceptable list of data authentication sources, i.e. the web sites of patent and trademark offices throughout the world, third party providers who can obtain information from various trademark offices;
 - 5.1.2 Name, address and contact information of the applicant is accurate, current and matches that of the registered owner of the trademarks listed;
 - 5.1.3 Electronic contact information is provided and accurate;
 - 5.1.4 The registration numbers and countries match the information in the respective trademark office database for that registration number.
- 5.2 For validation of marks by the Clearinghouse that were not protected via a court, statute or treaty, the mark holder shall be required to provide evidence of use of the mark in connection with the bona fide offering for sale of goods or services prior to application for inclusion in the Clearinghouse. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use.

6. MANDATORY RIGHTS PROTECTION MECHANISMS

All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch or initial launch period rights protection mechanisms (RPMs). These RPMs, at a minimum, must consist of a Trademark Claims service and a Sunrise process.

- 6.1 Trademark Claims service
- 6.1.1 New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that registration is open for general registration.
 - 6.1.2 A Trademark Claims service is intended to provide clear notice to the prospective registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants (Trademark Claims Notice). A form that describes the required elements is attached. The specific statement by

prospective registrant warrants that: (i) the prospective registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

- 6.1.3 The Trademark Claims Notice should provide the prospective registrant access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder. These links (or other sources) shall be provided in real time without cost to the prospective registrant. Preferably, the Trademark Claims Notice should be provided in the language used for the rest of the interaction with the registrar or registry, but it is anticipated that at the very least in the most appropriate UN-sponsored language (as specified by the prospective registrant or registrar/registry).
- 6.1.4 If the domain name is registered in the Clearinghouse, the registrar (again through an interface with the Clearinghouse) will promptly notify the mark holders(s) of the registration after it is effectuated.
- 6.1.5 The Trademark Clearinghouse Database will be structured to report to registries when registrants are attempting to register a domain name that is considered an "Identical Match" with the mark in the Clearinghouse. "Identical Match" means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no "marks contained" would qualify for inclusion.

6.2 Sunrise service

- 6.2.1 Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match to the name to be registered during Sunrise.
- 6.2.2 Sunrise Registration Process. For a Sunrise service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and

incorporate a Sunrise Dispute Resolution Policy (SDRP).

- 6.2.3 The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section 7.2 below), (ii) optional registry elected requirements re: international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.
- 6.2.4 The proposed SDRP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.
- 6.2.5 The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

7. PROTECTION FOR MARKS IN CLEARINGHOUSE

The scope of registered marks that must be honored by registries in providing Trademarks Claims services is broader than those that must be honored by registries in Sunrise services.

- 7.1 For Trademark Claims services - Registries must recognize and honor all word marks that have been or are: (i) nationally or regionally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion. No demonstration of use is required.
- 7.2 For Sunrise services - Registries must recognize and honor all word marks: (i) nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

8. COSTS OF CLEARINGHOUSE

Costs should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.

TRADEMARK NOTICE

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below.

Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country. [in bold italics or all caps]

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration.

If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below. The following [number] Trademarks are listed in the Trademark Clearinghouse:

1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

[with links to the TM registrations as listed in the TM Clearinghouse]

2. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant:

Trademark Registrant Contact:

***** [with links to the TM registrations as listed in the TM Clearinghouse]

X. 1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

**UNIFORM RAPID SUSPENSION SYSTEM (“URS”)
4 JUNE 2012**

DRAFT PROCEDURE

1. Complaint

1.1 Filing the Complaint

- a) Proceedings are initiated by electronically filing with a URS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.
- b) Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees will be non-refundable.
- c) One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related. There will not be a minimum number of domain names imposed as a prerequisite to filing.

1.2 Contents of the Complaint

The form of the Complaint will be simple and as formulaic as possible. There will be a Form Complaint. The Form Complaint shall include space for the following:

- 1.2.1 Name, email address and other contact information for the Complaining Party (Parties).
- 1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.
- 1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).
- 1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.
- 1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.
- 1.2.6 A statement of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

- a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce - was submitted to, and validated by, the Trademark Clearinghouse)
- b. Proof of use may also be submitted directly with the URS Complaint.

and

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

- a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or
- b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
- c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

1.2.7 A box in which the Complainant may submit up to 500 words of explanatory free form text.

1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

2. Fees

2.1 URS Provider will charge fees to the Complainant. Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider.

2.2 Complaints listing fifteen (15) or more disputed domain names registered by the same registrant will be subject to a Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

3. Administrative Review

3.1 Complaints will be subjected to an initial administrative review by the URS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a *prima facie* case has been established.

3.2 The Administrative Review shall be conducted within two (2) business days of submission of the Complaint to the URS Provider.

3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.

3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

4. Notice and Locking of Domain

4.1 Upon completion of the Administrative Review, the URS Provider must immediately notify the registry operator (via email) ("Notice of Complaint") after the Complaint has been deemed compliant with the filing requirements. Within 24 hours of receipt of the Notice of Complaint from the URS Provider, the registry operator shall "lock" the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The registry operator will notify the URS Provider immediately upon locking the domain name ("Notice of Lock").

4.2 Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint, sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the potential

effects if the Registrant fails to respond and defend against the Complaint. Notices must be clear and understandable to Registrants located globally. The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the registrant's country or territory.

- 4.3 All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.
- 4.4 The URS Provider shall also electronically notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.

5. The Response

- 5.1 A Registrant will have 14 calendar days from the date the URS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the URS Provider. Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.
- 5.2 No filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) days following a Determination. For Responses filed more than thirty (30) days after a Determination, the Registrant should pay a reasonable non-refundable fee for re-examination, plus a Response Fee as set forth in section 2.2 above if the Complaint lists twenty-six (26) or more disputed domain names against the same registrant. The Response Fee will be refundable to the prevailing party.
- 5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the URS Provider if there is a good faith basis for doing so. In no event shall the extension be for more than seven (7) calendar days.
- 5.4 The Response shall be no longer than 2,500 words, excluding attachments, and the content of the Response should include the following:
 - 5.4.1 Confirmation of Registrant data.
 - 5.4.2 Specific admission or denial of each of the grounds upon which the Complaint is based.
 - 5.4.3 Any defense which contradicts the Complainant's claims.
 - 5.4.4 A statement that the contents are true and accurate.
- 5.5 In keeping with the intended expedited nature of the URS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.
- 5.6 Once the Response is filed, and the URS Provider determines that the Response is compliant with the filing requirements of a Response (which shall be on the same day),

the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the URS Provider, for review and Determination. All materials submitted are considered by the Examiner.

- 5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:
- 5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
 - 5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or
 - 5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

- 5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:
- 5.8.1 The domain name is generic or descriptive and the Registrant is making fair use of it.
 - 5.8.2 The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.
 - 5.8.3 Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.
 - 5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.
- 5.9 Other factors for the Examiner to consider:
- 5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner must review each case on its merits.
 - 5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS.

Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

5.9.2.1. the nature of the domain name;

5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and

5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility.

6. Default

- 6.1 If at the expiration of the 14-day answer period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.
- 6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.
- 6.3 All Default cases proceed to Examination for review on the merits of the claim.
- 6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.
- 6.5 If a Response is filed after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.
- 6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the Registry Operator to unlock the name and return full control of the domain name registration to the Registrant.

7. Examiners

- 7.1 One Examiner selected by the Provider will preside over a URS proceeding.
- 7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in URS proceedings. Specifically, Examiners shall be provided with instructions on the URS elements and defenses and how to conduct the examination of a URS proceeding.

- 7.3 Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid “forum or examiner shopping.” URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, non-performance, or malfeasance) to be determined on a case by case analysis.

8. Examination Standards and Burden of Proof

- 8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:
- 8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed; and
- 8.1.2.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.
- 8.1.2.2 Proof of use may also be submitted directly with the URS Complaint.
- 8.1.2 The Registrant has no legitimate right or interest to the domain name; and
- 8.1.3 The domain was registered and is being used in a bad faith.
- 8.2 The burden of proof shall be clear and convincing evidence.
- 8.3 For a URS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS).
- 8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark.
- 8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the URS proceeding will be terminated without prejudice, e.g., a UDRP, court proceeding or

another URS may be filed. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.

- 8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP.

9. Determination

- 9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.
- 9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider's website. However, there should be no other preclusive effect of the Determination other than the URS proceeding to which it is rendered.
- 9.3 If the Complainant does not satisfy the burden of proof, the URS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.
- 9.4 Determinations resulting from URS proceedings will be published by the service provider in a format specified by ICANN.
- 9.5 Determinations shall also be emailed by the URS Provider to the Registrant, the Complainant, the Registrar, and the Registry Operator, and shall specify the remedy and required actions of the registry operator to comply with the Determination.
- 9.6 To conduct URS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a fourteen (14) day Response period (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) business days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than five (5) days after the Response is filed. Implementation details will be developed to accommodate the needs of service providers once they are selected. (The tender offer for potential service providers will indicate that timeliness will be a factor in the award decision.)

10. Remedy

- 10.1 If the Determination is in favor of the Complainant, the decision shall be immediately transmitted to the registry operator.

- 10.2 Immediately upon receipt of the Determination, the registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The URS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the Whois shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.
- 10.3 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.
- 10.4 No other remedies should be available in the event of a Determination in favor of the Complainant.

11. Abusive Complaints

- 11.1 The URS shall incorporate penalties for abuse of the process by trademark holders.
- 11.2 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) “deliberate material falsehood,” that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.
- 11.3 A Complaint may be deemed abusive if the Examiner determines:
 - 11.3.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
 - 11.3.2 (i) the claims or other assertions were not warranted by any existing law or the URS standards; or (ii) the factual contentions lacked any evidentiary support
- 11.4 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.
- 11.5 Two findings of “deliberate material falsehood” shall permanently bar the party from utilizing the URS.
- 11.6 URS Providers shall be required to develop a process for identifying and tracking barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.

- 11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.
- 11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

12. Appeal

- 12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.
- 12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.
- 12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor of the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.
- 12.4 An appeal must be filed within 14 days after a Determination is issued and any Response must be filed 14 days after an appeal is filed.
- 12.5 If a respondent has sought relief from Default by filing a Response within six months (or the extended period if applicable) of issuance of initial Determination, an appeal must be filed within 14 days from date the second Determination is issued and any Response must be filed 14 days after the appeal is filed.
- 12.6 Notice of appeal and findings by the appeal panel shall be sent by the URS Provider via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator.
- 12.7 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

13. Other Available Remedies

The URS Determination shall not preclude any other remedies available to the appellant, such as UDRP (if appellant is the Complainant), or other remedies as may be available in a court of competition jurisdiction. A URS Determination for or against a party shall not prejudice the

party in UDRP or any other proceedings.

14. Review of URS

A review of the URS procedure will be initiated one year after the first Examiner Determination is issued. Upon completion of the review, a report shall be published regarding the usage of the procedure, including statistical information, and posted for public comment on the usefulness and effectiveness of the procedure.

TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the trademark holder and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover Trademark post-delegation dispute resolution proceedings generally. To the extent more than one Trademark PDDRP provider (“Provider”) is selected to implement the Trademark PDDRP, each Provider may have additional rules that must be followed when filing a Complaint. The following are general procedures to be followed by all Providers.

2.2 In the Registry Agreement, the registry operator agrees to participate in all post-delegation procedures and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be submitted electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a trademark holder (which may include either registered or unregistered marks as defined below) claiming that one or more of its marks have been infringed, and thereby the Complainant has been harmed, by the registry operator’s manner of operation or use of the gTLD.
- 5.2 Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial “threshold” review (“Threshold Review Panel”).

6. Standards

For purposes of these standards, “registry operator” shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

6.1 Top Level:

A complainant must assert and prove, by clear and convincing evidence, that the registry operator’s affirmative conduct in its operation or use of its gTLD string that is identical or confusingly similar to the complainant’s mark, causes or materially contributes to the gTLD doing one of the following:

(a) taking unfair advantage of the distinctive character or the reputation of the complainant’s mark; or

(b) impairing the distinctive character or the reputation of the complainant’s mark; or

(c) creating a likelihood of confusion with the complainant’s mark.

An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark.

6.2 Second Level

Complainants are required to prove, by clear and convincing evidence that, through the registry operator’s affirmative conduct:

(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and

(b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which:

(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(ii) impairs the distinctive character or the reputation of the complainant's mark, or

(iii) creates a likelihood of confusion with the complainant's mark.

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such as enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

7. Complaint

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

7.2 Content:

7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, and any relevant evidence, which shall include:
- (a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.
 - (b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
 - (c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.
 - (d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) its willingness to meet to resolve the issue.
 - (e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.
 - (f) Copies of any documents that the Complainant considers to evidence its basis for relief, including evidence of current use of the Trademark at issue in the Complaint and domain name registrations.
 - (g) A statement that the proceedings are not being brought for any improper purpose.
 - (h) A statement describing how the registration at issue has harmed the trademark owner.
- 7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.
- 7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

8. Administrative Review of the Complaint

- 8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.
- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

9. Threshold Review

- 9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and the Complaint has been deemed compliant with procedural rules.
- 9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:
 - 9.2.1 The Complainant is a holder of a word mark that: (i) is nationally or regionally registered and that is in current use; or (ii) has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty at the time the PDDRP complaint is filed;
 - 9.2.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse
 - 9.2.1.2 Proof of use may also be submitted directly with the Complaint.
 - 9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;
 - 9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein
OR

The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and its willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.

9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.

9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.

9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.

9.6 Provider shall electronically serve the Threshold Determination on all parties.

9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.

9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider will commence the proceedings on the merits.

10. Response to the Complaint

10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.

10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.

10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

- 10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.
- 10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

11. Reply

- 11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

12. Default

- 12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.
- 12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.
- 12.4 All Default cases shall proceed to Expert Determination on the merits.

13. Expert Panel

- 13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 13.2 The Provider shall appoint a one-person Expert Panel, unless any party requests a three- member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.
- 13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Providers rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.

- 13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

14. Costs

- 14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.
- 14.2 The Complainant shall be required to pay the filing fee as set forth above in the “Complaint” section, and shall be required to submit the full amount of the Provider estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant’s share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator’s share if the registry operator prevails.
- 14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

15. Discovery

- 15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel’s own accord, or upon request from the Parties.
- 15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.
- 15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

16. Hearings

- 16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

- 16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.
- 16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.
- 16.4 All dispute resolution proceedings will be conducted in English.

17. Burden of Proof

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

18. Remedies

- 18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.
- 18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:
 - 18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:
 - (a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or
 - (b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;
 - 18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;

OR,

- 18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

- 18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.
- 18.5 The Expert Panel may also determine whether the Complaint was filed “without merit,” and, if so, award the appropriate sanctions on a graduated scale, including:
 - 18.5.1 Temporary bans from filing Complaints;
 - 18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and
 - 18.5.3 Permanent bans from filing Complaints after being banned temporarily.
- 18.6 Imposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.

19. The Expert Panel Determination

- 19.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 19.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for that Determination. The Expert Determination should be publicly available and searchable on the Provider’s web site.
- 19.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Panel’s Determination.
- 19.4 The Expert Determination shall state which party is the prevailing party.
- 19.5 While the Expert Determination that a registry operator is liable under the standards of the Trademark PDDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

20. Appeal of Expert Determination

- 20.1 Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the Trademark PDDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 20.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20

days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

- 20.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 20.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 20.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 20.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 20.7 The prevailing party shall be entitled to an award of costs of appeal.
- 20.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

21. Challenge of a Remedy

- 21.1 ICANN shall not implement a remedy for violation of the Trademark PDDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.
- 21.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.
- 21.3 If ICANN decides to implement a remedy for violation of the Trademark PDDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement the remedy in furtherance of the Trademark PDDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

- 21.4 The registry operator may challenge ICANN's imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the PDDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.
- 21.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

22. Availability of Court or Other Administrative Proceedings

- 22.1 The Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 22.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same Parties, facts and circumstances as the Trademark PDDRP was instituted prior to the filing date of the Complaint in the Trademark PDDRP, the Provider shall suspend or terminate the Trademark PDDRP.

REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)¹
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the harmed established institution and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover these dispute resolution proceedings generally. To the extent more than one RRDRP provider (“Provider”) is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.

2.2 In any new community-based gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be filed electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

¹ Initial complaints that a Registry has failed to comply with registration restrictions shall be processed through a Registry Restriction Problem Report System (RRPRS) using an online form similar to the Whois Data Problem Report System (WDPRS) at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator shall receive a copy of the complaint and will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant will have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Failure by the Registry to address the complaint to complainant’s satisfaction does not itself give the complainant standing to file an RRDRP complaint.

- 4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.
- 4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a harmed established institution as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement.
- 5.2 Established institutions associated with defined communities are eligible to file a community objection. The “defined community” must be a community related to the gTLD string in the application that is the subject of the dispute. To qualify for standing for a community claim, the Complainant must prove both: it is an established institution, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.
- 5.3 Complainants must have filed a claim through the Registry Restriction Problem Report System (RRPRS) to have standing to file an RRDRP.
- 5.4 The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

6. Standards

- 6.1 For a claim to be successful, the claims must prove that:
 - 6.1.1 The community invoked by the objector is a defined community;
 - 6.1.2 There is a strong association between the community invoked and the gTLD label or string;
 - 6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;
 - 6.1.4 There is a measureable harm to the Complainant and the community named by the objector.

7. Complaint

- 7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

7.2 Content:

- 7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.
- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, which must include:
 - 7.2.3.1 The particular registration restrictions in the Registry Agreement with which the registry operator is failing to comply; and
 - 7.2.3.2 A detailed explanation of how the registry operator's failure to comply with the identified registration restrictions has caused harm to the complainant.
- 7.2.4 A statement that the proceedings are not being brought for any improper purpose.
- 7.2.5 A statement that the Complainant has filed a claim through the RRPRS and that the RRPRS process has concluded.
- 7.2.6 A statement that Complainant has not filed a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) complaint relating to the same or similar facts or circumstances.

7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

7.5 At the same time the Complaint is filed, the Complainant will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

8. Administrative Review of the Complaint

8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.

- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

9. Response to the Complaint

- 9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.
- 9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.
- 9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- 9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.
- 9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.
- 9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

10 Reply

- 10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

11. Default

- 11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.
- 11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.
- 11.4 All Default cases shall proceed to Expert Determination on the merits.

12. Expert Panel

- 12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.
- 12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.
- 12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

13. Costs

- 13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the administrative fees, including the Filing and Response Fee, of the Provider, and the Expert Panel fees, and are intended to be reasonable.
- 13.2 The Complainant shall be required to pay the Filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the other Provider-estimated administrative fees, including the Response Fee, and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

- 13.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred, including the Filing Fee. Failure to do so shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.
- 13.4 If the Panel declares the registry operator to be the prevailing party, the Provider shall reimburse the registry operator for its Response Fee.

14. Discovery/Evidence

- 14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence.
- 14.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 14.3 Without a specific request from the Parties, but only in extraordinary circumstances, the Expert Panel may request that the Provider appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

15. Hearings

- 15.1 Disputes under this RRDRP will usually be resolved without a hearing.
- 15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.
- 15.3 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.
- 15.4 Hearings should last no more than one day, except in the most exceptional circumstances.
- 15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.
- 15.6 All dispute resolution proceedings will be conducted in English.

16. Burden of Proof

The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

17. Recommended Remedies

- 17.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 17.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.
- 17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its promised limitations, including:
- 17.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations; except that the remedial measures shall not:
- (a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or
 - (b) direct actions by the registry operator that are contrary to those required under the registry agreement
- 17.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 17.3.3 In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.
- 17.3 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

18. The Expert Determination

- 18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 18.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its

Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.

- 18.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.
- 18.4 The Expert Determination shall state which party is the prevailing party.
- 18.5 While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

19. Appeal of Expert Determination

- 19.1 Either party shall have a right to seek a de novo appeal of the Expert Determination based on the existing record within the RDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."
- 19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 19.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 19.7 The prevailing party shall be entitled to an award of costs of appeal.
- 19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

20. Breach

- 20.1 If the Expert determines that the registry operator is in breach, ICANN will then proceed to notify the registry operator that it is in breach. The registry operator will be given the opportunity to cure the breach as called for in the Registry Agreement.

- 20.2 If registry operator fails to cure the breach then both parties are entitled to utilize the options available to them under the registry agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.
- 20.3 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

21. Availability of Court or Other Administrative Proceedings

- 21.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 21.2 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 6

4 June 2012

Module 6

Top-Level Domain Application - Terms and Conditions

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval rejection or withdrawal of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.
7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other

materials prepared in connection with the evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion. Applicant acknowledges that ICANN will handle personal information collected in accordance with its gTLD Program privacy statement <http://newgtlds.icann.org/en/applicants/agb/program-privacy>, which is incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct these background screening activities. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:
 - a. Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;
 - b. Applicant may be required to obtain specific government records directly and supply those records to ICANN for review;
 - c. Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization;

- d. Applicant may be requested to supply certain information in the original language as well as in English.
9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.
11. Applicant authorizes ICANN to:
 - a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
 - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.

12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.
13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and evaluation of its application to represent ICANN adverse to Applicant in the matter.
14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process, including the process for withdrawal of applications, at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to

such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

Resp. Ex. 6



[ICANN Resolutions](#) » 2012-04-10 - Establishment of New gTLD Program Committee

Important note: The Board Resolutions are as reported in the Board Meeting Transcripts, Minutes & Resolutions portion of ICANN's website. Only the words contained in the Resolutions themselves represent the official acts of the Board. The explanatory text provided through this database (including the summary, implementation actions, identification of related resolutions, and additional information) is an interpretation or an explanation that has no official authority and does not represent the purpose behind the Board actions, nor does any explanations or interpretations modify or override the Resolutions themselves. Resolutions can only be modified through further act of the ICANN Board.

2012-04-10 - Establishment of New gTLD Program Committee

Resolution of the ICANN Board

Topic:

Establishment of Committee

Summary:

Establishment of New gTLD Program Committee

Category:

Board

Meeting Date:

Tue, 10 Apr 2012

Resolution Number:

2012.04.10.01 - 2012.04.10.04

URL for Resolution:

<http://www.icann.org/en/groups/board/documents/resolutions-10apr12-en.htm>

Status:

Ongoing

Implementation Actions:

- Set forth a process for the creation of Board Committees to address future conflict of interest situations
 - Responsible entity: CEO
 - Due date: None provided
 - Completion date: Ongoing

Resolution Text:

Resolved (2012.04.10.01), the Board hereby establishes the Board New gTLD Program Committee as follows: (i) the voting members of the Committee will consist of: Rod Beckstrom, Cherine Chalaby, Chris Disspain, Bill Graham, Erika Mann, Gonzalo Navarro, Ray Plzak, R. Ramaraj, George Sadowsky, Mike Silber, and Kuo-Wei Wu; (ii) the liaisons to the Committee will be Thomas Roessler; and (iii) the Chair of the Committee will be Cherine Chalaby.

Resolved (2012.04.10.02), the Board hereby delegates to the Board New gTLD Program Committee all legal and decision making authority of the Board relating to the New gTLD Program (for the round of the Program, which commenced in January 2012 and for the related Applicant Guidebook that applies to this current round) as set forth in its Charter, which excludes those things that the Board is prohibited from delegating by law, or pursuant to Article XII, Section 2 of the ICANN Bylaws.

Resolved (2012.04.10.03), all members of the New gTLD Program Committee reinforce their commitment to the 8 December 2011 Resolution of the Board (Resolution 2011.12.08.19) regarding Board member conflicts, and specifying in part: "Any and all Board members who approve any new gTLD application shall not take a contracted or employment position with any company sponsoring or in any way involved with that new gTLD for 12 months after the Board made the decision on the application."

Resolved (2012.04.10.04), the Board directs the CEO to prepare a document setting forth a process for the creation of Board Committees to address future situations where there may be multiple Board members with perceived, potential or actual conflicts of interest on an issue.

Rationale for Resolution:

In order to have efficient meetings and take appropriate actions with respect to the New gTLD Program for the current round of the Program and as related to the Applicant Guidebook, the Board decided to create the "New gTLD Program Committee" in accordance with Article XII of the Bylaws and has delegated decision making authority to the Committee as it relates to the New gTLD Program for the current round of the Program which commenced in January 2012 and for the related Applicant Guidebook that applies to this current round.

Establishing this new Committee without conflicted members, and delegating to it decision making authority, will provide some distinct advantages. First, it will eliminate any uncertainty for conflict Board members with respect to attendance at Board meetings and workshops since the New gTLD Program topics can be dealt with at the Committee level. Second, it will allow for actions to be taken without a meeting by the committee. As the Board is aware, actions without a meeting cannot be taken unless done via electronic submission by unanimous consent; such unanimous consent cannot be achieved if just one Board member is conflicted. Third, it will provide the community with a transparent view into the Board's commitment to dealing with actual, potential or perceived conflicts.

This resolution should have a positive impact on the community and ICANN as a whole as the New gTLD Program Committee will be able to take actions relating to the New gTLD Program for the current round of the Program and as related to the Applicant Guidebook without any question of conflict arising. No fiscal impact is anticipated as a result of this action and there will be no impact on the security, stability no resiliency of the domain name system.

Other Related Resolutions:

- Resolutions 2011.06.20.01, 2011.06.20.02, 2011.06.20.03, approving the New gTLD Program, available at <https://community.icann.org/display/tap/2011-0B>
- Other resolutions TBD

Additional Information:

- The current composition and work of the New gTLD Program Committee can be located at <http://www.icann.org/en/groups/board/new-gtld>
- The resolution does not address funding for the items identified therein.

Resp. Ex. 7



Applicants' Corner

- Applicant Advisories
- Application Comments Forum
- Batching / Metering
- Change Request Process
- Clarification Questions
- Global Support

GAC Advice →

- Singapore 52 Communiqué and Applicant Responses
- Los Angeles Communiqué and Applicant Responses
- London Communiqué and Applicant Responses
- Singapore Communiqué and Applicant Responses
- Buenos Aires Communiqué and Applicant Responses
- Beijing Communiqué and Applicant Responses
- Durban Communiqué and Applicant Responses
- Category 1 Safeguards
- Category 2 Safeguards and Applicant Responses

GAC ADVICE

- [What does GAC Advice Mean?](#)
- [GAC Communiqués & Applicant Responses](#)
- [New gTLD Program Committee Resolutions and Scorecards](#)
- [GAC Category 1 Advice & Applicant Advisory](#)
- [GAC Category 2 Advice & Applicant Advisory](#)
- [Archive](#)

In relation to the New gTLD Program, GAC Advice is advice from the Governmental Advisory Committee (GAC) to the ICANN Board regarding an application identified as being problematic, e.g., that potentially violates national law or raises sensitivities.

See GAC Advice issued, applicant responses, and related documentation below:

What Does GAC Advice Mean?

- If GAC Advice is based on a consensus of the GAC, it will create a strong presumption that the application should not be approved. If the ICANN Board does not act in accordance with this type of advice, it must provide rationale for doing so.
- If the GAC advises that there are concerns about a particular application, the ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns and provide rationale for its decision.
- If the GAC advises that an application should not proceed unless remediated, this will create a strong presumption that the application should not proceed unless there is a remediation method available in the Applicant Guidebook (such as securing the approval of one or more governments) that is implemented by the applicant. If the issue identified by the GAC is not remediated, the ICANN Board is expected to provide a rationale for its decision if it does not follow GAC advice.

GAC Communiqués & Applicant Responses

GAC Communiqués	GAC Advice and Applicant Responses
GAC Dublin 54 Communiqué [PDF, 163 KB] October 2015.	
GAC Buenos Aires 53 Communiqué [PDF, 108 KB] June 2015.	
GAC Singapore 52 Communiqué [PDF, 123 KB] February 2015.	No response was submitted.
GAC Los Angeles Communiqué [PDF, 128 KB]	Responses to GAC Los Angeles

GAC Early Warning
New gTLD Sessions from ICANN Meetings
Objections
Pre-Delegation Testing
Program Feedback
Registry Data Escrow
Spec 11 of the Revised New gTLD Registry Agreement: PIC FAQs
TLD Application System (TAS)
Trademark Clearinghouse
Uniform Rapid Suspension System (URS)
Withdrawal Process

KB] October 2014.	Communiqué November 2014.
GAC London Communiqué [PDF, 138 KB] June 2014.	Responses to GAC London Communiqué August 2014.
GAC Singapore Communiqué [PDF, 448 KB] March 2014.	Responses to GAC Singapore Communiqué May 2014.
GAC Buenos Aires Communiqué [PDF, 97 KB] November 2013.	Responses to GAC Buenos Aires Communiqué January 2014.
GAC Durban Communiqué [PDF, 110 KB] July 2013.	Responses to GAC Durban Communiqué August 2013.
GAC Beijing Communiqué [PDF, 155 KB] April 2013.	Responses to GAC Beijing Communiqué May 2013.

Applicant Guidebook
Applicant Support Program
Auctions
Community Priority Evaluation (CPE)
Contracting & the Registry Agreement
Global Support
Pre-Delegation Testing

New gTLD Program Committee Resolutions and Scorecards

- **Comprehensive Report of NGPC Responses to GAC Advice re: the New gTLD Program** [PDF, 505 KB] (7 October 2015)

- **Approved New gTLD Program Committee Resolution | GAC Advice: Buenos Aires Communiqué (June 2015)** (18 October 2015)
 - **Annex 1: GAC Advice – Buenos Aires Communiqué 24 June 2015: Actions and Updates** [PDF, 264 KB] (18 October 2015)
- **Approved New gTLD Program Committee Resolution | GAC Category 2 Safeguard Advice – Exclusive Generic TLDs** (21 June 2015)
- **Approved New gTLD Program Committee Resolution | Remaining Items from Beijing, Durban, Buenos Aires, Singapore and London GAC Advice: Updates and Actions** (8 September 2014)
 - **Annex 1: GAC Advice (Beijing, Durban, Buenos Aires, Singapore and London): Actions and Updates** [PDF, 429 KB] (8 September 2014)
- **Approved New gTLD Program Committee Resolutions | Remaining Items from Beijing, Durban, Buenos Aires, and Singapore GAC Advice** (14 May 2014)
 - **Annex 1: GAC Advice (Beijing, Durban, Buenos Aires and Singapore): Actions and Updates** [PDF, 436 KB] (14 May 2014)
- **Approved New gTLD Program Committee Resolutions | GAC Advice on .AMAZON (and related IDNs)** (14 May 2014)
- **Approved New gTLD Program Committee Resolutions | Applications for .vin and .wine/ GAC Communiqué – Singapore** (4 April 2014)
- **Approved New gTLD Program Committee Resolutions | Remaining Items from Beijing, Durban and Buenos Aires GAC Advice: Updates and Actions** (5 February 2014)
 - **Annex 1: GAC Advice (Beijing, Durban, Buenos Aires): Actions and Updates** [PDF, 370 KB] (5 February 2014)
 - **Annex 2: GAC Category 1 Implementation Framework** [PDF, 61 KB] (5 February 2014)
- **Approved New gTLD Program Committee Resolution | Remaining Items from Beijing and Durban GAC Advice** (28 September 2013)
 - **Annex 1: Remaining Items from Beijing and Durban GAC Advice: Updates and Actions** [PDF, 94 KB] (28 September 2013)
- **Approved New gTLD Program Committee Resolution | GAC Communiqué Durban –**

Scorecard (10 September 2013)

- [Annex 1: ICANN Board New gTLD Program Committee Scorecard in response to GAC Durban Communiqué \[PDF, 118 KB\] \(10 September 2013\)](#)
- [Approved New gTLD Program Committee Resolution | Consideration of Non-Safeguard Advice in the GAC's Beijing Communiqué \(4 June 2013\)](#)
 - [Annex 1: NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué \[PDF, 563 KB\] \(4 June 2013\)](#)

GAC Category 1 Advice & Applicant Advisory

- [GAC Category 1 Safeguard Advice](#)
- [GAC Category 1 Implementation Framework \[PDF, 61 KB\]](#)
- [Applicant Advisory: GAC Category 1 Implementation](#)

GAC Category 2 Advice & Applicant Advisory

- [GAC Category 2 Safeguard Advice and Applicant Responses](#)
- [NGPC Resolution: GAC Category 2 Exclusive Generic TLDs](#)
- [Applicant Advisory: GAC Category 2 Implementation](#)

Archive

Timing of GAC Advice

- The Applicant Guidebook states – To be considered by the ICANN Board during the evaluation process, GAC Advice must be submitted by the close of the Objection Filing Period.
- The GAC has advised the ICANN Board that it "is considering the implications of providing any GAC advice on gTLD applications. These considerations are not expected to be finalized before the Beijing meeting in April 2013."
- The timing of GAC Advice will not impact the processing of applications. Regardless of when GAC Advice is submitted to the Board, applicants will have 21 calendar days to submit a response to the ICANN Board.
- GAC advice can be tracked via the GAC website at <https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>.
- See GAC Advice issued, applicant responses, and related documentation below.

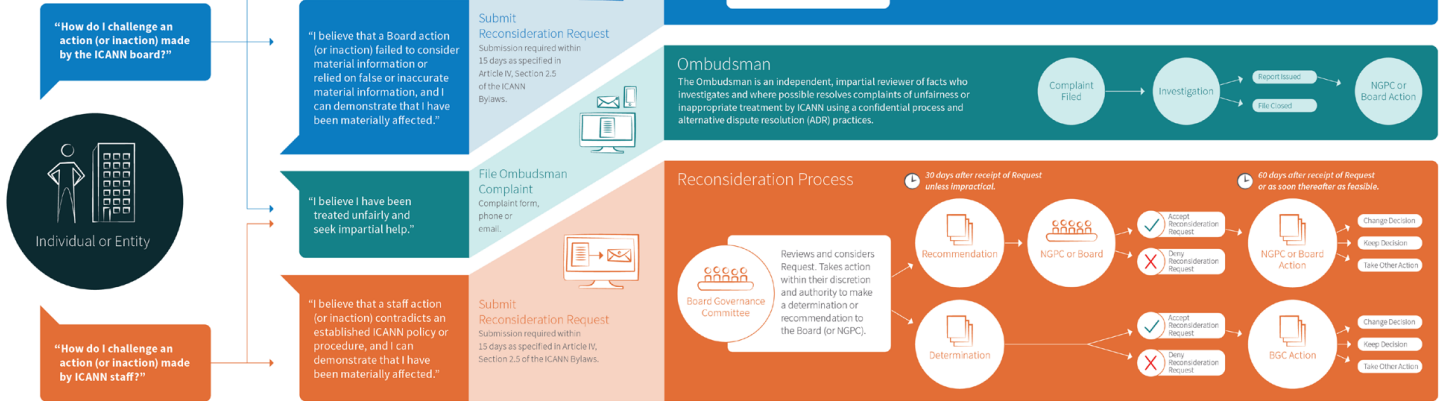
Resp. Ex. 8



ICANN Accountability Mechanisms Available to the ICANN Community

ICANN has a proven commitment to accountability and transparency in all of its practices. In order to reinforce its transparency and accountability, ICANN has established accountability mechanisms for the review of actions (or inactions) taken by ICANN's Board of Directors or staff. When a member of the community believes that the member has been materially affected by a Board or staff action (or inaction), there are accountability mechanisms available to the member. The correct mechanism to use is based on the nature or basis of the complaint and whether the challenged action (or inaction) was taken by the Board or staff.

For more details on ICANN's accountability mechanisms, please refer to Articles IV and V of the ICANN Bylaws.



IRP (INDEPENDENT REVIEW PROCESS) PANEL

A group of independent subject matter experts convened as part of any Independent Review Process that is charged with comparing the challenged action (or inaction) 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.

BGC: BOARD GOVERNANCE COMMITTEE

The BGC is comprised of ICANN Board members and is responsible for a variety of Board-related activities that are identified in its Charter. The BGC is responsible for, among other things, considering and responding to Reconsideration Requests submitted to the Board pursuant to ICANN's Bylaws.

NGPC: NEW gTLD PROGRAM COMMITTEE

The NGPC is comprised of ICANN Board members and has all the powers of the Board, subject to any limitations in law, the Articles of Incorporation, Bylaws, or ICANN's Conflicts of Interest Policy. The NGPC is responsible for making strategic and financial decisions relating to ICANN's New gTLD Program for the current round of the Program and as related to the Applicant Guidebook.

Disclaimer: This document is for general informational purposes only. For the stated policy and procedures on ICANN's accountability mechanisms, please refer to Articles IV and V of the ICANN Bylaws at <http://www.icann.org/en/about/governance/bylaws>.

Version 1.0 | March 2014

Resp. Ex. 9

PROCESS FOR RESPONDING TO ICANN'S DOCUMENTARY INFORMATION DISCLOSURE POLICY (DIDP) REQUESTS

The following sets forth the process guidelines for responding to a DIDP Request.

1. Upon receipt of a DIDP Request, ICANN staff performs a review of the Request and identifies what documentary information is requested and the staff members who may be in possession of or have knowledge regarding information responsive to the Request.
2. Staff conducts interviews of the relevant staff member(s) and performs a thorough search for documents responsive to the DIDP Request.
3. Documents collected are reviewed for responsiveness.
4. A review is conducted as to whether the documents identified as responsive to the Request are subject to any of the Defined Conditions for Nondisclosure identified at <http://www.icann.org/en/about/transparency/didp>.
5. To the extent that any responsive documents fall within any Defined Conditions for Nondisclosure, a review is conducted as to whether, under the particular circumstances, the public interest in disclosing the documentary information outweighs the harm that may be caused by such disclosure.
6. Documents that have been determined as responsive and appropriate for public disclosure are posted in the appropriate locations on ICANN's website. To the extent that the publication of any documents is appropriate but premature at the time the Response is due, ICANN will so indicate in its Response to the DIDP Request and notify the Requester upon publication.
7. Staff prepares a Response to the DIDP Request within thirty calendar days from receipt of the Request. The Response will be sent to the Requester by email. The Response and Request will also be posted on the DIDP page at <http://www.icann.org/en/about/transparency> in accordance with the posting guidelines set forth at <http://www.icann.org/en/about/transparency/didp>.

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Resources

- About ICANN

- Board

- Accountability
 - Accountability Mechanisms
 - Reconsideration
 - Ombudsman Independent Review
 - Document Disclosure
 - Disclosure Policy
 - DIDP Response Process
- Reviews
 - Expected Standards of Behavior
 - Enhancing ICANN Accountability and Governance

ICANN Documentary Information Disclosure Policy

NOTE: With the exception of personal email addresses, phone numbers and mailing addresses, DIDP Requests are otherwise posted in full on ICANN's website, unless there are exceptional circumstances requiring further redaction.

ICANN's Documentary Information Disclosure Policy (DIDP) is intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality.

A principal element of ICANN's approach to transparency and information disclosure is the identification of a comprehensive set of materials that ICANN makes available on its website as a matter of course.

Specifically, ICANN has:

- Identified many of the categories of documents that are already made public as a matter of due course
- Developed a time frame for responding to requests for information not already publicly available
- Identified specific conditions for nondisclosure of information
- Described the mechanism under which requestors may appeal a denial of disclosure

Public Documents

ICANN posts on its website at www.icann.org, numerous categories of documents in due course. A list of those categories follows:

- Annual Reports – <http://www.icann.org/en/about/annual-report>

Governance

Groups

Business	<ul style="list-style-type: none"> Articles of Incorporation – http://www.icann.org/en/about/governance/articles
<input type="checkbox"/> Contractual Compliance	<ul style="list-style-type: none"> Board Meeting Transcripts, Minutes and Resolutions – http://www.icann.org/en/groups/board/meetings
<input type="checkbox"/> Registrars	<ul style="list-style-type: none"> Budget – http://www.icann.org/en/about/financials
<input type="checkbox"/> Registries	<ul style="list-style-type: none"> Bylaws (current) – http://www.icann.org/en/about/governance/bylaws
Operational Metrics	<ul style="list-style-type: none"> Bylaws (archives) – http://www.icann.org/en/about/governance/bylaws/archive
<input type="checkbox"/> Identifier Systems Security, Stability and Resiliency (IS-SSR)	<ul style="list-style-type: none"> Correspondence – http://www.icann.org/correspondence/ Financial Information – http://www.icann.org/en/about/financials Litigation documents – http://www.icann.org/en/news/litigation Major agreements – http://www.icann.org/en/about/agreements Monthly Registry reports – http://www.icann.org/en/resources/registries/reports Operating Plan – http://www.icann.org/en/about/planning Policy documents – http://www.icann.org/en/general/policy.html Speeches, Presentations & Publications – http://www.icann.org/presentations Strategic Plan – http://www.icann.org/en/about/planning
<input type="checkbox"/> ccTLDs	
<input type="checkbox"/> Internationalized Domain Names	
<input type="checkbox"/> Universal Acceptance Initiative	
<input type="checkbox"/> Policy	
<input type="checkbox"/> Public Comment	
<input type="checkbox"/> Technical Functions	<ul style="list-style-type: none"> Material information relating to the <u>Address Supporting Organization (ASO)</u> – http://aso.icann.org/docs including ASO policy documents, Regional Internet Registry (RIR) policy documents, guidelines and procedures, meeting agendas and minutes, presentations, routing statistics, and information regarding the RIRs
<input type="checkbox"/> Contact	
<input type="checkbox"/> Help	<ul style="list-style-type: none"> Material information relating to the <u>Generic Supporting Organization (GNSO)</u> – http://gns0.icann.org – including correspondence and presentations, council resolutions, requests for comments, draft documents, policies, reference documents (see http://gns0.icann.org/reference-documents.htm), and council administration documents (see http://gns0.icann.org/council/docs.shtml). Material information relating to the <u>country code Names Supporting Organization (ccNSO)</u> – http://ccnso.icann.org – including meeting agendas, minutes, reports, and presentations

- Material information relating to the At Large Advisory Committee (ALAC) – <http://atlarge.icann.org> – including correspondence, statements, and meeting minutes
- Material information relating to the Governmental Advisory Committee (GAC) – <http://gac.icann.org/web/index.shtml> – including operating principles, gTLD principles, ccTLD principles, principles regarding gTLD Whois issues, communiqués, and meeting transcripts, and agendas
- Material information relating to the Root Server Advisory Committee (RSSAC) – <http://www.icann.org/en/groups/rssac> – including meeting minutes and information surrounding ongoing projects
- Material information relating to the Security and Stability Advisory Committee (SSAC) – <http://www.icann.org/en/groups/ssac> – including its charter, various presentations, work plans, reports, and advisories

Responding to Information Requests

If a member of the public requests information not already publicly available, ICANN will respond, to the extent feasible, to reasonable requests within 30 calendar days of receipt of the request. If that time frame will not be met, ICANN will inform the requester in writing as to when a response will be provided, setting forth the reasons necessary for the extension of time to respond. If ICANN denies the information request, it will provide a written statement to the requestor identifying the reasons for the denial.

Defined Conditions for Nondisclosure

ICANN has identified the following set of conditions for the nondisclosure of information:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Personnel, medical, contractual, remuneration, and similar records relating to an individual's personal information, when the disclosure of such information would or likely would constitute an invasion of personal privacy, as well as proceedings of internal appeal mechanisms and investigations.
- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.
- Confidential business information and/or internal policies and procedures.
- Information that, if disclosed, would or would be likely to endanger the life, health, or safety of any individual or materially prejudice the administration of justice.
- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.
- Information that relates in any way to the security and stability of the Internet, including the operation of the L Root or any changes, modifications, or additions to the root zone.
- Trade secrets and commercial and financial information not publicly disclosed by ICANN.
- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) complying with which is not feasible; or (iv) are made with an abusive or vexatious purpose or by a vexatious or querulous individual.

Information that falls within any of the conditions set forth above may still be

made public if ICANN determines, under the particular circumstances, that the public interest in disclosing the information outweighs the harm that may be caused by such disclosure. Further, ICANN reserves the right to deny disclosure of information under conditions not designated above if ICANN determines that the harm in disclosing the information outweighs the public interest in disclosing the information.

ICANN shall not be required to create or compile summaries of any documented information, and shall not be required to respond to requests seeking information that is already publicly available.

Appeal of Denials

To the extent a requestor chooses to appeal a denial of information from ICANN, the requestor may follow the Reconsideration Request procedures or Independent Review procedures, to the extent either is applicable, as set forth in Article IV, Sections 2 and 3 of the ICANN Bylaws, which can be found at <http://www.icann.org/en/about/governance/bylaws>.

DIDP Requests and Responses

Request submitted under the DIDP and ICANN responses are available here: <http://www.icann.org/en/about/transparency>

Guidelines for the Posting of Board Briefing Materials

The posting of Board Briefing Materials on the Board Meeting Minutes page (at <http://www.icann.org/en/groups/board/meetings>) is guided by the application of the DIDP. The Guidelines for the Posting of Board Briefing Materials are available at <http://www.icann.org/en/groups/board/documents/briefing-materials-guidelines-21mar11-en.htm>.

To submit a request, send an email to didp@icann.org



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Resp. Ex. 11

ANNEX 1 to NGPC Resolution No. 2013.06.04.NG01

NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué

4 June 2013

This document contains the NGPC's response to the GAC Beijing Communiqué issued 11 April 2013 <<http://www.icann.org/en/news/correspondence/gac-to-board-11apr13-en>> for the non-safeguard advice items in the GAC Register of Advice where the NGPC has adopted a score of "1A" to indicate that its position is consistent with the GAC advice as described in the Scorecard. Refer to the GAC Register of Advice for the full text of each item of advice in the GAC Beijing Communiqué <<https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>>.

GAC Register #	Summary of GAC Advice		NGPC Response
1. 2013-04-11-Obj-Africa (Communiqué §1.a.i.1)	The GAC Advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .africa (Application number 1-1165-42560)	1A	The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) 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 withdraw (pursuant to AGB § 1.5.1) or seek relief according to ICANN's accountability mechanisms (see ICANN Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.
2. 2013-04-11-Obj-GCC (Communiqué §1.a.i.2)	The GAC Advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .gcc (application number: 1-1936-2101)	1A	The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) The NGPC directs staff that pursuant to the GAC advice and Section 3.1 of the Applicant Guidebook, Application number 1-1936-2101 for .gcc will not be approved. In accordance with the AGB the applicant may withdraw (pursuant to AGB § 1.5.1) or seek relief according to ICANN's accountability mechanisms (see ICANN Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.

GAC Register #	Summary of GAC Advice		NGPC Response
3. 2103-04-11- Religious Terms (Communiqué §1.a.ii)	The GAC Advises the Board that with regard to Module 3.1 part II of the Applicant Guidebook, the GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.	1A	<p>The NGPC accepts this advice. The AGB provides that if "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."</p> <p>Pursuant to Section 3.1.ii of the AGB, the NGPC stands ready to enter into dialogue with the GAC on this matter. We look forward to liaising with the GAC as to how such dialogue should be conducted.</p> <p>(Note a community objection has been filed with the International Centre for Expertise of the ICC against .ISLAM and .HALAL. Because formal objections have been filed, these applications cannot move to the contracting phase until the objections are resolved.)</p>

GAC Register #	Summary of GAC Advice		NGPC Response
4. 2013-04-11-gTLDStrings (Communiqué §1.c)	In addition to this safeguard advice, the GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban. Consequently, the GAC advises the ICANN Board to not proceed beyond Initial Evaluation with the following strings : .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .date, .spa, .yun, .thai, .zulu, .wine, .vin	1A	<p>The NGPC accepts this advice. The AGB provides that "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)" (AGB § 3.1). At this time, ICANN will not proceed beyond initial evaluation of these identified strings. In other words, ICANN will allow evaluation and dispute resolution processes to go forward, but will not enter into registry agreements with applicants for the identified strings for now.</p> <p>(Note: community objections have been filed with the International Centre for Expertise of the ICC against .PERSIANGULF, .AMAZON, and .PATAGONIA. The application for .ZULU was withdrawn.)</p>
5. 2013-04-11-CommunitySupport (Communiqué §1.e)	The GAC advises the Board that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information.	1A	The NGPC accepts this advice. Criterion 4 for the Community Priority Evaluation process takes into account "community support and/or opposition to the application" in determining whether to award priority to a community application in a contention set. (Note however that if a contention set is not resolved by the applicants or through a community priority evaluation then ICANN will utilize an auction as the objective method for resolving the contention.)

GAC Register #	Summary of GAC Advice		NGPC Response
6. 2013-04-11-PluralStrings (Communiqué §1.f)	The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion. Therefore the GAC advises the Board to reconsider its decision to allow singular and plural versions of the same strings.	1A	The NGPC accepts this advice and will consider whether to allow singular and plural versions of the same string.
7. 2013-04-11-RAA (Communiqué §2)	The GAC advises the ICANN Board that the 2013 Registrar Accreditation Agreement should be finalized before any new gTLD contracts are approved.	1A	The NGPC accepts this advice. The final draft of the RAA was posted for public comment on 22 April 2013. The new gTLD Registry Agreement was posted for public comment on 29 April 2013, and it requires all new gTLD registries to only use 2013 RAA registrars. The public comment reply period for the 2013 RAA closes on 4 June 2013. The NGPC intends to consider the 2013 RAA shortly thereafter.
8. 2013-04-11-WHOIS (Communiqué §3)	The GAC urges the ICANN Board to ensure that the GAC Principles Regarding gTLD WHOIS Services, approved in 2007, are duly taken into account by the recently established Directory Services Expert Working Group.	1A	The NGPC accepts this advice. The NGPC notes that staff has confirmed that the GAC Principles have been shared with the Expert Working Group.

GAC Register #	Summary of GAC Advice		NGPC Response
9. 2013-04-11-IOCRC (Communiqué §4)	The GAC advises the ICANN Board to amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.	1A	<p>The NGPC accepts the GAC advice. The proposed final version of the Registry Agreement posted for public comment on 29 April 2013 includes protection for an indefinite duration for IOC/RCRC names. Specification 5 of this version of the Registry Agreement includes a list of names (provided by the IOC and RCRC Movement) that "shall be withheld from registration or allocated to Registry Operator at the second level within the TLD."</p> <p>This protection was added pursuant to a NGPC resolution to maintain these protections "until such time as a policy is adopted that may require further action" (204.11.26.NG03). The resolution recognized the GNSO's initiation of an expedited PDP. Until such time as the GNSO approves recommendations in the PDP and the Board adopts them, the NGPC's resolutions protecting IOC/RCRC names will remain in place. Should the GNSO submit any recommendations on this topic, the NGPC will confer with the GAC prior to taking action on any such recommendations.</p>

Resp. Ex. 12



GET STARTED

NEWS & MEDIA

POLICY

PUBLIC COMMENT

RESOURCES

COMMUNITY

IANA STEWARDSHIP & ACCOUNTABILITY



Shahram Soboutipour

Member Of Multistakeholder Advisory Group (MAG) At IGF Secretariat

Iran, Islamic Republic Of



Languages

Persian [Native]

English [Professional Working]

Arabic [Elementary]

Areas of Interest

Technology

Civil Society

Biography

Shahram Soboutipour is a Medical Doctor (graduated in 2000) with deep interests in ICT fields, which made him change his field of experience from Medicine to ICT from 2000.

He has experiences in Corporate Build-up and Management (Business and Marketing Strategy, Product Management, Budgeting, etc.), with deep experiences in Software and e-Service fields.

Shahram's first venture into cyberspace goes back to his cooperation with one of the first ISPs in Iran in 1999,

Memberships

No Membership

Level of Experience

With ICANN

Very Experienced

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Internationalized Domain Resolution Union).

Shahram has an in-depth experience with ICANN, the Domain Industry and Internet Governance. He serves as adviser and member in several National ICANN and IG related WGs and committees. He has been elected as a member of Multi-stakeholder Advisory Group (MAG) for IGF Secretariat (2013), where its purpose is to advise the Secretary-General of the United Nations on the programme and schedule of the Internet Governance Forums.

Formerly from 2007, he has been involved in non-for-profit non-governmental ICT and Internet Governance activities by serving as Member of PIR's Advisory Council, the .ORG Registry (2008-2012), and Member of BoD (2009-2012) and Director of Int'l Affairs (2010-2013) of the Iranian ICT Guild Organization (IIG), the nationwide professional ICT Association covering Iranian ICT Private Sector activities. Shahram is now serving Tehran ICT Guild Organization (TIG), -IIG's subsidiary in the capital- as the Senior Adviser on International Affairs.

He also engages into ICT4D projects with iJMA3, Union of Arab ICT Associations, as Country Director for Iran and Program Coordinator.



**MOUNDE NJOUONKOU
ABDEL SALAM**
IT Security Manager



Otto Wilfredo Aparicio



Mohammad Asad Nazir



Resul dursun
Kayseri Evden Eve
Nakliyat / Emniyet
Evden Eve Nakliyat



Sudip K Sen

[BROWSE ALL PROFILES](#)



Asia Green IT System

Chief Operating Officer -

I am responsible for the day to day operations of AGIT's main current project: The New gTLD Project. AGIT is the applicant for 8 new Top Level Domains, mostly focusing on the emerging market of the Middle East.

2015-01-01 - Present

Internet Governance Forum Secretariat

Member of Multistakeholder Advisory Group (MAG) -

The Secretary-General of the United Nations established the Advisory Group (now referred to as the Multistakeholder Advisory Group (MAG)). Its purpose is to advise the Secretary General on the programme and schedule of the Internet Governance Forum meetings. The MAG comprises of 56 Members from governments, the private sector and civil society, including representatives from the academic and technical communities.

2013-05-01 - Present



Persian Internet Governance Forum (PersianIGF) Secretariat

Initiator, Coordinator -

I was a member of the initiating team. We held the formulation session of PersianIGF at IGF2013 in Bali, Indonesia, which was welcomed by the IGF attendees more than what we expected. Later I was involved at the secretariat of PersianIGF until the formation of its MultiStakeholder Advisory Group (MAG).

2013-09-01 - 2014-09-01

Iranian ICT Guild Organization (IIG)

Director of International Affairs -

I was responsible for expanding IIG's international presence by routing IIG to international and regional organizations, participating in international events, and applying for memberships in relevant organizations.

2010-01-01 - 2013-09-01



IJMA3 - The Arab ICT Organization

Iran Country Director -

As a coordinator of some projects in the Middle East region, I am responsible in facilitating of the projects' progress in my territory.

2012-05-01 - 2013-08-01

PersiaSys ME

Chief Research and Development Officer -

My responsibilities in PersiaSys ME consist of the moderation of the R&D department as well as investigations on the current and future products and services PersiaSys ME provides or would like to provides to its clients.

2011-03-01 - 2013-03-01

Iranian ICT Guild Organization (IIG)

Member of the Baord of Directors -

The Iranian ICT Guild organization (IIG) was formed in June 2005 with the primary objective of being catalyst for the growth of the ICT industry in Iran. IIG's power is taken from the Iranian parliament's copyright law which declares the foundation of IIG as the protector and supporter of this law. IIG is a non-governmental, non-profit organization and is financed mainly by its member's annual payments. IIG's chairman appointment letter is signed by the Iranian President ensuring efficiency of its decisions among the country. Now IIG has more than 6000+ members across the country comprising of private companies, computer stores and consultants. I was a member of the Board of Directors consisting of 23 well known IT business men from around

the country. I also do engage in IIG as the head of International Affairs.

2009-01-01 - 2012-01-01



Public Interest Registry (.ORG Registry)

Advisory Council Member -

Created in 1984, .ORG is one of the internet's original top-level domains (TLDs), along with .COM, .NET, .GOV, .EDU and .MIL. In January 2003, the Public Interest Registry assumed responsibility for operating .ORG and maintaining the authoritative database of all .ORG domain names.

Composed of leaders from a broad spectrum of the noncommercial organizations around the world, the Advisory Council was created to advise on issues ranging from public policy to the introduction of new services. Their perspectives, representing the voice of the global noncommercial community, play a vital role in the long-term success of .ORG. I am currently a member of the Advisory Council. There are several working groups formed in Advisory Council which I am a member in the following ones: - IDN Working Group - Outreach and Awareness Working Group

2008-04-01 - 2012-01-01

Satcom Co.

Interim Vice CEO -

In this position I managed the smooth transition of Satcom's traditional business into a complete web-based business form by virtualization of the company.

2010-12-01 - 2011-03-01

ELECOMP 2010

Director of International Affairs -

As the largest Electronic, Computer & E-Commerce International Exhibition and Conference in Iran, which its 16th event will be hold on November 7-12th 2010, I am trying to move it forward to be more global. I am negotiating with international groups and organization to arrange their participation in this event.

2010-08-01 - 2011-01-01

Karmania Technology Inc.

Founder, CEO -

Karmania Technology Inc., a software development company working for more than 7 year in Domain Industry, Web Hosting and other web services as the 1st company in south-east of Iran. The growth of Karmania's domain/webhosting and software development services under my supervision brought the following honors during 2005-07 and later: - 17th place in WebHosting providers country ranking (according to WebHosting.info statistics) - Providing 1.3% of Iranian gTLD domain industry market to more than 3000 customers - Directi's No.1 reseller in Iran - More than 60 national/provincial successful web based software launches Karmania has also been active in Internationalized Domain Names (known as IDNs) from 2003 in cooperation with i-DNS.net International (the leading company working on IDNs) in Singapore, and now has patents on Persian Domain Name Resolution methods and software. It has also been succeeded in attracting a 570,000 Euro foreign investment in the field. The company is also known as the No.1 company accepted for entrance to the Kerman Science and Technology Park.

2001-09-01 - 2010-12-01



Athena Group of Companies

Corporate Development Manager -

Athena Group of Companies is one of the fastest growing ICT Solution Provider Groups based in Tehran, serving

large private and governmental enterprises in their ICT needs. Despite its young age, Athena has been completely successful in extending its business credit and consumers' trust, so that its serving more than 10,000 individual customers and 500 enterprises. The group currently consists of 3 companies each specialized in different categories including: * Networking/ Monitoring solutions * VoIP solutions * Security solutions * Hardware/Software solutions * High Level Learning/e-learning services My duties in Athena Group consists but is not limited to: * Organization Reformation and Development * Corporate Budgeting * New Markets' Research on potential business opportunities

2009-10-01 - 2010-09-01

Kelid Vajeh Tejarat LLC.

Director -

Member of board of directors

2006-05-01 - 2010-01-01



ICANN

GNSO IDN Working Group Member -

Helping ICANN's IDN policies to be distinguished and formulated.

2007-01-01 - 2008-01-01

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Resp. Ex. 13

STATE OF KUWAIT

Ministry of Communications

Undersecretary office



دولة الكويت
وزارة المواصلات
مكتب الوكيل

REC'D JUL 25 2013

التاريخ : 25 JUL 2013

الرقم : MC M/5/7-13321

Date : 25th July 2013

Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA
Tel : +1 310 301 5800
Fax : +1 310 823 8649

ICC International Centre for Expertise
38 Cours Albert 1er
75008 Paris
France
Tel: +33 1 49 53 30 53
Fax: +33 1 49 53 30 49

Dear Chairman of ICANN Board,

Dear ICC Panel on .islam and .halal objections,

This has reference to new gTLD applications .islam (1-2130-23450) and .halal (1-2131-60793) and to the community-based objections filed by the government of United Arab Emirates against those two applications. We would like to express our concern to the new gTLDs applications (.islam and .halal) that have been applied by Asia Green IT System (AGIT). We believe that gTLD applications related to religions must be fully supported and governed by the concerned community. Unfortunately this is not the case with these two applications as the applicant did not consult the community, nor it received the support of the community.

STATE OF KUWAIT

Ministry of Communications

Undersecretary office

**دولة الكويت**
وزارة المواصلات
مكتب الوكيل

التاريخ:

الرقم:

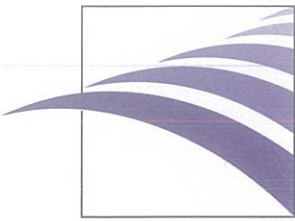
Being part of the Islamic community, we would like to share the concerns raised by UAE government in its early warning. We believe that the application put forward by AGIT is not in the interest of the Islamic community due to the sensitivities inherited in them. We believe that this TLD should be managed and operated by the community itself through a neutral body that truly represents the Islamic community such as the Organization of Islamic Cooperation (OIC). Therefore we would like to support to the objection that was put forward by the government of United Arab Emirates.

Regards,

Undersecretary

Eng . Hameed H . Al-Qattan

Resp. Ex. 14



Republic of Lebanon
Telecommunications
Regulatory Authority

Date: 04 September, 2013

**To: Ms. Cherine Chalaby, Chairman of the New gTLD Program Committee,
ICANN New gTLD Program Committee
ICANN Board Members,**

Subject: Position of Lebanon Regarding New gTLD Applications for .ISLAM and .HALAL

Dear Ms. Chalaby,

Dear New gTLD Program Committee Members,

Dear ICANN Board Members,

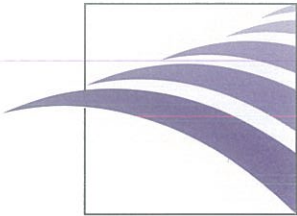
Reference is made to inform you the Lebanese position regarding new gTLD applications for .ISLAM and .HALAL as follows:

We strongly believe that, in general, the ICANN should stay away from making decisions related to religious domain names based on other than purely technical criteria, principals, requirements, and inputs.

Having stated our overarching position, Lebanon believes that TLDs like .ISLAM and .HALAL like many other new TLDs sought using the **new gTLD program**, will benefit the general public and will help the Muslim community in getting better presentation, and it will also help the community integrate and engage better on the Internet.

We also understand and point out that TLDs of this nature will also bring with it few additional management challenges that we believe that the ICANN board and committees must take into account as part of the evaluation of these two TLDs and of other similar TLDs.

We must reiterate our strong belief that the evaluation process must be a purely technical conducted through a technical committee based on purely technical criteria. However, in case inputs other than technical inputs must be taking into account, we also strongly believe that, the management and operation of these TLDs must be conducted by a neutral non-governmental



Republic of Lebanon
Telecommunications
Regulatory Authority

multi-stakeholder group representing, at least, the larger Muslim community, and representing its different sections and segments including Governments, NGOs and IGOs, Private Sector, Academia, as well as other stakeholders of the internet for the Muslim community.

It is extremely important to guarantee a growth-oriented developmental management process of these, and of other similar, very sensitive TLDs, where the management is conducted in a non-governmental, non-political multi-stake-holder manner. It is also important to avoid any dominance or major influence by any specific organization, country or group of countries, governments, governmental organizations in an effort to help conduct a proper and healthy multi-stakeholder management with the objective of making sure that the internet (and the society as a whole) follows a more inclusive, democratic, peace-seeking, transparent approach, consistent with the purposes of the ICANN and the larger Internet community.

This approach could help engage the entire Larger Muslim Community in a nondiscriminatory process that could benefit from its very objectives to fully consider the matter and take into account the highest level of non-alignment, impartiality, neutrality, inclusiveness, transparency and democratic process.

Yours sincerely,

Dr. Imad Y. Hoballah

Lebanon's Representative to the ICANN-GAC

Chairman and CEO, TRA, Lebanon

Resp. Ex. 15



Governmental Advisory Committee

Buenos Aires, 20 November 2013

GAC Communiqué – Buenos Aires, Argentina

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Buenos Aires during the week of 16 November 2013. 56 GAC Members attended the meetings, with one GAC Member participating remotely, and five Observers. The GAC expresses warm thanks to the local host, NIC Argentina, for their support.

At the beginning of its meeting the GAC expressed its sympathy for and solidarity with the people and government of the Philippines following the recent disaster of Typhoon Haiyan.

II. GAC Advice to the Board¹

1. Category 1 and Category 2 Safeguard Advice

The GAC welcomed the response of the Board to the GAC's Beijing Communiqué advice on Category 1 and Category 2 safeguards. The GAC received useful information regarding implementation of the safeguards during its discussions with the New gTLD Program Committee. GAC members asked for clarification of a number of issues and look forward to ICANN's response.

- a. The GAC highlights the importance of its Beijing advice on 'Restricted Access' registries, particularly with regard to the need to avoid undue preference and/or undue disadvantage.

i. The GAC requests

1. A briefing on whether the Board considers that the existing PIC specifications (including 3c) fully implements this advice.
- b. The GAC requests a briefing on the public policy implications of holding auctions to resolve string contention (including community applications).

¹ To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: <https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>

- c. The GAC considers that new gTLD registry operators should be made aware of the importance of protecting children and their rights consistent with the UN Convention on the Rights of the Child.
- d. **The GAC advises the ICANN Board:**
 - i. to re-categorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors, therefore ascribing these domains exclusively to legitimate medical practitioners. The GAC notes the strong implications for consumer protection and consumer trust, and the need for proper medical ethical standards, demanded by the medical field online to be fully respected.
- e. The GAC welcomes the Board's communication with applicants with regard to open and closed gTLDs, but seeks **written clarification** of how strings are identified as being generic.

2. **GAC Objections to Specific Applications (ref. Beijing Communiqué 1.c.)**

a. **.guangzhou (IDN in Chinese), .shenzhen (IDN in Chinese), and .spa**

Discussions between interested parties are ongoing so as noted in the Durban Communiqué

i. **The GAC advises the ICANN Board:**

- 1. Not to proceed beyond initial evaluation until the agreements between the relevant parties are reached.
 - a. The application for .guangzhou (IDN in Chinese – application number 1-1121-22691)
 - b. The application for .shenzhen (IDN in Chinese – 1-1121-82863)
 - c. The applications for .spa (application number 1-1309-12524 and 1-1619-92115)
- b. The GAC notes that the application for .yun (application number 1-1318-12524) has been withdrawn.
- c. The GAC welcomes the Board's acceptance of its advice in the Durban Communiqué on the application for .thai.
- d. The GAC sought an update from the Board on the current status of the implementation of the GAC Advice for .amazon.

3. **.wine and .vin**

The GAC took note of the developments on the two strings .wine and .vin from its previous meetings in Beijing and Durban.

GAC members have undertaken extensive discussions to examine a diversity of views on these applications, and the protections associated with Geographical Indications (GIs).

GAC considers that appropriate safeguards against possible abuse of these new gTLDs are needed.

Some members are of the view, after prolonged and careful consideration, that the existing safeguards outlined in the GAC's Beijing Communiqué and implemented by the ICANN Board are appropriate and sufficient to deal with the potential for misuse of the .wine and .vin new gTLDs. These members welcome the Board's response to these safeguards, which prohibit fraudulent or deceptive use of domain names. They consider that it would be inappropriate and a serious concern if the agreed international settings on GIs were to be redesigned by ICANN. The current protections for geographical indications are the outcome of carefully balanced negotiations. Any changes to those protections are more appropriately negotiated among intellectual property experts in the World Intellectual Property Organization and the World Trade Organization.

Other members consider that delegation of .wine and .vin strings should remain on hold until either sufficient additional safeguards to protect GIs are put into place in these strings to protect the consumers and businesses that rely on such GIs; or common ground has been reached for the worldwide protection of GIs via international fora and wide array of major trade agreements. Given this changing context, they welcome the current face-to-face talks between the applicants for .wine and .vin. and wine producers, aiming to protect their assets and consumers' interests whilst taking into account governments' public policy concerns.

The Board may wish to seek a clear understanding of the legally complex and politically sensitive background on this matter in order to consider the appropriate next steps in the process of delegating the two strings. GAC members may wish to write to the Board to further elaborate their views.

4. Protection of Inter-Governmental Organisations (IGOs)

a. The GAC Advises the ICANN Board that:

- i. The GAC, together with IGOs, remains committed to continuing the dialogue with NGPC on finalising the modalities for permanent protection of IGO acronyms at the second level, by putting in place a mechanism which would:
 1. provide for a permanent system of notifications to both the potential registrant and the relevant IGO as to a possible conflict if a potential registrant seeks to register a domain name matching the acronym of that IGO;
 2. allow the IGO a timely opportunity to effectively prevent potential misuse and confusion;
 3. allow for a final and binding determination by an independent third party in order to resolve any disagreement between an IGO and a potential registrant; and
 4. be at no cost or of a nominal cost only to the IGO.

The GAC looks forward to receiving the alternative NGPC proposal adequately addressing this advice. The initial protections for IGO acronyms should remain in place until the dialogue between the NGPC, the IGOs and the GAC ensuring the implementation of this protection is completed.

5. Special Launch Program for Geographic and Community TLDs

The GAC recognizes the importance of the priority inclusion of government and locally relevant name strings for the successful launch and continued administration of community and geographic TLDs.

The GAC appreciates that the Trademark Clearing House (TMCH) is an important rights protection mechanism applicable across all the new gTLDs and has an invaluable role to fulfill across the new gTLD spectrum as a basic safety net for the protection of trademark rights.

a. The GAC Advises the ICANN Board:

- i. that ICANN provide clarity on the proposed launch program for special cases as a matter of urgency.

6. Protection of Red Cross/Red Crescent Names

a. The GAC advises the ICANN Board:

- i. that it is giving further consideration to the way in which existing protections should apply to the words “Red Cross”, “Red Crescent” and related designations at the top and second levels with specific regard to national Red Cross and Red Crescent entities; and that it will provide further advice to the Board on this.

7. .islam and .halal

- a. GAC took note of letters sent by the OIC and the ICANN Chairman in relation to the strings .islam and .halal. The GAC has previously provided advice in its Beijing Communiqué, when it concluded its discussions on these strings. The GAC Chair will respond to the OIC correspondence accordingly, noting the OIC’s plans to hold a meeting in early December. The GAC chair will also respond to the ICANN Chair's correspondence in similar terms.

III. Inter-constituencies Activities

1. Meeting with the Generic Names Supporting Organisation (GNSO)

The GAC met with the GNSO and welcomed preliminary work that has been done to identify improved ways for earlier GAC involvement in policy development processes which have potential public policy aspects. A joint GAC/GNSO working group will be established to develop inter-sessionally more detailed options for implementation.

2. Meeting with the Expert Working Group on gTLD Directory Services (EWG)

The GAC met with the EWG and exchanged views on the model proposed by the EWG for next generation directory services. GAC members highlighted a range of issues including the importance of applicable data privacy laws, the balance between public and restricted data elements, and the accreditation process to allow access to restricted data for legitimate purposes. The GAC welcomed the opportunity for continuing engagement with the EWG.

3. Meeting with the Country Code Names Supporting Organisation (ccNSO)

The GAC met with the ccNSO and received briefings on ccNSO working groups on the IDN policy development process and the framework of interpretation; and the study group on country names. The GAC committed to continuing engagement with these issues, all of which have public policy implications, and will continue to work closely with the ccNSO.

4. Meeting with the Accountability and Transparency Review Team 2 (ATRT 2)

The GAC is grateful for the work undertaken by the ATRT2 and discussed with review team members their draft recommendations and report, noting that it was valuable to gain an external perspective on the work and operations of the GAC. The GAC has already made progress in relation to early engagement in policy development processes, increased transparency and improved working methods, but acknowledges that there is always more to be done, particularly in outreach. GAC members noted that the GAC provides policy advice, not legal advice. The GAC noted that each member already operates within their own government's code of conduct framework.

5. Meeting with the Brand Registry Group (BRG)

The GAC met with the Brand Registry Group to discuss their proposal for a streamlined process under an addendum to the Registry Agreement for the approval of country names and 2-letter and character codes at the second level. The GAC undertook to consider this proposal further and respond to the BRG in due course.

The GAC warmly thanks the GNSO, the EWG, the ccNSO, and the ATRT 2, who jointly met with the GAC; as well as all those among the ICANN community who have contributed to the dialogue with the GAC in Buenos Aires.

IV. Internal Matters

- 1. New Members and Observers** - The GAC welcomes the Commonwealth of Dominica and Montenegro as members, and the Organisation of Islamic Cooperation and the Caribbean Telecommunications Union as observers.
- 2. GAC Secretariat** – The independent consultants, Australian Continuous Improvement Group, have begun providing additional secretariat services to the

GAC. A range of measures to improve the efficiency and effectiveness of the GAC is being progressively implemented.

3. **GAC Leadership** - The GAC welcomed the re-election of the current Vice Chairs (Australia, Switzerland and Trinidad and Tobago) for a further term. The issue of a possible increase in the number of Vice Chairs to better represent regions and manage workload has been referred to the GAC working group on working methods for consideration and report.
4. **New gTLDs** - At the ICANN meeting in Durban, the GAC formed a working group to begin consideration of potential public policy input for future rounds of new gTLDs. This working group has been focusing on issues associated with the protection of geographic names, the processes associated with identified communities, and developing economy issues and applicant support. The outcomes of the Geographic names working group are expected to be presented to the community by the ICANN 49 Singapore meeting. The GAC looks forward to discussing these issues with the community in future meetings.
5. **Working Methods** – At the ICANN meeting in Durban the GAC formed a working group to consider improvements to the GAC’s working methods. A range of immediate measures has been identified and is being progressively implemented. Other matters will be progressed in coordination with related initiatives including the ATRT 2 process.
6. **High Level Meeting** - A high level meeting of governments will be held in London in June 2014 in conjunction with the ICANN and GAC meetings. The agenda for the meeting should be finalised in Singapore.

V. Next Meeting

The GAC will meet during the period of the 49th ICANN meeting in Singapore.

Resp. Ex. 16

December 4, 2013

Dr. Stephen D. Crocker, Chair, Board of Directors

ICANN

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094-2536

USA

Dear Dr. Crocker,

RE: RESOLUTION ON THE .ISLAM AND .HALAL APPLICATIONS

I write to document the resolution of our applications for .ISLAM and .HALAL, and to receive contracts from ICANN as soon as possible.

Six months ago, on June 4, 2013, the New gTLD Program Committee (NGPC) of the ICANN Board adopted a resolution¹ as a consequence to communication received from the ICANN's Government Advisory Committee (GAC) at the conclusion of the Beijing meeting. The NGPC responded to this communication by producing a Scorecard,² and committing to further dialogue with the GAC. This Scorecard further referenced the community objection filed with ICC against .ISLAM and .HALAL, and said that "these applications cannot move to the contracting phase until the objections are resolved."

The GAC has now clearly concluded its discussion as to these applications. In her November 29, 2013 letter to you, GAC Chair Heather Dryden said *"You also state that the NGPC will await any further GAC input on this matter in Buenos Aires. This was brought up in the GAC in Buenos Aires and, as I trust you have noticed, the Buenos Aires Communiqué (section II.7) simply clarifies that the GAC concluded its*

¹ <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm#1.a>

² <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-04jun13-en.pdf>

discussions on these applications with the advice provided in the Beijing Communiqué. Accordingly, no further GAC input on this matter can be expected."

Furthermore, Asia Green IT has prevailed in both objections filed with ICC. The ICC expert found there was no substantial opposition to our applications and that, *"The Objector has certainly not provided any evidence that the Respondent is not acting or does not intend to act in accordance with the interests of the Muslim community."*³ This was consistent with the Independent Objector's earlier findings, nearly a year ago, in response to the Early Warnings issued by a few governments.⁴ Therefore, as there are no remaining objections, there is no remaining hurdle to ICANN's issuance of contracts to us for these two TLDs

AGIT has garnered tremendous global support for the .ISLAM and .HALAL applications. Our primary mission with these TLDs is to act in accordance with the interests of the world's many various Muslim communities. We are seeking only to act as technical facilitator and coordination vehicle to strengthen the world's Muslim communities' presence online through their own dedicated TLDs. This is why, from the outset, our TLD operations plan included multi-stakeholder governance mechanisms designed to allow all Muslim community stakeholders to become active participants in the governance of .ISLAM and .HALAL.

This was clearly stated in our initial applications to ICANN. Although these were made public by ICANN on June 13, 2012, as mentioned in the text of the applications themselves, we at AGIT had been working toward dedicated Muslim domain names for more than 8 years. Quoting from our application for .HALAL for example, I would highlight that the *"HALAL gTLD is designed to accommodate a global community."* The same application references an accountability mechanism, which is also described in our application for .ISLAM as *"populated by members of the Islamic community,"* and which AGIT intended from the start to *"be representative of the entire broad spectrum of the Muslim community."*

At the core of this governance mechanism is the Policy Advisory Council (PAC) contemplated for each TLD. PACs will be deployed for both .ISLAM and .HALAL. They will serve as non-profit governing

³ <http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Expertise/ICANN-New-gTLD-Dispute-Resolution/EXP-427-ICANN-44-Expert-Determination/> and <http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Expertise/ICANN-New-gTLD-Dispute-Resolution/EXP-430-ICANN-47-Expert-Determination/>

⁴ <http://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/islam-general-comment/>

boards made up of leaders from many of the world's various Muslim communities, governments, and organizations. The PACs will oversee policy development for the TLDs, to ensure they are coherent and consistent with Muslim interests. AGIT has invited the leading Muslim organisations, including the Organization for Islamic Cooperation (OIC), to become members of the PACs.

Therefore, we hope you will agree with us that it is high time the significant delays we have faced in getting our applications for .Islam and .Halal approved have come to an end. When all possible avenues of objection against an applicant have been exhausted, and when an applicant has followed ICANN's new gTLD program rules to the letter, ICANN's Board should do the same. The new gTLD program was quite rightly designed to allow recourse against an applicant. But it was also quite rightly designed not to force applicants into an endless process loop that can be perpetuated even when the standard mechanisms for recourse have been exhausted.

ICANN's objection procedure expert at the ICC, and the Independent Objector, have advised that there are no grounds for blocking our two applications. ICANN's GAC has effectively advised that there are no grounds for blocking our two applications, and that their deliberations have concluded. We now ask that the NGPC finally concludes its discussion of these applications, and causes ICANN staff to issue Contracting Invitation Requests to us immediately.

Sincerely yours,



Mehdi Abbasnia

Chairman and Managing Director

Asia Green IT System Ltd.

Resp. Ex. 17

December 30, 2013

Dr. Stephen D. Crocker, Chairman, ICANN Board of Directors

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA

C.C. Fadi Chehade, the President & CEO of ICANN
C.C. Cherine Chalaby, Chairman, ICANN Board's New gTLD Program Committee
C.C. Heather Dryden, Chair of ICANN Governmental Advisory Committee
C.C. Cyrus K. Namazi, Vice President, DNS Industry Engagement
C.C. Allen R. Grogan, Chief Contracting Counsel

**RE: DECEMBER 19, 2013 LETTER FROM ORGANISATION OF ISLAMIC COOPERATION TO
ICANN BOARD CHAIR**

Dear Dr. Crocker,

I am writing with regards to the Organization of Islamic Cooperation (OIC) letter dated December 19, 2013 and addressed to you¹. This letter references a resolution recently adopted by the OIC and states that this organization, purportedly as the sole official representative of the Muslim world, has decided to file an objection to ICANN for the use of the gTLDs .Islam and .Halal.

In my letter to you dated December 4, 2013², I outlined the arduous process followed by AGIT to apply for the aforementioned TLDs. At every step, we have conformed to ICANN's requirements as laid out in its 338-page Applicant Guidebook and supplemental supporting documentation.

Our applications were scrutinized by the Independent Objector, who did not object to them but instead found that they would likely be beneficial to Muslims³. The new gTLD program's official Community Objection process was used by one of the OIC Member States to oppose our applications for .Islam and .Halal on the grounds that they did not have community

¹ Ref OIC/SG-01/2013 006754

² <http://www.icann.org/en/news/correspondence/abbasnia-to-crocker-04dec13-en>

³ <http://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/islam-general-comment/>

support. In both case we prevailed⁴ and the expert arbitrator determined that there is no substantial community opposition and there is no likelihood of material detriment to any Muslim community.

Then, despite being heavily lobbied by the OIC and several of its Member States, the GAC did not reach consensus against our applications, and closed its consideration of the matter⁵. Undeterred, opponents of .Islam and .Halal have now chosen to go completely outside the new gTLD process in their attempts to continue putting pressure on ICANN to block our applications.

Yet such efforts only serve to prevent Muslims the world over from claiming their own space on the Internet. The OIC is a political and governmental organization, it is not a multi-stakeholder body where voices from the user, business, scientific, academic and civil society communities are heard. Further, contrary to its assertions, the OIC does not speak for all Muslims. Non-OIC countries account for in excess of 321 million Muslims. A country like India for example, which is said to have been blocked from membership by the OIC⁶, has an estimated 177 million Muslims, or 10% of the world's Muslim population.

Many other Muslim organizations support our applications, including the Islamic Chamber Research & Information Center (ICRIC)⁷ and Halal World Institute (responsible for development and proper implementation of OIC Halal Food Standards⁸ which were approved by OIC in 2010⁹). Letters of support from those two organizations are attached for your reference.

Further, our proposed policies for .Islam and .Halal include a multi-stakeholder governance "Policy Advisory Council" for each TLD that would be made up of leaders from those Muslim communities that are invited, and wish to participate. We have sent out invitations to participate to many of them, including the OIC. As proposed by AGIT, .Islam and .Halal would therefore be inclusive of all Muslim communities, not just those governments that have gained OIC membership. Thus, we intend for our company, through the PACs, to be exactly the type of entity sought by OIC to run these TLDs as, in their own words: "reflecting the collective voice of the Muslim people."

⁴ <http://newgtlds.icann.org/sites/default/files/drsp/04nov13/determination-1-1-2131-60793-en.pdf> and <http://newgtlds.icann.org/sites/default/files/drsp/04nov13/determination-1-1-2130-23450-en.pdf>

⁵ <https://gacweb.icann.org/display/gacweb/Meeting+46%3A+Beijing%2C+People%27s+Republic+of+China+7-11+April+2013>

⁶ http://en.wikipedia.org/wiki/Organisation_of_Islamic_Cooperation#Dispute_with_India

⁷ <http://www.icric.org/about/4> and <http://www.icric.org/project/detail/53>

⁸ <http://www.halalworld.org/about/2?lang=en#.UsEfsdIW3HA> and <http://halalworld.ca/about-us>

⁹ <http://www.halalworld.org/standard?lang=en#.UsEfvIw3HA>

I also believe blocking our applications at this late stage, and after we have conformed to every one of the new gTLD program's rules, would damage the program's credibility, and indeed that of ICANN as a multi-stakeholder governance organization. The program's objection period closed on March 13, 2013. Its operation and avenues for submitting objections are extremely well documented¹⁰. It was designed to allow objections, but also to protect applicants from the risk of endless objections filed as attempts to continuously block applications.

The OIC itself was well aware of the deadline, as it notified its Member States of these applications at that time, and left it for any Member State to oppose the applications¹¹. Only one Member State opposed, and their Community Objections were dismissed. Allowing this organization to object in any fashion now, so far outside the process and its timeline, would be severely detrimental to ICANN's bottom-up, multi-stakeholder, policy development process.

AGIT is willing to work with the OIC and other stakeholders to manage the .Islam and .Halal TLDs through a multi-stakeholder approach that would serve the best interests of Muslims all over the world and truly showcase the merits of ICANN's own multi-stakeholder, community-driven approach.

I therefore reiterate my request that the Board's New gTLD Program Committee direct ICANN staff to approve our applications for .Islam and .Halal and allow us to proceed to the contracting phase without further delay.

Sincerely yours,



Mehdi Abbasnia

Chairman & Managing Director

Appendix 1: Letter of support for Asia Green IT System's TLD application from the Islamic Chamber Research & Information Center for **.islam new gTLD**.

Appendix 2: Letter of support for Asia Green IT System's TLD application from the Islamic Chamber Research & Information Center for **.halal new gTLD**.

Appendix 3: Letter of support for Asia Green IT System's TLD application from the Halal World Institute for **.halal new gTLD**.

¹⁰ <http://newgtlds.icann.org/en/program-status/odr>

¹¹ This correspondence was addressed by the expert arbitrator in the Community Objection process, and has previously been provided to you



To: ICANN

Suite 330, 4676 Admiralty Way

Marina del Rey, CA 90292

Attention: New gTLD Evaluation Process

Subject: Letter for support for .ISLAM new gTLD

This letter is to confirm that the **Islamic Chamber Research and Information Center (ICRIC)** fully supports the application for .ISLAM submitted to ICANN by Asia Green IT System Bilgisayar San. Ve Tic. Ltd. Sti in the New gTLD Program.

As the Director General of the Islamic Chamber Research and Information Center (ICRIC), I confirm that I have the authority of this center to be writing to you on this matter.

Therefore, the Islamic Chamber of Commerce and Industry (ICCI) has been established as an economic wing for the OIC since 1977.

Islamic Chamber Research and Information Center (ICRIC) affiliated to the **Islamic Chamber of Commerce and Industry (ICCI)** which is under the umbrella of the **Organization of the Islamic Cooperation (OIC)** was established in 2003. ICRIC has a Board of directors consisting of 9 members from Malaysia, Jordan, Iran and Egypt; plus Secretary General of ICCI and acts within the framework of its articles of association approved by the Islamic Chamber and with regard to 16 strategic principles included in its mandate for elevation of trade and economic ties among Islamic Countries.

As a subsidiary of the Islamic Chamber of Commerce and Industry (ICCI), I declare that we believe that .ISLAM gTLD will be used to Principles of rounding i.e. the march of rapprochement among Muslim community on the general principles.

This application is being submitted as community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the applications. 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.

Thank you for the opportunity to support this application.

Yours sincerely

Mehdi Fakheri

Director General



To: ICANN
Suite 330, 4676 Admiralty Way
Marina del Rey, CA 90292
Attention: New gTLD Evaluation Process
Subject: Letter for support for .HALAL

In the name of God

Dear Sirs

This letter is to confirm that **Islamic Chamber Research & Information Center (ICRIC)** fully supports the application for .HALAL submitted to ICANN by Asia Green IT System Bilgisayar San. Ve Tic. Ltd. Sti in the New gTLD Program.

As **the President**, I confirm that I have the authority of the ICRIC to be writing to you on this matter.

The gTLDs will be used to promote the concept of Halal productions and development of Halal standards.

This application is being submitted as community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the applications. 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.

Thank you for the opportunity to support this application.

Yours sincerely

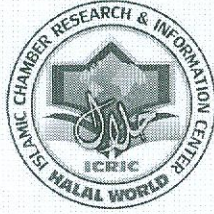
Mohammad Nahavandian

President

www.icric.org

info@icric.org

www.HalalWorld.org



HALAL WORLD

Islamic Chamber Research
& Information Center

No. 15-2012

Date: Apr 24, 2012

To: ICANN
Suite 330, 4676 Admiralty Way
Marina del Rey, CA 90292
Attention: New gTLD Evaluation Process
Subject: Letter for support for .HALAL

This letter is to confirm that the **HalalWorld Center** fully supports the application for .HALAL submitted to ICANN by Asia Green IT System Bilgisayar San. Ve Tic. Ltd. Sti in the New gTLD Program.

As the General Secretary of the HalalWorld Center, I confirm that I have the authority of this center to be writing to you on this matter.

Islamic Chamber research & Information Center (ICRIC), affiliated to Islamic Chamber of Commerce & Industry (ICCI) and a member of the family of Organization of Islamic Conference (OIC) has embarked to study and research on the subject to meet the need in Muslim World, and as a result embarked to adopt a monitoring system in "Halal Product" including "Halal Food" and proceeded to research, development, information and support in this ground, under the supervision of the HalalWorld Center.

As a member of the **HALAL Industry Service Providers Community**, I declare that we believe that .HALAL gTLD will be used to promote the concept of Halal productions, and development of Halal standards.

This application is being submitted as community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the applications. 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.

Thank you for the opportunity to support this application.

Yours sincerely

Dr. Abd-ul-Hussain Fakhari

General Secretary



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Approved Resolutions | Meeting of the New gTLD Program Committee

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05 Feb 2014

1. Main Agenda

- a. [Remaining Items from Beijing, Durban and Buenos Aires GAC Advice: Updates and Actions](#)
[Rationale for Resolution 2014.02.05.NG01](#)
- b. [Discussion of Report on String Confusion Expert Determinations](#)
[Rationale for Resolution 2014.02.05.NG02](#)
- c. [Staff Update on Reassignment of Registry Agreements](#)
- d. [Staff Update on Name Collision Framework](#)

1. Main Agenda:

a. Remaining Items from Beijing, Durban and Buenos Aires GAC Advice: Updates and Actions

Whereas, the [GAC](#) met during the [ICANN 46](#) meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué").

Whereas, the [GAC](#) met during the [ICANN 47](#) meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the [GAC](#) met during the [ICANN 48](#) meeting in Buenos Aires and issued a Communiqué on 20 November 2013 ("Buenos Aires Communiqué").

Whereas, the NGPC adopted scorecards to respond to certain items of the [GAC's](#) advice in the Beijing Communiqué and the Durban Communiqué, which were adopted on 4 June 2013, 10 September 2013, and 28 September 2013.

Whereas, the NGPC has developed another iteration of the scorecard to respond to certain remaining items of [GAC](#) advice in the Beijing Communiqué and the Durban Communiqué, and new advice in the Buenos Aires Communiqué.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the [ICANN Board's](#) authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.02.05.NG01), the NGPC adopts the "[GAC Advice \(Beijing, Durban, Buenos Aires\): Actions and Updates](#)" (5 February 2014), attached as [Annex 1](#) [PDF, 371 KB] to this Resolution, in response to open items of Beijing, Durban and Buenos Aires [GAC](#) advice as presented in the scorecard.

Rationale for Resolution 2014.02.05.NG01

Article XI, Section 2.1 of the ICANN Bylaws

<http://www.icann.org/en/about/governance/bylaws#XI> permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, and its Buenos Aires Communiqué dated 20 November 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The NGPC has previously addressed items of the GAC's Beijing and Durban advice, but there are some items that the NGPC continues to work through. Additionally, the GAC issued new advice in its Buenos Aires Communiqué that relates to the New gTLD Program. The NGPC is being asked to consider accepting some of the remaining open items of the Beijing and Durban GAC advice, and new items of Buenos Aires advice as described in the attached scorecard dated 28 January 2014.

As part of its consideration of the GAC advice, ICANN posted the GAC advice and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The Beijing GAC advice was posted on 18 April 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>, the Durban GAC advice was posted on 1 August 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>, and the Buenos Aires GAC advice was posted on 11 December 2013. The complete set of applicant responses are provided at: <http://newgtlds.icann.org/en/applicants/gac-advice/>.

In addition, on 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address Beijing GAC advice regarding safeguards applicable to broad categories of new gTLD strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>. The NGPC has considered the applicant responses in addition to the community feedback on how ICANN could implement the GAC's safeguard advice in the Beijing Communiqué in formulating its response to the remaining items of GAC advice.

As part of the applicant responses, several of the applicants who were subject to GAC Category 1 Safeguard Advice have indicated that they support the NGPC's proposed implementation plan, dated 29 October 2013, and voiced their willingness to comply with the safeguards proposed in the plan. On the other hand, an applicant noted that the NGPC's plan to respond to the GAC's Category 1 Safeguard advice is a "step back from what the GAC has asked for" with regard to certain strings. Others contended that their applied-for string should not be listed among the Category 1 Safeguard strings. Some of the applicants for the .doctor string noted that the NGPC should not accept the new GAC advice on .doctor because the term "doctor" is not used exclusively in connection with medical services and to re-categorize the string as relating to a highly regulated sector is unfair and unjust.

With respect to the Category 2 Safeguards, some applicants urged ICANN to ensure that any Public Interest Commitments or application changes based on safeguards for applications in contention sets are "bindingly implemented and monitored after being approved as a Change Request." Additionally, some applicants indicated their support for the GAC advice protections for inter-governmental organization acronyms, protection of Red Cross/Red Crescent names, and special launch programs for geographic and community TLDs.

As part of its deliberations, the NGPC reviewed the following materials and documents:

- GAC Beijing Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2
[PDF, 238 KB]
- GAC Durban Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2
[PDF, 103 KB]
- GAC Buenos Aires Communiqué:
https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2 [PDF, 97 KB]
- Letter from H. Dryden to S. Crocker dated 11 September 2013 re: .vin and .wine: <http://www.icann.org/en/news/correspondence/dryden-to-crocker-09sep13-en.pdf> [PDF, 66 KB]
- Applicant responses to GAC advice:
<http://newgtlds.icann.org/en/applicants/gac-advice/>
- Applicant Guidebook, Module 3:
<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf> [PDF, 261 KB]

In adopting its response to remaining items of Beijing and Durban GAC advice, and the new Buenos Aires advice, the NGPC considered the applicant comments submitted, the GAC's advice transmitted in the Communiqués, and the procedures established in the AGB and the ICANN Bylaws. The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

There are no foreseen fiscal impacts associated with the adoption of this resolution, but fiscal impacts of the possible solutions discussed will be further analysed if adopted. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS.

As part of ICANN's organizational administrative function, ICANN posted the Buenos Aires GAC advice and officially notified applicants of the advice on 11 December 2013. The Durban Communiqué and the Beijing Communiqué were posted on 18 April 2013 and 1 August 2013, respectively. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

b. Discussion of Report on String Confusion Expert Determinations

Whereas, on 10 October 2013 the Board Governance Committee (BGC) requested staff to draft a report for the NGPC on String Confusion Objections "setting out options for dealing with the situation raised within this Request, namely the differing outcomes of the String Confusion Objection Dispute Resolution process in similar disputes involving Amazon 's Applied – for String and TLDH's Applied-for String."

Whereas, the NGPC is considering potential paths forward to address the perceived inconsistent Expert Determinations from the New gTLD Program String Confusion Objections process, including implementing a review mechanism. The review will be limited to the String Confusion Objection Expert Determinations for .CAR/.CARS and .CAM/.COM.

Whereas, the proposed review mechanism, if implemented, would constitute a change to the current String Confusion Objection process in the New gTLD Applicant Guidebook.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.02.05.NG02), the NGPC directs the President and CEO, or his designee, to publish for public comment the proposed review mechanism for addressing perceived inconsistent Expert Determinations from the New gTLD Program String Confusion Objections process.

Rationale for Resolution 2014.02.05.NG02

The NGPC's action today, addressing how to deal with perceived inconsistent Expert Determinations from the New gTLD Program String Confusion Objections process, is part of the NGPC's role to provide general oversight of the New gTLD Program. One core of that work is "resolving issues relating to the approval of applications and the delegation of gTLDs pursuant to the New gTLD Program for the current round of the Program." (See NGPC Charter, Section II.D).

The action being approved today is to first direct the ICANN President and CEO, or his designee, to initiate a public comment period on the framework principles of a potential review mechanism to address the perceived inconsistent String Confusion Objection Expert Determinations.

The effect of this proposal, and the issue that is likely to be before the NGPC after the close of the public comments, is to consider implementing a new review mechanism in the String Confusion Objection cases where objections were raised by the same objector against different applications for the same string, where the outcomes of the String Confusion Objections differ. If the proposal is eventually adopted after public comment and further consideration by the NGPC, ICANN would work with the International Centre for Dispute Resolution (ICDR) to implement the new review mechanism outlined in the proposal.

There are no foreseen fiscal impacts associated with the adoption of this resolution, which would initiate the opening of public comments, but the fiscal impacts of the proposed new review mechanism will be further analyzed if adopted. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS. The posting of the proposal for public comment is an Organizational Administrative Action not requiring public comment, however follow on consideration of the proposal requires public comment.

c. Staff Update on Reassignment of Registry Agreements

Item not considered.

d. Staff Update on Name Collision Framework

Item not considered.

Published on 7 February 2014



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ANNEX 1 to ICANN NGPC RESOLUTION NO. 2014.02.05.NG01

GAC Advice (Beijing, Durban, Buenos Aires): Actions and Updates

5 February 2014

	GAC Register #	GAC Advice		Action/Update
Open Items of GAC Advice				
1. WINE and VIN	2013-09-09-wine and vin; 2013-11-20-wine-vin (Buenos Aires Communiqué §3)	<p><u>Follow-up from Durban:</u> The GAC advises the ICANN Board that the GAC has finalized its consideration of the strings .wine and .vin and further advises that the applications should proceed through the normal evaluation process.</p> <p><u>Buenos Aires:</u> The Board may wish to seek a clear understanding of the legally complex and politically sensitive background on this matter in order to consider the appropriate next steps of delegating the two strings. GAC members may wish to write to the Board to further elaborate their views.”</p>		<p>On 28 September 2013, the NGPC noted that it stood ready to hear from GAC members as to the nature of the differences in views expressed in the advice while the NGPC analyzed. In Buenos Aires, ICANN facilitated a dialogue between the applicant for .VIN and the affected non-governmental parties.</p> <p>In response to the GAC’s suggestion in the Buenos Aires Communiqué, the NGPC has commissioned an analysis of the legally complex and politically sensitive background on this matter in the context of the GAC advice in order to consider the appropriate next steps of delegating .WINE and .VIN. The analysis is expected to be completed so that it can be considered by the NGPC when it meets in Singapore.</p>
2. GUANGZHOU and SHENZHEN	2013-11-20-guangzhou; 2013-11-20-shenzhen (Buenos Aires Communiqué §2.a.i.1.a & b)	The GAC advises the Board not to proceed beyond initial evaluation until the agreements between the relevant parties are reached: .guangzhou (IDN in Chinese - application number 1-1121-22691) and .shenzhen (IDN in Chinese - application number 1-1121-82863)	1A	The NGPC accepts this advice. ICANN received notice on 6 December 2013 that the applicants for .GUANGZHOU and .SHENZHEN are withdrawing their applications for consideration from the New gTLD Program. The NGPC will inform the GAC of this new information.

	GAC Register #	GAC Advice		Action/Update
3. SPA	2013-11-20-spa (Buenos Aires Communiqué §2.a.i.1.c)	The GAC advises the Board not to proceed beyond initial evaluation until the agreements between the relevant parties are reached: .spa (application numbers: 1-1619-92115, 1-1309-81322, 1-1110-73648) [Note: Application numbers updated from original text of advice.]	1A	The NGPC accepts this advice. ICANN will not enter into registry agreements with applicants for the identified string at this time. The NGPC notes concern about concluding the discussions with the applicants and will request the GAC to (1) provide a timeline for final consideration of the string, and (2) identify the “interested parties” noted in the GAC advice.
4. YUN	2013-04-11-gTLDStrings; 2013-07-18-gTLDStrings (Buenos Aires Communiqué §2.b)	The GAC notes that the application for .yun (application number 1-1318-12524) has been withdrawn.	1A	The NGPC accepts this advice. ICANN received notice on 15 November 2013 that the applicant of application number 1-1318-12524 for .YUN was withdrawing its applications for consideration from the New gTLD Program. Since application number 1-1318-12524 has been withdrawn, the remaining application for the .YUN string (application 1-974-89210) should continue through the stages of the application process.
5. AMAZON	2013-07-18 – Obj-Amazon (Durban Communiqué §1.1.a.i.1; Buenos Aires Communiqué §2.d)	The GAC advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .amazon (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591)		ICANN has commissioned an independent, third-party expert to provide additional analysis on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments. The analysis is expected to be completed in time for the ICANN Singapore meeting so that the NGPC can consider it in Singapore.

	GAC Register #	GAC Advice	Action/Update
6. IGO PROTECTION S	2013-11-20-IGO (Buenos Aires Communiqué §6.a.i)	<p>The GAC advises the ICANN Board that the GAC, together with IGOs, remains committed to continuing the dialogue with NGPC on finalizing the modalities for permanent protection of IGO acronyms at the second level, by putting in place a mechanism which would: (1) provide for a permanent system of notifications to both the potential registrant and the relevant IGO as to possible conflict if a potential registrant seeks to register a domain name matching the acronym of that IGO; (2) allow the IGO a timely opportunity to effectively prevent potential misuse and confusion; (3) allow for a final and binding determination by an independent third party in order to resolve any disagreement between an IGO and a potential registrant; and (4) be at no cost or of a nominal cost only to the IGO.</p> <p>The GAC looks forward to receiving the alternative NGPC proposal adequately addressing this advice. Initial protections for IGO acronyms should remain in place until the dialogue between the NGPC, the IGOs and the GAC ensuring the implementation of this protection is completed.</p>	<p>On 2 October 2013, the NGPC proposal in response to the GAC’s advice in the Durban Communiqué regarding protections for IGO acronyms was submitted to the GAC for its consideration.</p> <p>The NGPC is developing ways to implement the GAC advice, including whether there are mechanisms, other than the Trademark Clearinghouse, that can be used to implement the advice. The NGPC will prepare an alternative proposal for consideration by the GAC.</p> <p>The NGPC adopted a resolution at its 9 January 2014 meeting to extend the initial protections for IGO acronyms while the GAC and NGPC continue to work through outstanding implementation issues.</p> <p>To note: During the Buenos Aires meeting, the GNSO unanimously approved the recommendations in the Final Report of the IGO/INGO Protection PDP Working Group. The Final Report recommended reserving IGO names but not their acronyms. It did allow for the inclusion of acronyms in the TMCH in future rounds if they were included in the TMCH during the current round. It also requested an issue report on possible revisions to the UDRP and URS policies that would allow IGOs to take advantage of these processes. Subject to receiving direction from the Board, the NGPC will: (1) consider the policy recommendations from the GNSO as the NGPC continues to actively develop an approach to respond to the GAC advice on protections for IGOs, and (2) develop a comprehensive proposal to address the GAC advice and the GNSO policy recommendations for consideration by the Board at a subsequent meeting.</p>

	GAC Register #	GAC Advice		Action/Update
7. IOC/RCRC PROTECTION S	2013-07-18 – IOCRC (Durban Communiqué §5.a.i(sic))	The GAC advises the ICANN Board that the same complementary cost neutral mechanisms to be worked out for the protection of acronyms of IGOs be used to also protect the acronyms of the International Committee of the Red Cross (ICRC/CICR) and the International Federation of Red Cross and Red Crescent Societies (IFRC/FICR).		Refer to the update above.
8. RCRC NAMES	2013-11-20-IOC-RCRC (Buenos Aires Communiqué §6.a.i)	The GAC advises the ICANN Board that it is giving further consideration to the way in which existing protections should apply to the words “Red Cross”, “Red Crescent” and related designations at the top and second levels with specific regard to national Red Cross and Red Crescent entities; and that it will provide further advice to the Board on this.	1A	The NGPC accepts this advice.

	GAC Register #	GAC Advice		Action/Update
9. CAT 1 SAFEGUARDS	2013-04-11- Safeguards – Categories -1; 2013-11-20-Cat1- Cat2 (Beijing Communiqué Annex I, Category 1; Buenos Aires Communiqué §1.d.i)	<p><u>Beijing Communiqué</u>: Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm. (Refer to the GAC Register of Advice for the full text of each Category 1 Safeguard.)</p> <p><u>Buenos Aires Communiqué</u>: The GAC advises the ICANN Board to re-categorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors, therefore ascribing these domains exclusively to legitimate medical practitioners. The GAC notes the strong implications for consumer protection and consumer trust, and the need for proper medical ethical standards, demanded by the medical field online to be fully respected.</p>	1A	<p>The NGPC accepts the advice. The NGPC adopts the implementation framework attached as Annex 2 <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-2-05feb14-en.pdf> to address this advice, and directs the ICANN President and CEO, or his designee, to implement the Category 1 Safeguard advice consistent with the implementation framework.</p> <p>With respect to the additional advice in the Buenos Aires Communiqué on the Category 1 Safeguards, the NGPC accepts the advice to re-categorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors and ensure that the domains in the .doctor TLD are ascribed exclusively to legitimate medical practitioners.</p>

	GAC Register #	GAC Advice	Action/Update
<p>10. CAT 2 SAFEGUARDS – EXCLUSIVE ACCESS</p>	<p>2013-04-11- Safeguards – Categories -2; 2013-11-20-Cat1- Cat2</p> <p>(Beijing Communiqué Annex I, Category 2, Item 2; Buenos Aires Communiqué §1.e)</p>	<p><u>Beijing</u>: For strings representing generic terms, exclusive registry access should serve a public interest goal. In the current round, the GAC has identified the following non-exhaustive list of strings that it considers to be generic terms, where the applicant is currently proposing to provide exclusive registry access: .antivirus, .app, .autoinsurance, .baby, .beauty, .blog, .book, .broker, .carinsurance, .cars, .cloud, .courses, .cpa, .cruise, .data, .dvr, .financialaid, .flowers, .food, .game, .grocery, .hair, .hotel, .hotels, .insurance, .jewelry, .mail, .makeup, .map, .mobile, .motorcycles, .movie, .music, .news, .phone, .salon, .search, .shop, .show, .skin, .song, .store, .tennis, .theater, .theatre, .tires, .tunes, .video, .watches, .weather, .yachts, .クラウド [cloud], .ストア [store], .セール [sale], .ファッション [fashion], .家電 [consumer electronics], .手表 [watches], .書籍 [book], .珠宝 [jewelry], .通販 [online shopping], .食品 [food]</p> <p><u>Buenos Aires</u>: The GAC welcomes the Board’s communication with applicants with regard to open and closed gTLDs, but seeks written clarification of how strings are identified as being generic.</p>	<p>ICANN contacted the 186 applicants for strings identified in the GAC’s Category 2 safeguard advice. The applicants were asked to respond by a specified date indicating whether the applied-for TLD will be operated as an exclusive access registry. An overwhelming majority of the applicants (174) indicated that the TLD would not be operated as an exclusive access registry. The NGPC adopted a resolution directing staff to move forward with the contracting process for applicants for strings identified in the Category 2 Safeguards that were prepared to enter into the Registry Agreement as approved, since moving forward with these applicants was consistent with the GAC’s advice.</p> <p>Twelve applicants responded that the TLD would be operated as an exclusive access registry. These 12 applicants have applied for the following strings: .BROKER, .CRUISE, .DATA, .DVR, .GROCERY, .MOBILE, .PHONE, .STORE, .THEATER, .THEATRE and .TIRES. Staff requested the applicants to provide an explanation of how the proposed exclusive registry access serves a public interest goal. The responses have been received. ICANN staff will forward the responses to the NGPC and the GAC so that the responses can be considered prior to the Singapore meeting.</p> <p>The NGPC accepts the advice in the Buenos Aires Communiqué. As requested in in the Buenos Aires Communiqué, the NGPC has provided a written clarification to the GAC of how strings are identified as being generic.</p>

	GAC Register #	GAC Advice		Action/Update
11. CAT 2 SAFEGUARDS – RESTRICTED ACCESS	2013-04-11- Safeguards – Categories -2; 2013-11-20-Cat1- Cat2 (Beijing Communiqué Annex I, Category 2, Item 2; Buenos Aires Communiqué §1.a.i.1)	<p><u>Beijing Communiqué</u>: As an exception to the general rule that the gTLD domain name space is operated in an open manner registration may be restricted, in particular for strings mentioned under category 1 above. In these cases, the registration restrictions should be appropriate for the types of risks associated with the TLD. The registry operator should administer access in these kinds of registries in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage.</p> <p><u>Buenos Aires Communiqué</u>: The GAC highlights the importance of its Beijing advice on ‘Restricted Access’ registries, particularly with regard to the need to avoid undue preference and/or undue disadvantage. The GAC requests a briefing on whether the Board considers that the existing PIC specifications (including 3c) fully implements this advice.</p>	1A	<p>The NGPC accepted the GAC’s Beijing advice regarding Category 2 (Restricted Access). To implement the advice, the NGPC revised Specification 11 – Public Interest Commitments in the New gTLD Registry Agreement. The PIC Spec requires that “Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.”</p> <p>The NGPC accepts the advice in the Buenos Aires Communiqué. As requested, the NGPC has provided a written clarification to the GAC on whether the Board considers that the existing PIC specifications (including 3c) fully implements this advice.</p>

	GAC Register #	GAC Advice	Action/Update
12. HALAL AND ISLAM	2103-04-11- Religious Terms; 2013-11-20- islam-halal (Beijing Communiqué §1.a.ii; Buenos Aires Communiqué §7)	<p>The GAC advises the Board that with regard to Module 3.1 part II of the Applicant Guidebook, the GAC recognizes that religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.</p> <p>GAC took note of letters sent by the OIC and the ICANN Chairman in relation to the strings .islam and .halal. The GAC has previously provided advice in its Beijing Communiqué, when it concluded its discussions on these strings. The GAC Chair will respond to the OIC correspondence accordingly, noting the OIC's plans to hold a meeting in early December. The GAC chair will also respond to the ICANN Chair's correspondence in similar terms.</p>	<p>The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting. Pursuant to Section 3.1.ii of the AGB, the NGPC and some members of the GAC met during the ICANN 47 meeting in Durban to discuss the concerns about the applications.</p> <p>On 24 October 2013 decisions were posted in favor of the applicant on the community objections filed by the Telecommunications Regulatory Authority of the UAE.</p> <p>In a 4 November 2013 letter from the Organization of Islamic Cooperation (OIC) to the GAC Chair, the OIC requested that its letter be considered an “official opposition of the Member States of the OIC towards probable authorization by the GAC allowing the use of [...] .ISLAM and .HALAL by any entity not representing the collective voice of the Muslim people.”</p> <p>In a 11 November 2013 letter to the GAC Chair, the NGPC indicated that before it takes action on the strings, it will wait for any additional GAC input during the Buenos Aires meeting or resulting GAC Communiqué. The Buenos Aires Communiqué took note of the letters sent by the OIC, but did not offer any additional advice to the Board. The OIC also adopted a resolution in December 2013 communicating its official objection to the use of the applied-for .ISLAM and .HALAL TLDs.</p> <p>The NGPC takes note of the significant concerns expressed during the dialogue, and additional opposition raised, including by the OIC, which represents 1.6 billion members of the Muslim community. The NGPC has sent a letter to the applicant, which is available here <http://www.icann.org/en/news/correspondence/cr-ocker-to-abbasnia-07feb14-en.pdf>.</p>

	GAC Register #	GAC Advice		Action/Update
13. [PROTECTIONS FOR CHILDREN]	2013-11-20-Cat1- Cat2 (Buenos Aires Communiqué §1.e)	The GAC considers that new gTLD registry operators should be made aware of the importance of protecting children and their rights consistent with the UN Convention on the Rights of the Child.	1A	The NGPC acknowledges the GAC's view. ICANN will contact all new gTLD registry operators to make them aware of the importance of protecting children and their rights consistent with the UN Convention on the Rights of the Child.
14. [AUCTIONS]	2013-11-20-Cat1- Cat2 (Buenos Aires Communiqué §1.b)	The GAC requests a briefing on the public policy implications of holding auctions to resolve string contention (including community applications).	1A	The NGPC accepts this advice. The NGPC will provide a briefing to the GAC regarding the public policy implications of holding auctions to resolve string contention (including community applications).
15. [SPECIAL LAUNCH PROGRAM]	2013-11-20- GeoTLDs (Buenos Aires Communiqué §5.a.i)	The GAC advises the ICANN Board that ICANN provide clarity on the proposed launch program for special cases as a matter of urgency.	1A	The NGPC accepts this advice. ICANN published materials in December 2013 to provide clarity to the community on the proposed launch program for special cases. < http://newgtlds.icann.org/en/about/trademark-clearinghouse/launch-application-guidelines-19dec13-en.pdf > Additionally, the NGPC has provided a briefing to the GAC on this issue.

Resp. Ex. 20



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Resp. Ex. 21



August 10, 2015

Mr. John Jeffrey
General Counsel, ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Dear John,

I write with respect to the longstanding "Cooperative Engagement Process" regarding Asia Green IT Systems' new gTLD applications for .HALAL and .ISLAM, initiated by AGIT on Feb. 21, 2014. This letter replaces our August 4 letter in its entirety. We request this letter be posted promptly to ICANN's correspondence page.

We believe that the recent IRP decision in the .AFRICA matter, and the Board's general acceptance of that decision in its July 16 resolution, require that 1) the Board also return the subject applications to processing by the Global Domains Division, and 2) that the GDD issue contracts immediately to AGIT to operate these two gTLDs.

The IRP panel's binding decision held that the Board violated ICANN's Articles of Incorporation and Bylaws by blindly accepting unsubstantiated GAC Advice (indeed, "consensus" advice) to reject DCA's application. The IRP panel held that, at minimum, the Board should have made an appropriate inquiry and investigation into the rejection, and should have provided substantial reasoning for any rejection, given the substantial investment DCA made in the application, and given ICANN's purported requirement that applicants waive all rights to redress in court.

In this matter, the Board thus far has blindly accepted unsubstantiated advice not of the consensus GAC, but of just a few members of the GAC, and has placed the subject applications into undefined, interminable purgatory. The Board's unprecedented, extremely troubling letter dated February 7, 2014, essentially granted veto power over these applications to those few GAC members, without any reasoning whatsoever. That followed AGIT's successful opposition to the UAE government's Community Objection to these applications, by the neutral expert panel created by ICANN to resolve such objections. It also followed the Board-appointed Independent Objector's thorough investigation and refusal to object to these applications. The Board effectively overruled those decisions without any reasoning whatsoever, other than reference to these few objecting GAC members.

The action taken by the Board's February 5, 2014 resolution and February 7, 2014 letter, to place these applications into undefined limbo until such time as unspecified "conflicts" between AGIT and the few referenced objectors are resolved, is clearly a violation of



ICANN's Articles of Incorporation and Bylaws. That decision ignored both the Independent Objector's reasoned determination, and the ICDR's reasoned determination - each community consensus procedures approved by the Board and set forth in the Applicant Guidebook. That Board decision was completely non-transparent, as absolutely no reasoning is given by the Board, other than reference to vague concerns of these few objecting governments. There was no reasoning given for ignoring the IO and/or ICDR decisions, or for granting these few governments such unprecedented and troubling veto power over these applications. *Logically, as the Board is not able to accept unsubstantiated, consensus GAC Advice to reject one application for .AFRICA, it is not able to accept unsubstantiated, non-consensus advice of just a few GAC members to reject two applications for .HALAL and .ISLAM.*

To be sure, AGIT has been more than patient with respect to these applications and this "Cooperative Engagement Process". AGIT has passed all of ICANN's numerous evaluations set forth in the AGB and otherwise as to all eight of its applications. These two applications in particular withstood the scrutiny of ICANN's appointed expert "Independent Objector", who decided not to object. AGIT has overcome the Community Objection raised by the UAE government, on precisely the same, extremely vague and unsubstantiated grounds as raised by the referenced government objectors. Also, ICANN and AGIT have received OFAC approval from the US Government for ICANN to contract with AGIT. Thus ICANN's application evaluators, two independent experts commissioned by ICANN, and the U.S. government, have all approved issuance of these contracts. ICANN has no legitimate reason to continue withholding these two contracts from AGIT, based solely on the unsupported, indeed several times expertly refuted, whim of just a few IGO GAC members.

Therefore, we respectfully request that the ICANN Board, in its next meeting, reconsider its February 5, 2014 resolution and its unprecedented February 7, 2014 letter in light of the IRP panel decision and July 16, 2015 resolution of the ICANN Board with respect to the .AFRICA application.

Alternatively, in the context of the ongoing CEP and pursuant to ICANN's Bylaws, in order to narrow the issues for any IRP that AGIT may file against ICANN, and in order to comply with ICANN's transparency obligations as set forth in its Articles and Bylaws, AGIT makes the following further requests of ICANN:

1. Explain in detail the Board's reasoning for accepting the authority of the OIC to veto the subject applications.

2. Explain in detail the Board's reasoning for ignoring and/or rejecting the advice of the Independent Objector and the ICDR panelist in the Community Objection proceeding.



3. Explain in detail the purported "conflicts" referenced vaguely in the February 7, 2014 letter as requiring undefined "resolution" before the contracts can issue.
4. Explain in detail the procedure by which ICANN will facilitate the resolution of such conflicts.
5. Explain in detail the desired form and substance of the resolution that ICANN purportedly requires.
6. Preserve and promptly provide to AGIT, in unredacted form, all documents in ICANN's possession, custody or control which are related to these applications, including without limitation:
 - a. All correspondence between any representative of ICANN on the one hand, and on the other hand any purported representative of the OIC, GCC, Lebanon, Indonesia or any other objector to the subject applications.
 - b. All records of the NGPC meeting with GAC members in Durban relating to these applications, referenced in the February 7, 2014 letter to AGIT.
 - c. All documents considered by the Board in coming to its February 5, 2014 resolution and February 7, 2014 letter to AGIT.
 - d. All documents considered by the BGC and NGPC in rejecting AGIT's Request for Reconsideration of that resolution.
 - e. All documents regarding any effort by ICANN to facilitate resolution of the purported "conflicts" referenced in the February 7 letter.
7. Provide an entirely unredacted version of both the .AFRICA IRP decision and all documents submitted to and/or considered by the IRP panel in reaching that decision.

We hope the Board will choose to reconsider this matter, and thus avoid further, repetitive and costly litigation via the IRP process or otherwise. Please let us have your substantive reply no later than August 20, 2015.

Sincerely,

By: 

Mike Rodenbaugh
RODENBAUGH LAW



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<http://rodenbaugh.com>

Resp. Ex. 22

Response to Documentary Information Disclosure Policy Request

To: Mike Rodenbaugh

Date: 10 October 2015

Re: Request No. 20150910-1

Thank you for your Request for Information dated 10 September 2015 (Request), which was submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN's) Documentary Information Disclosure Policy (DIDP), on behalf of Asia Green IT System Ltd. (AGIT). For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks disclosure of the following documents:

1. All correspondence between any representative of ICANN on the one hand, and on the other hand any purported representative of the OIC, GCC, Lebanon, Indonesia or any other objector to AGIT's applications for .HALAL and .ISLAM.
2. All records of the NGPC meeting with GAC members in Durban relating to these applications, referenced in the February 7, 2014 letter to AGIT.
3. All documents considered by the Board in coming to its February 5, 2014 resolution and February 7, 2014 letter to AGIT.
4. All documents considered by the Board Governance Committee (BGC) and New gTLD Program Committee (NGPC) in rejecting AGIT's Request for Reconsideration of that resolution.
5. All documents regarding any effort by ICANN to facilitate resolution of the purported "conflicts" referenced in the February 7 letter.
6. Provide an entirely unredacted version of both the .AFRICA IRP decision and all documents submitted to and/or considered by the IRP panel in reaching that decision.

Response

All but one of your Request seeks documents related to AGIT's applications for .HALAL and .ISLAM. In its Beijing Communiqué, the Governmental Advisory Committee (GAC) advised the ICANN Board:

[w]ith regard to Module 3.1 part II of the Applicant Guidebook:... The GAC recognizes that religious terms are sensitive issues. Some GAC members have

raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.

(Beijing Communiqué, § IV.1.a.i.ii.1, <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>.) Prior to the issuance of the Beijing Communiqué, the applications received GAC Early Warning notices from two GAC members: (i) the United Arab Emirates (“UAE”) (<https://gacweb.icann.org/download/attachments/27131927/Islam-AE-23450.pdf>; <https://gacweb.icann.org/download/attachments/27131927/Halal-AE-60793.pdf>); and (ii) India (<https://gacweb.icann.org/download/attachments/27131927/Islam-IN-23459.pdf>; <https://gacweb.icann.org/download/attachments/27131927/Halal-IN-60793.pdf>.) Both members expressed serious concerns regarding the AGIT’s Applications, including a perceived lack of community involvement in, and support for, the AGIT’s Applications. (*See id.*)

On 4 June 2013, the NGPC adopted the NGPC Scorecard (“4 June 2013 Resolution”) setting forth the NGPC’s response to the GAC Advice found in the Beijing Communiqué (“NGPC Scorecard”). (<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm#1.a>; <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-04jun13-en.pdf>.) With respect to the .ISLAM and .HALAL strings, the NGPC Scorecard stated in pertinent part:

The NGPC accepts [the GAC] advice. The AGB provides that if “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.” Pursuant to Section 3.1ii of the [Guidebook], the NGPC stands ready to enter into dialogue with the GAC on this matter. We look forward to liaising with the GAC as to how such dialogue should be conducted.

(NGPC Scorecard, Pg. 3.) The NGPC Scorecard further noted the Community Objections filed against the AGIT’s Applications and indicated that “these applications cannot move to the contracting phase until the objections are resolved.” (*Id.*)

Module 3.1 of the AGB states that GAC Advice may take several forms. Part II of the Module 3.1 states:

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.

(AGB § 3.1.II, <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>.)

Pursuant to Module 3.1, part II, the ICANN New gTLD Program Committee (NGPC) and some members of the GAC met during the ICANN 47 meeting in Durban to discuss the concerns about the .HALAL and .ISLAM applications. (See Annex 1 to NGPC Resolution 2014.02.05.NG01 at <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf>.)

On 25 July 2013, the Ministry of Communications for the State of Kuwait sent a letter to ICANN expressing its support for UAE's Community Objections and identifying concerns that the AGIT did not receive the support of the community, the AGIT's Applications are not in the best interest of the Islamic community, and the strings "should be managed and operated by the community itself through a neutral body that truly represents the Islamic community such as the Organization of Islamic Cooperation." (<http://www.icann.org/en/news/correspondence/al-qattan-to-icann-icc-25jul13-en.pdf>)

On 4 September 2013, in a letter to the NGPC Chairman, the Republic of Lebanon expressed general support for the .ISLAM and .HALAL strings, but stated that it strongly believes "the management and operation of these TLDs must be conducted by a neutral non-governmental multi-stakeholder group representing, at least, the larger Muslim community." (<http://www.icann.org/en/news/correspondence/hoballah-to-chalaby-et-al-04sep13-en.pdf>.)

On 4 November 2013, the Secretary General of the Organization of Islamic Cooperation ("OIC") submitted a letter to the GAC Chair, stating that, as the "second largest intergovernmental organization with 57 Member States spread across four continents" and the "sole official representative of 1.6 million Muslims," the Member States of the OIC officially opposed the use of the .ISLAM and .HALAL strings "by any entity not representing the collective voice of the Muslim people". (<http://www.icann.org/en/news/correspondence/crocker-to-dryden-11nov13-en.pdf>.)

On 11 November 2013, having received a copy of the OIC's 4 November 2013 letter, the ICANN Board Chairman sent a letter to the GAC Chair, noting that the NGPC has not taken any final action on the .ISLAM and .HALAL applications while they were subject to formal objections. The letter further stated that since the objection proceedings have concluded, the NGPC will wait for any additional GAC input regarding the strings and stands ready to discuss the applications if additional dialog would be helpful. (See <https://www.icann.org/en/news/correspondence/crocker-to-dryden-11nov13-en>.)

On 21 November 2013, the GAC issued its Buenos Aires Communiqué, which stated the following with respect to the AGIT's Applications:

GAC took note of letters sent by the OIC and the ICANN Chairman in relation to the strings .islam and .halal. The GAC has previously provided advice in its Beijing Communiqué, when it concluded its discussions on these strings. The GAC Chair will respond to the OIC correspondence accordingly, noting the OIC's plans to hold a meeting in early December.

The GAC chair will also respond to the ICANN Chair's correspondence in similar terms.

(Buenos Aires Communiqué, Pg. 4, available at https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2.)

On 29 November 2013, the GAC Chair responded to the ICANN Board Chairman's 11 November 2013 correspondence, confirming that the GAC has concluded its discussion on the AGIT's Applications and stating that "no further GAC input on this matter can be expected." (<http://www.icann.org/en/news/correspondence/dryden-to-crocker-29nov13-en.pdf>.)

On 4 December 2013, AGIT submitted a letter to the ICANN Board Chairman requesting contracts for .ISLAM and .HALAL "as soon as possible." (<http://www.icann.org/en/news/correspondence/abbasnia-to-crocker-04dec13-en.pdf>.)

On 19 December 2013, the Secretary General of the OIC sent a letter to the ICANN Board Chairman, stating that the Foreign Ministers of the 57 Muslim Member States of the OIC have unanimously approved and adopted a resolution officially objecting to the .ISLAM and .HALAL strings and indicating that the resolution "underlines the need for constructive engagement between the ICANN and OIC as well as between ICANN and OIC Member States." (<http://www.icann.org/en/news/correspondence/ihsanoglu-to-crocker-19dec13-en.pdf>.)

On 24 December 2013, the Ministry of Communication and Information Technology on behalf of the government of Indonesia sent a letter to the NGPC Chairman, stating that Indonesia "strongly objects" to the .ISLAM string and, in principle, "approves" the .HALAL string "provided that it is managed properly and responsibly." (<http://www.icann.org/en/news/correspondence/iskandar-to-chalaby-24dec13-en.pdf>.)

On 30 December 2013, the AGIT submitted a letter to the ICANN Board Chairman challenging the nature and extent of the OIC's opposition to the AGIT's Applications, reiterating its proposed policies and procedures for governance of .ISLAM and .HALAL, and requesting to proceed to the contracting phase. (<http://www.icann.org/en/news/correspondence/abbasnia-to-crocker-30dec13-en.pdf>.)

On 5 February 2014, the NGPC adopted an updated iteration of the NGPC Scorecard ("Actions and Updates Scorecard"). (5 February 2014 Resolution, available at <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-05feb14-en.htm#1.a.rationale>; Actions and Updates Scorecard, available at <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf>.) With respect to the AGIT's Applications, the NGPC's Actions and Updates Scorecard stated in pertinent part:

The NGPC takes note of the significant concerns expressed during the dialogue, and additional opposition raised, including by the OIC, which represents 1.6 billion members of the Muslim community.

(Action and Updates Scorecard, Pg. 8.) In accordance with Module 3.1, part II, the NGPC provided a detailed explanation for its decision in the Rationale to Resolution 2014.02.05.NG01 at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a.rationale> and in Annex 1 (<https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf>). In addition, the NGPC directed the transmission of a letter from the NGPC, via the Chairman of the Board, to the AGIT. (<http://www.icann.org/en/news/correspondence/crocker-to-abbasnia-07feb14-en.pdf>.)

On 7 February 2014, Dr. Steve Crocker, Chair of the ICANN Board sent a letter to Mehdi Abbasnia, Chairman and Managing Director of AGIT. The letter acknowledges AGIT's stated commitment to a multi-stakeholder governance model, but states:

Despite these commitments, a substantial body of opposition urges ICANN not to delegate the strings .HALAL and .ISLAM.... There seems to be a conflict between the commitments made in your letters and the concerns raised in letters to ICANN urging ICANN not to delegate the strings. Given these circumstances, the NGPC will not address the applications further until such time as the noted conflicts have been resolved.

(*See id.*)

Item No. 1 seeks the disclosure of all correspondence between any representative of ICANN on the one hand, and on the other hand any purported representative of the OIC, GCC, Lebanon, Indonesia or any other objector to AGIT's applications for .HALAL and .ISLAM. These documents have been published on ICANN's correspondence page and include the following: <https://www.icann.org/en/news/correspondence/al-qattan-to-icann-icc-25jul13-en>, <https://www.icann.org/en/news/correspondence/mahdoiun-to-chalaby-icann-board-09aug13-en>, <https://www.icann.org/en/news/correspondence/hoballah-to-chalaby-et-al-04sep13-en>, <https://www.icann.org/en/system/files/correspondence/mahdioun-to-chehade-et-al-20nov13-en.pdf>, <https://www.icann.org/en/system/files/correspondence/ihsanoglu-to-crocker-19dec13-en.pdf>, <https://www.icann.org/en/news/correspondence/iskandar-to-chalaby-24dec13-en>, <https://www.icann.org/en/system/files/correspondence/kamel-to-iskandar-24jan14-en.pdf>, and <https://www.icann.org/en/system/files/correspondence/hawa-diakite-to-crocker-03feb14-en.pdf>. In addition, we note that the attached letter from Dr. Crocker to Mr. Ekmeleddin İhsanoğlu, dated 13 January 2014, is also responsive to this request but was inadvertently not published on the correspondence page. We will publish it on the correspondence page.

Item No. 2 seeks the disclosure of all records of the NGPC meeting with GAC members in Durban relating to these applications, referenced in the February 7, 2014 letter to AGIT. All non-privileged documents responsive to this request have been published, including, without limitation, <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14->

[en.pdf](#). To the extent there are other documents responsive to this item, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

Item No. 3 seeks all documents considered by the Board in coming to its February 5, 2014 resolution and February 7, 2014 letter to AGIT. The 5 February 2014 Resolution and Rationale set forth the materials reviewed by the NGPC as part of its deliberations, including, without limitation, the following:

- GAC Beijing Communiqué
(https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2)
- GAC Durban Communiqué
(https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2)
- GAC Buenos Aires Communiqué
(https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2)

- Applicant responses to GAC advice (<http://newgtlds.icann.org/en/applicants/gac-advice/>)
- Applicant Guidebook, Module 3 (<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>)

(See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a>.) The Board briefing materials for the 5 February 2014 meeting have been published at <https://www.icann.org/en/groups/board/documents/briefing-materials-1-05feb14-en.pdf>. To the extent there are other documents responsive to this item, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

Item No. 4 seeks all documents considered by the BGC and NGPC in rejecting AGIT's Request for Reconsideration of that resolution. The documents considered by the BGC in its consideration on AGIT's Reconsideration Request 14-7 are set forth in the BGC's Recommendation to Request 14-7 available at

<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/recommendation-agit-13mar14-en.pdf>, which includes, without limitation, the documents cited above, as well as

<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-agit-26feb14-en.pdf>, <https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-agit-exhibit-26feb14-en.pdf>,

<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-attachment-agit-1-28feb14-en.pdf>,
<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-attachment-agit-2-28feb14-en.pdf>,
<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-attachment-agit-3-28feb14-en.pdf>,
<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-attachment-agit-4-28feb14-en.pdf>,
<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-attachment-agit-5-28feb14-en.pdf>, and
<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-attachment-agit-6-28feb14-en.pdf>. In addition, the minutes of the BGC 13 March 2014 meeting have been published at <https://www.icann.org/en/groups/board/documents/minutes-bgc-13mar14-en.htm>. Similarly, the document considered by the NGPC in Resolution 2014.03.22.NG04 adoption the BGC's Recommendation on Request 14-7 are set forth in the Rationale for Resolution 2014.03.22.NG04, available at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-03-22-en#1.e>. Additionally, the Board briefing materials for the 22 March 2014 NGPC meeting are available at <https://www.icann.org/resources/pages/2014-2015-01-28-en>. Further, the Minutes of the 22 March 2014 NGP C meeting are available at <https://www.icann.org/en/groups/board/documents/minutes-new-gtld-22mar14-en.htm>.

To the extent there are other documents responsive to this item, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Item No. 5 seeks the disclosure of all documents regarding any effort by ICANN to facilitate resolution of the purported "conflicts" referenced in the 7 February letter from Dr. Crocker to AGIT. This request seems to be premised on the mistaken belief that ICANN's Chairman suggested in his letter that ICANN would facilitate the resolution referenced in the 7 February 2014 letter. He did not. Specifically, the letter states:

There seems to be a conflict between the commitments made in your letters and the concerns raised in letters to ICANN urging ICANN not to delegate the strings. Given these circumstances, the NGPC will not address the applications further until such time as the noted conflicts have been resolved.

(<https://www.icann.org/en/system/files/correspondence/crocker-to-abbasnia-07feb14-en.pdf>.) To the extent there are any documents responsive to this item, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

With respect to Item No. 6, except for the GAC designated confidential information, ICANN has unredacted the IRP Final Declaration in the DotConnectAfrica Trust IRP, as well as all papers filed by the parties and the hearing transcripts (see <https://www.icann.org/resources/pages/dca-v-icann-2013-12-11-en>). With respect to the GAC designated confidential information, such information is subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

About DIDP

ICANN's DIDP is limited to requests for documentary information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, please see <http://www.icann.org/en/about/transparency/didp>. ICANN makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN continually strives to provide as much information to the community as is reasonable. We encourage you to sign up for an account at MyICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN's website that are of interest because, as we continue to enhance our reporting mechanisms, reports will be posted for public access.

We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.

Attachment



The Internet Corporation for Assigned Names and Numbers

13 January 2014
Mr. Ekmeleddin İhsanoğlu
Secretary General of the Organization of Islamic Cooperation

Dear Mr. İhsanoğlu,

Thank you for your letter dated 19 December 2013 regarding the new gTLD applications of .islam and .halal.

We received with great interest the news about the Resolution on preserving gTLDs with Islamic identity that was unanimously adopted by OIC's 57 Member States in the Fortieth Session of the Council of Foreign Ministers held in Conakry, Republic of Guinea, on 9-11 December 2013. I have forwarded the Resolution to the New gTLD Program Committee of the ICANN Board (NGPC) for their consideration. The time window for formal objections on new gTLD strings has ended, but we will have to wait for the consideration and decision of the NGPC according to their rules and procedures.

On the other hand, I am delighted that one of articles of the Resolution encourages the OIC and its Member States to become more active in ICANN, which we surely welcome and support as ICANN Board and staff. This will build the necessary bridges for engagement and dialogue and foster the cooperation between our two organizations in the future. We were pleased to see the OIC become an observer at ICANN's Government Advisory Committee (GAC), and look forward to an era of more active participation of OIC's Member States in the GAC as well as in other ICANN constituencies. The active engagement will enrich constituencies and support ICANN's constant efforts to become more global and inclusive. In this respect, I would like to propose that the ICANN Regional VP for the Middle East, Baher Esmat, work closely with your team to foster more active engagement with OIC and its Member States, and I count on your support to this effort.

Once again, thank you for your communication and we look forward to working more closely with OIC and its Member States.

Sincerely,

Stephen D. Crocker, Chair
ICANN Board of Directors

Resp. Ex. 23

Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process

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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.

1. Definitions

In these Supplementary Procedures:

DECLARATION refers to the decisions/opinions of the IRP PANEL.

ICANN refers to the Internet Corporation for Assigned Names and Numbers.

ICDR refers to the International Centre for Dispute Resolution, which has been designated and approved by ICANN's Board of Directors as the Independent Review Panel Provider (IRPP) under Article IV, Section 3 of ICANN's Bylaws.

INDEPENDENT REVIEW or IRP refers to the procedure that takes place upon the filing of a request to review ICANN Board actions or inactions alleged to be inconsistent with ICANN's Bylaws or Articles of Incorporation

INTERNATIONAL DISPUTE RESOLUTION PROCEDURES OR RULES refer to the ICDR's International Arbitration Rules that will govern the process in combination with these Supplementary Procedures.

IRP PANEL refers to the neutral(s) appointed to decide the issue(s) presented. The IRP will be comprised of members of a standing panel identified in coordination with the ICDR. Certain decisions of the IRP are subject to review or input of the Chair of 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 ICDR; or (ii) is in place but does not have the requisite diversity of skill and experience needed for a particular proceeding, the ICDR shall identify and appoint one or more panelists, as required, from outside the omnibus standing panel to augment the panel members for that proceeding.

2. Scope

The ICDR will apply these Supplementary Procedures, in addition 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. In the event there is any inconsistency between these Supplementary Procedures and the RULES, these Supplementary Procedures will govern. These Supplementary Procedures and any amendment of them shall apply in the form in effect at the time the request for an INDEPENDENT REVIEW is received by the ICDR.

3. Number of Independent Review Panelists

Either party may elect that the request for INDEPENDENT REVIEW be considered by a three-member panel: the parties' election will be

taken into consideration by the Chair of the standing panel convened for the IRP, who will make a final determination whether the matter is better suited for a one- or three-member panel.

4. Conduct of the Independent Review

The IRP Panel should conduct its proceedings by electronic means to the extent feasible. Where necessary, the IRP Panel may conduct telephone conferences. In the extraordinary event that an in-person hearing is deemed necessary by the panel presiding over the IRP proceeding (in coordination with the Chair of the standing panel convened for the IRP, or the ICDR in the event the standing panel is not yet convened), the in-person hearing shall be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance. Telephonic hearings are subject to the same limitation.

The IRP PANEL retains responsibility for determining the timetable for the IRP proceeding. Any violation of the IRP PANEL's timetable may result in the assessment of costs pursuant to Section 10 of these Procedures.

5. Written Statements

The initial written submissions of the parties shall not exceed 25 pages each in argument, double-spaced and in 12-point font. All necessary evidence to demonstrate the requestor's claims that ICANN violated its Bylaws or Articles of Incorporation should be part of the submission. Evidence will not be included when calculating the page limit. The parties may submit expert evidence in writing, and there shall be one right of reply to that expert evidence. The IRP PANEL may request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties.

6. Summary Dismissal

An IRP PANEL may summarily dismiss any request for INDEPENDENT REVIEW where the requestor has not demonstrated that it meets the standing requirements for initiating the INDEPENDENT REVIEW.

Summary dismissal of a request for INDEPENDENT REVIEW is also appropriate where a prior IRP on the same issue has concluded through DECLARATION.

An IRP PANEL may also dismiss a querulous, frivolous or vexatious request for INDEPENDENT REVIEW.

7. Interim Measures of Protection

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. Where the IRP PANEL is not yet comprised, the Chair of the standing panel may provide a recommendation on the stay of any action or decision.

8. Standard of Review

The IRP is subject to the following standard of review: (i) did the ICANN Board act without conflict of interest in taking its decision; (ii) did the ICANN Board exercise due diligence and care in having sufficient facts in front of them; (iii) did the ICANN Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

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.

9. Declarations

Where there is a three-member IRP PANEL, any DECLARATION of the IRP PANEL shall be made by a majority of the IRP PANEL members. If any IRP PANEL member fails to sign the DECLARATION, it shall be accompanied by a statement of the reason for the absence of such signature.

10. Form and Effect of an IRP Declaration

- a. DECLARATIONS shall be made in writing, promptly by the IRP PANEL, based on the documentation, supporting materials and arguments submitted by the parties.
- b. The DECLARATION shall specifically designate the prevailing

party.

- c. A DECLARATION may be made public only with the consent of all parties or as required by law. Subject to the redaction of Confidential information, or unforeseen circumstances, ICANN will consent to publication of a DECLARATION if the other party so request.
- d. Copies of the DECLARATION shall be communicated to the parties by the ICDR.

11. Costs

The IRP PANEL shall fix costs in its DECLARATION. The party not prevailing in an IRP shall ordinarily be responsible for bearing all costs of the proceedings, but under extraordinary circumstances the IRP PANEL may allocate up to half of the costs to the prevailing party, taking into account the circumstances of the case, including the reasonableness of the parties' positions and their contribution to the public interest.

In the event the Requestor has not availed itself, in good faith, of the cooperative engagement or conciliation process, and the requestor is not successful in the Independent Review, the IRPPANEL must award ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.

12. Emergency Measures of Protection

Article 37 of the RULES will not apply.

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Resp. Ex. 24



Centralized Zone Data Service (CZDS)

Comments & Feedback

Current Application Status

Delegated Strings

Contention Set Status

Evaluation Panels

gTLD Correspondence →

Objection & Dispute Resolution

Post-Delegation Dispute Resolution Procedures (PDDRP)

Program Statistics

Timelines

TLD Startup Information - Sunrise and Claims Periods

Trademark Clearinghouse (TMCH)

Uniform Rapid Suspension System

GTLD CORRESPONDENCE

This section is for formal letters with ideas and comments for the new gTLD program.

Correspondence	Affiliation	Date	Notes
Letter from Paul Zamek to ICANN and EIU	EVP: Communications & Strategic Partnerships DotMusic Limited	25 January 2016	
Letter from Amanda Palmer to ICANN and Economist Intelligence Unit	Personal Capacity	19 January 2016	
Letter from Paul Zamek to ICANN and the Economist Intelligence Unit	EVP: Communications & Strategic Partnerships DotMusic Limited	11 January 2016	
Letter from Sandie Shaw to ICANN and EIU	Personal Capacity	4 January 2016	
Letter from the GNSO Council to ICANN Board	GNSO Council	31 December 2015	
Letter from Paul Zamek to ICANN and the Economist Intelligence Unit	EVP: Communications & Strategic Relationships DotMusic Limited	22 December 2015	
Email from Rick Carnes to Stephen D. Crocker	President Songwriters Guild of America	21 December 2015	ICANN's Response
Letter from Constantine Roussos to ICANN and the Economist Intelligence Unit	Founder DotMusic Limited	16 December 2015	
Letter from Imogen Heap to ICANN and Economist Intelligence Unit	Personal Capacity	16 December 2015	
Letter from Hal Ritson to ICANN and Economist Intelligence Unit	Personal Capacity	15 December 2015	
Letter from Ed O'Brien to ICANN and Economist Intelligence Unit	Personal Capacity	15 December 2015	

ICANN
Correspondence

Letter from Rumer Shirakbari to ICANN and Economist Intelligence Unit	Personal Capacity	15 December 2015	
Letter from Katie Melua to ICANN and Economist Intelligence Unit	Personal Capacity	15 December 2015	
Letter from Fran Healy to ICANN and Economist Intelligence Unit	Personal Capacity	15 December 2015	
Letter from Roxanne De Bastion to ICANN and Economist Intelligence Unit	Personal Capacity	15 December 2015	
Letter from Paul Zamek to ICANN and Economist Intelligence Unit	EVP: Communications & Strategic Relationships DotMusic Limited	11 December 2015	
Letter from the International Artist Organisation to ICANN and Economist Intelligence Unit	International Artist Organisation	11 December 2015	
Letter from Alvaro Alvarez to ICANN and Economist Intelligence Unit	Senior Vice President, General Counsel and Secretary Donuts Inc.	10 December 2015	
Letter from Imogen Heap to ICANN and Economist Intelligence Unit	Personal Capacity	9 December 2015	
Letter from Jarvee Hutcherson to ICANN	National President American Society of Young Musicians	8 December 2015	
Letter from Thomas Schneider to Steven Crocker	Chair ICANN Governmental Advisory Committee	1 December 2015	
Letter from Paul Zamek to ICANN and Economist Intelligence Unit	EVP: Communications & Strategic Partnerships	1 December 2015	ICANN's Response
Letter from Volker Greimann and David Cake to Steve Crocker	GNSO Council	24 November 2015	
Letter from Paul Zamek to ICANN and Economist Intelligence Unit	EVP: Communications & Strategic Relationships DotMusic	23 November 2015	
Letter from Kevin G. Rupy to Fadi Chehadé	Vice President, Law & Policy United States Telecom Association	17 November 2015	ICANN's Response
Letter from the DotKids	DotKids Foundation Limited	10	

Foundation Limited to ICANN Board, CPE Panel, and ICANN Global Domains Division		November 2015	
Letter from Paul Diaz to Steve Crocker	Chair Registry Stakeholder Group	09 November 2015	
Letter from Sophia Bekele to ICANN	Execute Director/CEO DotConnectAfrica Trust	09 November 2015	
Letter from Patrick Charnley to Steve Crocker and Fadi Chehadé	Senior Legal Policy Adviser IFPI	09 November 2015	
Letter from Paul Zamek to ICANN and Economist Intelligence Unit	EVP: Communications & Strategic Relationships DotMusic	09 November 2015	
Letter from Jason Schaeffer to Steve Crocker et al.	Counsel DotMusic Limited	03 November 2015	
Letter from Paul Zamek to ICANN and Economist Intelligence Unit	EVP: Communications & Strategic Relationships DotMusic	31 October 2015	
Letter from Esa Mohamed to Akram Atallah	President International Union of Architects	28 October 2015	ICANN's Response
Letter from Heather Diaz to Akram Atallah	Director, Compliance and Policy fTLD Registry Services, LLC	26 October 2015	ICANN's Response
Letter from Issah Yahaya to ICANN	Chief Director Ministry of Communications, Republic of Ghana	16 October 2015	
Letter from Fred Matiang'i to ICANN Board and Geographic Names Panel	Cabinet Secretary Ministry of Information, Communications and Technology, Republic of Kenya	15 October 2015	
Letter from Helen Smith to Steve Crocker et al.	Executive Chair Independent Music Companies Association (IMPALA)	13 October 2015	
Letter from Sophia Bekele to the Director of the New gTLD Program, Geographic Names Panel, New gTLD Program Committee Chair, Stephen Crocker, and Chairperson of the Governmental Advisory Committee	Executive Director/CEO DotConnectAfrica Trust	13 October 2015	

Letter from Steve Crocker to Jonathan Robinson	Chair ICANN Board of Directors	12 October 2015	
Letter from Jim Mahoney to Steve Crocker et al.	General Manager, USA Music and Entertainment Rights Licensing Independent Network (MERLIN)	12 October 2015	
Letter from Alison Wenham to ICANN and Economist Intelligence Unit	Chairman and Chief Executive Worldwide Independent Network (WIN)	6 October 2015	
Letter from Benoît Machuel to ICANN and Economist Intelligence Unit	General Secretary International Federation of Musicians (FIM)	5 October 2015	
Letter from Molly Neuman to Steve Crocker et al.	Vice President/Interim President American Association of Independent Music (A2IM)	1 October 2015	
Letter from Cherine Chalaby to Jonathan Robinson	Chair, Board New gTLD Program Committee	30 September 2015	
Letter from Dr. Elham M.A. Ibrahim to Geographic Names Panel	Commissioner for Infrastructure and Energy African Union Commission	29 September 2015	
Letter from Steve Crocker to Thomas Schneider	Chair ICANN Board of Directors	29 September 2015	
Letter from Thomas Schneider to Steve Crocker	Chair ICANN Government Advisory Committee (GAC)	26 September 2015	
Letter from Jonathan Robinson to Steve Crocker	Chair GNSO Council	21 September 2015	
Letter from Howard M. Stupp to Steve Crocker	International Olympic Committee (IOC) Director of Legal Affairs	17 September 2015	
Letter from Paul Zamek to ICANN and EIU	EVP: Communications & Strategic Relationships DotMusic	16 September 2015	
Letter from Steve Crocker to Thomas Schneider	Chair ICANN Board of Directors	04 September 2015	
Letter from Steve Crocker to Jonathan Robinson	Chair ICANN Board of Directors	03 September 2015	

Letter from Jamie Baxter to ICANN	dotgay LLC	03 September 2015	
Letter from Sikelela F. Dlamini to Fadi Chehadé and Thomas Schneider	GAC Representative from the Kingdom of Swaziland	02 September 2015	
Letter from Paul Zamek to ICANN and Economic Intelligence Unit	EVP: Communications & Strategic Relationships DotMusic	02 September 2015	
Letter from Crystal Ondo to Akram Atallah	Director, Legal Affairs and Compliance Donuts Inc.	28 August 2015	
Letter from Sarah Gardner to Steve Crocker et al.	Executive Director International Federation of Arts Councils and Culture Agencies	26 August 2015	
Letter from Dr. Florian Drücke and René Houareau to Dr. Steve Crocker et al.	Bundesverband Musikindustrie e.V.	18 August 2015	
Letter from Jamie Baxter to ICANN	dotgay LLC	18 August 2015	
Letter from Paul Zamek to ICANN and Economist Intelligence Unit	EVP: Communications & Strategic Relationships DotMusic Limited	17 August 2015	
Letter from Jason Schaeffer to Steve Crocker et al.	DotMusic Limited	12 August 2015	
Letter from Constantinos Roussos to ICANN and Economist Intelligence Unit	Founder & CEO DotMusic Limited	12 August 2015	
Letter from Statton Hammock to Steve Crocker, Fadi Chehadé, and Akram Atallah	Vice-President, Business & Legal Affairs Rightside Group Ltd.	12 August 2015	
Letter from Robin Gross to Steve Crocker and Fadi Chahadé	Executive Director IP Justice	12 August 2015	
Letter from Don C. Moody to Stephen D. Crocker, Fadi Chahadé, Christine Willett, and the CPE Panel	Counsel Donuts Inc.	12 August 2015	
Letter from Jason Schaeffer to Steve Crocker et al.	Counsel DotMusic Limited	12 August 2015	
Letter from Casey Rae to Steve Crocker, Fadi Chehadé, Akram Atallah, Christine Willett, Cherine Chalaby, Thomas Schneider, Cyrus Namazi, John	CEO Future of Music Coalition	11 August 2015	

Jeffrey, CPE Panel			
Letter from Ed Nash to Steve Crocker, Fadi Chahadé, and Akram Atallah	President NashStrutton, LLC	11 August 2015	
Letter from Javree Hutcherson to Steve Crocker, Fadi Chahadé, and Akram Atallah	National President American Society of Young Musicians	07 August 2015	
Letter from Akram Atallah to Thomas Schneider	ICANN	06 August 2015	
Letter from Akram Atallah to Thomas Schneider	ICANN	06 August 2015	
Letter from Gilles Daigle to Steve Crocker and Fadi Chehadé	General Counsel SOCAN	06 August 2015	
Letter from Alain Artero to Christine Willett	TLDs Project Manager .RADIO European Broadcasting Union	05 August 2015	
Letter from Thomas Theune to Steve Crocker et al.	Director Broadcasting and Online GEMA – Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte	05 August 2015	
Letter from Arjun Nair to Steve Crocker, Fadi Chehadé, Akram Atallah	Rang	04 August 2015	
Letter from Joe Lamond to Steve Crocker, Fadi Chehadé, Akram Atallah, Christine Willett, Cherine Chalaby, Thomas Schneider, Cyrus Namazi, John Jeffrey, Community Priority Evaluation Panel	President/CEO The National Association of Music Merchants (NAMM)	30 July 2015	
Letter from Thomas Schneider to Akram Atallah	Chair ICANN Government Advisory Committee (GAC)	30 July 2015	
Letter from Jonathan Robinson to the ICANN Board	Chair ICANN GNSO Council	29 July 2015	
Letter from Steve Crocker to Jonathan Robinson	Chair ICANN Board of Directors	27 July 2015	
Letter from Athen O'Shea to Akram Atallah, Christine Willett, Cherine Chalaby	Chair Q Center Board of Directors	25 July 2015	
Letter from Jonathan Robinson to ICANN SO & AC Chairs, GNSO SG & C Chairs, Steve Crocker	Chair GNSO Council	22 July 2015	ICANN's Response

Letter from Sophia Bekele to Steve Crocker and Fadi Chehadé	Executive Director/CEO DotConnectAfrica Trust	21 July 2015	
Letter from Angel Gurría to Fadi Chehadé	Secretary-General Organization for Economic Cooperation and Development (OECD)	20 July 2015	
Letter from Thomas Schneider to Akram Atallah	Chair Government Advisory Committee (GAC)	16 July 2015	ICANN's Response
Letter from Alain Artero to Christine Willett	European Broadcasting Union	16 July 2015	ICANN's Response
Letter from Lucky Masilela to Steve Crocker	CEO ZA Central Registry (NPC)	15 July 2015	
Letter from Dr. Elham M.A. Ibrahim to Steve Crocker	Commissioner Infrastructure and Energy African Union	14 July 2015	
Letter from Akram Atallah to Neil Dundas COO	President, Global Domains Division ICANN	13 July 2015	
Letter from Jamie Baxter to ICANN	dotgay LLC	24 June 2015	
Letter from Steve Crocker to Thomas Schneider	Chair ICANN Board of Directors	23 June 2015	
Letter from Jamie Baxter to ICANN	dotgay LLC	23 June 2015	
Letter from Jamie Baxter to ICANN	dotgay LLC	22 June 2015	
Letter from J. Randy Forbes Co-Chair and Suzan DelBene Co-Chair to Fadi Chehadé and Steve Crocker	United States Congressional Trademark Caucus	19 June 2015	
Letter from Lorri Christou to Cherine Chalaby	Senior Vice President, Strategic Marketing and Communications Cruise Lines International Association	18 June 2015	ICANN's Response
Letter from Barry C. Melancon to the ICANN Board and Economist Intelligence Unit	President & CEO American Institute of Certified Public Accountants (AICPA)	12 June 2015	
Letter from Barry C. Melancon to the ICANN Board and Economist Intelligence Unit	President & CEO American Institute of Certified Public Accountants (AICPA)	12 June 2015	
Letter from Craig Laughton to the ICANN Board and	General Counsel CPA Australia Ltd	11 June 2015	

Economist Intelligence Unit			
Letter from Stefan Schnorr to Fadi Chehadé	Director General Federal Ministry for Economic Affairs and Energy, Germany	10 June 2015	ICANN's Response
Letter from Jonathan Robinson to SO & AC Chairs and Steve Crocker	Chair GNSO Council	02 June 2015	
Letter from Jamie Baxter to ICANN	dotgay LLC	29 May 2015	
Letter from Geoff Taylor to Steve Crocker and Fadi Chehadé	Chief Executive British Recorded Music Industry & BRIT Awards	27 May 2015	
Letter from Savio D'souza to Steve Crocker et al.	Secretary General The Indian Music Industry	25 May 2015	
Letter from Rakesh Nigam to ICANN and Economist Intelligence Unit	Chief Executive Officer Indian Performing Right Society Limited (IPRS)	21 May 2015	
Letter from Jed Hilly to ICANN and Economist Intelligence Unit	Executive Director Americana Music Association	20 May 2015	
Letter from Jo Dipple to Steve Crocker and Fadi Chehadé	CEO UK Music	19 May 2015	
Letter from Suresh Srinivasan to ICANN and Economist Intelligence Unit	Chief Operations Officer Phonographic Performance Limited	19 May 2015	
Letter from Frances Moore to Steve Crocker and Fadi Chehadé	Chief Executive Officer International Federation of the Phonographic Industry (IFPI)	18 May 2015	
Letter from Adam Awty to ICANN and Economist Intelligence Unit	Chief Operating Officer and Company Secretary CPA Australia Ltd.	15 May 2015	
Letter from Steven M. Marks to Steve Crocker and Fadi Chehadé	Chief, Digital Business & General Counsel Recording Industry Association of America, Inc.	12 May 2015	
Letter from Jonathon Nevett to ICANN Board of Directors and Economist Intelligence Unit	Co-Founder Donuts Inc.	11 May 2015	
Letter from Jonathon Nevett to ICANN Board of Directors and Economist Intelligence Unit	Co-Founder Donuts Inc.	11 May 2015	
Letter from Elisa Cooper to Akram Atallah	Chair ICANN Business Constituency	08 May 2015	ICANN's Response

Letter from American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) to ICANN	American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI)	24 April 2015	
Letter from Todd Dupler to ICANN Board and Economist Intelligence Unit	Director of Government Relations The Recording Academy	24 April 2015	
Letter from Thomas Schneider to Steve Crocker	Chair, Governmental Advisory Committee	23 April 2015	
Letter from Joeri Mol to ICANN and Economist Intelligence Unit	Senior Lecturer in Organisation Studies University of Melbourne	20 April 2015	
Letter from John Snyder to ICANN and Economist Intelligence Unit	Chair, Department of Music Industry Studies Loyola University New Orleans	14 April 2015	
Letter from Danielle M. Aguirre to ICANN Board of Directors and Economic Intelligence Unit	General Counsel National Music Publishers' Association	14 April 2015	
Letter from Martin Sutton, Elisa Cooper, and Gregory S. Shatan to Steve Crocker	President Brand Registry Group (BRG), Chair Business Constituency (BC), and President Intellectual Property Constituency (IPC)	14 April 2015	ICANN's Response
Letter from Jamie Baxter to ICANN	Vice President of Marketing dotgay LLC	14 April 2015	
Letter from William Ng to Steve Crocker, CPE Panel, and Akram Atallah	Chairman Asia Spa and Wellness Promotion Council Limited	9 April 2015	
Letter from Constantinos Roussos to ICANN and Economist Intelligence Unit	Founder DotMusic	31 March 2015	
Letter from Constantinos Roussos to ICANN and Economist Intelligence Unit	Founder DotMusic	31 March 2015	
Letter from Constantinos Roussos to ICANN and Economist Intelligence Unit	Founder DotMusic	31 March 2015	
Letter from Gregory S. Shatan to Akram Atallah	President Intellectual Property Constituency	27 March 2015	ICANN's Response
Letter from Jeffrey Smith to ICANN and Economist Intelligence Unit	Commercial Connect, LLC	13 March 2015	

Letter from Registry Stakeholder Group to Akram Atallah	Registry Stakeholder Group (RySG)	13 March 2015	ICANN's Response
Letter from Rich Bengloff to Steve Crocker, Fadi Chehadé, Akram Attallah, Christine Willett, Cherine Chalaby, Thomas Schneider and John Jeffrey.	President American Association of Independent Music (A2IM)	7 March 2015	
Letter from Alain Artero to John O. Jeffrey	Project Manager European Broadcasting Union	6 March 2015	ICANN's Response
Letter from Victoria Sheckler to Steve Crocker and Fadi Chehadé	Recording Industry Association of America	5 March 2015	
Letter from Martin Sutton to Akram Atallah	President Brand Registry Group	4 March 2015	
Letter from Kent W. Oyler to Economist Intelligence Unit	President & CEO Greater Louisville Inc.	3 March 2015	
Letter from Boubker Seddik Badr to Akram Atallah	Director of Digital Economy Ministry of Industry, Trade, Investment and Digital Economy, Government of Morocco	26 February 2015	ICANN's Response
Letter from Elizabeth S. Finberg to Stephen Crocker	Public Interest Registry	23 February 2015	
Letter from Patrick Collins to ICANN and EIU	President & CEO SESAC	22 February 2015	
Letter from C. Martin Harris to Economic Intelligence Unit, CPE Evaluation Panel	Chief Information Officer Cleveland Clinic	17 February 2015	
Letter from Chetan Nage to Akram Atallah	Manager Legal Tata Sons Limited	12 February 2015	ICANN's Response
Letter from Donuts Inc. to ICANN	Donuts Inc.	17 February 2015	
Letter from Tina O. Grande to Chris Disspain and the ICANN Board Governance Committee	Healthcare Leadership Council	10 February 2015	
Letter from Carmen A. Catizone to the Economist Intelligence Unit, CPE Panel	Executive Director/Secretary National Association of Boards of Pharmacy	10 February 2015	
Letter from Thomas J.	Chairman .JOBS, Chairman	8 February	ICANN's

Embrescia and Vincent Huang to Akram Atallah	Hu Yi Global	2015	Response
Letter from Jamie Baxter to ICANN	dotgay LLC	6 February 2015	
Letter from Petr Prokopík to ICANN and the EIU	Charles University in Prague	5 February 2015	
Letter from Kim Lithgow to ICANN and the Economist Intelligence Unit	Head of Pflag South Africa Parents and Friends of Lesbians and Gays	5 February 2015	
Letter from gTLD Registries Stakeholder Group to Steve Crocker	gTLDs Registry Stakeholder Group	5 February 2015	
Letter from Jamie Baxter to ICANN and the Economist Intelligence Unit	Vice President of Marketing dotgay LLC	5 February 2015	
Letter from Jamie Baxter to ICANN and the Economist Intelligence Unit	Vice President of Marketing dotgay LLC	5 February 2015	
Letter from Jamie Baxter to ICANN and the Economist Intelligence Unit	Vice President of Marketing dotgay LLC	5 February 2015	
Letter from Jamie Baxter to ICANN and the Economist Intelligence Unit	Vice President of Marketing dotgay LLC	5 February 2015	
Letter from Jamie Baxter to ICANN and the Economist Intelligence Unit	Vice President of Marketing dotgay LLC	5 February 2015	
Letter from Jamie Baxter to ICANN and the Economist Intelligence Unit	Vice President of Marketing dotgay LLC	5 February 2015	
Letter from Jeremiah Johnston to Fadi Chehade	Internet Commerce Association President	4 February 2015	
Letter from Top Level Design, LLC; United TLD Holdco Ltd.; and Top Level Domain Holdings, Ltd. to ICANN Board Governance Committee	Top Level Design, LLC; United TLD Holdco Ltd.; Top Level Domain Holdings, Ltd.	3 February 2015	
Letter from Anne Stockwell to ICANN and the Economist Intelligence Unit	Former Editor in Chief The Advocate	1 February 2015	
Letter from Kelly Daniel Mukwano to ICANN and the EIU	Executive Director i freedom Uganda Network	1 February 2015	
Letter from Jonathan Robinson to Steve Crocker	Chair ICANN GNSO Council	28 January 2015	

Letter from Jonathan Robinson to Cyrus Namazi	Chair ICANN GNSO Council	28 January 2015	
Letter from Cherine Chalaby to Thomas Schneider	Chair ICANN Board New gTLD Program Committee	22 January 2015	
Letter from Steve Crocker to Thomas Schneider	Chair ICANN Board Of Directors	22 January 2015	
Letter from Shaun Kruger to ICANN Board Governance Committee	Chairperson KwaZulu-Natal Gay and Lesbian Tourism Association (KZNGALTA)	18 January 2015	
Letter from Stephen Coote to ICANN Board Governance Committee	Director Gay Business Association	18 January 2015	
Letter from Nikolay Nikiforov to Stephen Crocker	Minister of Telecom and Mass Communications Russian Federation	15 January 2015	ICANN's Response
Letter from Jason Fiddler to ICANN Board Governance Committee	Festival Director Durban Gay & Lesbian Film Festival	15 January 2015	
Letter from Cherine Chalaby to Jonathan Robinson	Chair ICANN Board New gTLD Program Committee	15 January 2015	
Letter from Eckhard Pols to Fadi Chehadé	Chairman Commission of Children's Concerns	14 January 2015	ICANN's Response
Letter from Tanja Ineke to ICANN Board Governance Committee	President COC Nederland	14 January 2015	
Letter from Chatan Nage to Fadi Chehadé, Steve Crocker, and Cherine Chalaby	Manager - Legal Tata Sons Limited	13 January 2015	ICANN's Response
Letter from Boubker Seddik Badr to Akram Atallah	Director of Digital Economy Ministry of Industry, Trade, Investment and Digital Economy, Government of Morocco	09 January 2015	ICANN's Response
Letter from Adil El Maliki to Akram Atallah	General Director Moroccan Office of Industrial and Commercial Property (OMPIC)	09 January 2015	ICANN's Response
Letter from Craig Schwartz to Cherine Chalaby	Managing Director fTLD Registry Services	09 January 2015	
Letter from Susan Payne to	Head of Legal Policy Valideus	06	

Stephen Crocker, Fadi Chehadé, Cherine Chalaby	Ltd.	January 2015	
Letter from Raymond King to Christine Willett and Russ Weinstein	CEO Top Level Design, LLC	06 January 2015	
Letter from Torsten Bettinger to Akram Atallah	Attorney Bettinger, Schneider, Schramm	23 December 2014	ICANN's Response
Cherine Chalaby to Alan Greenberg	ICANN Board New gTLD Program Committee	19 December 2014	
Craig Schwartz to Stephen Crocker	fTLD Registry Services, LLC	19 December 2014	
Letter from Brigitte Zypries to Akram Atallah	Parliamentary State Secretary German Federal Ministry of Economic Affairs and Energy	19 December 2014	ICANN's Response
John Tanzella to ICANN Board Governance Committee	IGLTA	18 December 2014	
Letter from Rashi Rai to Akram Atallah	Associate Director Merck & Co., Inc	18 December 2014	ICANN's Response
David Gudelunas to ICANN and the Board Governance Committee	Associate Professor of Communication and Chair, Department of Communication, Co-Director of Women, Gender and Sexuality Studies Fairfield University	15 December 2014	
Letter from Akram Atallah to Rashi Rai to Torsten Bettinger	President, Global Domains Division ICANN	11 December 2014	
Donuts Inc. to the Community Priority Evaluation Panel	Donuts Inc.	10 December 2014	
Thomas Schneider to Steve Crocker	Governmental Advisory Committee (GAC)	9 December 2014	ICANN's Response
Elisa Cooper to Fadi Chehadé, Steve Crocker and the ICANN Board	ICANN Business Constituency	9 December 2014	
Caren Marks to Fadi Chehadé	Parliamentary State Secretary and Member of the German Bundestag Federal Ministry for	5 December 2014	ICANN's Response

	Family Affairs, Senior Citizens, Women and Youth, Germany		Deutsch
Shweta Sahjwani Asher to the Community Priority Evaluation Panel	Radix Registry	5 December 2014	
gTLD Registries Stakeholder Group to Steve Crocker and ICANN Board	gTLD Registries Stakeholder Group (RySG)	5 December 2014	
Tina Vinney to the ICANN Board	Aesthetics Practitioners Advisory Network	4 December 2014	
Les Johnson to the ICANN Board Governance Committee	Federation of Gay Games	28 November 2014	
Steve Crocker to Jonathan Robinson	Chair ICANN Board of Directors	24 November 2014	
National Gay & Lesbian Chamber of Commerce to the ICANN Board Governance Committee	National Gay & Lesbian Chamber of Commerce (NGLCC)	17 November 2014	
Renato Sabbadi to the ICANN Board Governance Committee	International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)	17 November 2014	
Paul Diaz to Steve Crocker and the ICANN Board	gTLD Registries Stakeholder Group	7 November 2014	
Patrick Weber to the ICANN Board, Stephen Crocker and Fadi Chehadé	NI2016	6 November 2014	
Patrick Weber to the ICANN Board, Stephen Crocker and Fadi Chehadé	European Federation for Medical Informatics	6 November 2014	
Stephen D. Crocker to Thomas Schneider	ICANN Board of Directors	3 November 2014	
Letter from Cyrus Namazi to Jonathan Robinson	Vice President, Domain Name Services & Industry Engagement ICANN	30 October 2014	
Antoine Geissbuhler, Mukesh Haikerwal, Peter Murray, and S. Yunkap Kwankam to Fadi Chehadé, Stephen Crocker, and Cherine Chalaby	Health On the Net Foundation, World Medical Association, International Medical Informatics Association, International Society for Telemedicine and	30 October 2014	

	eHealth		
Emilie Dessens to Fadi Chehadé	Domainoo	28 October 2014	ICANN's Response
Statton Hammock to Cherine Chalaby	Rightside Registry	24 October 2014	
Don Moody to Community Priority Evaluation Panel	Donuts Inc.	22 October 2014	
Fadi Chehadé to The Honorable Axelle Lemaire	ICANN	22 October 2014	Français
Shweta Sahjwani Asher to Community Priority Evaluation Panel	Radix Registry	20 October 2014	
Cherine Chalaby to Steve Crocker	ICANN Board New gTLD Program Committee	14 October 2014	
Independent Community Bankers of America, Global Federation of Insurance Associations & Financial Services Roundtable to Cherine Chalaby	Independent Community Bankers of America, Global Federation of Insurance Associations, & Financial Services Roundtable	13 October 2014	ICANN's Response
Sally Scutt to Cherine Chalaby	International Banking Federation	10 October 2014	ICANN's Response
Jonathan Robinson to Cherine Chalaby and Chris Disspain	ICANN GNSO Council	7 October 2014	
Celia Boyer, Mukesh Haikerwal and Peter Murray to Fadi Chehadé	Health On the Net Foundation, World Medical Association, International Medical Informatics Association	6 October 2014	ICANN's Response
gTLD Registries Stakeholders Group to Steve Crocker	gTLD Registries Stakeholder Group (RySG)	30 September 2014	
François Bourrier-Soifer to John Jeffrey	Scemla, Loizon, Veverka & De Fontmichel	26 September 2014	
Julien Dedier to Fadi Chehadé, Steve Crocker and Christine Willett	International Radio Emergency Support Coalition	24 September 2014	ICANN's Response
Rick Carnes to ICANN	Song Writers Guild of America	24	

		September 2014	
Philipp Metzger to Fadi Chehadé	Swiss Confederation	23 September 2014	ICANN's Response <hr/> ICANN's Response
Lucky Masilela to Christine Willett	ZA Central Registry	20 September 2014	ICANN's Response
Boubker Seddik Badr to Fadi Chehadé, Steve Crocker and Cherine Chalaby	Ministry of Industry, Trade, Investment and Digital Economy, Government of Morocco	17 September 2014	ICANN's Response <hr/> ICANN's Response
Martin Sutton to Akram Atallah	Brand Registry Group	17 September 2014	
Stephen Crocker to Heather Dryden	ICANN Board	10 September 2014	
August Ortmeyer and Stephan Wernicke to Fadi Chehadé	The Association of German Chambers of Commerce and Industry	8 September 2014	ICANN's Response
Tom Reed to Dr. Stephen D. Crocker	House of Representatives, 23rd District, New York	5 September 2014	ICANN's Response
Stephen Crocker to Heather Dryden	ICANN Board	2 September 2014	ICANN's Response
Stephen Crocker to Heather Dryden	ICANN Board	2 September 2014	
Arif H. Ali to John O. Jeffrey	Weil, Gotshal, & Manges, LLP	28 August 2014	
Helen Smith to the ICANN Board and Staff Members	IMPALA	27 August 2014	
Bärbel Vogel-Middeldorf to Fadi Chehadé	Federal Ministry of Economic Affairs and Energy, Germany	25 August 2014	

Andrew Merriam to Russ Weinstein	Top Level Design LLC	22 August 2014	ICANN's Response
Rich Bengloff to Fadi Chehadé et al	American Association of Independent Music	20 August 2014	
Jason Schaeffer to Robin Bew, Steve Crocker, Fadi Chehadé, Akram Atallah, and Christine Willett	DotMusic Limited	19 August 2014	ICANN's Response
Statton Hammock to Cherine Chalaby	United TLD Holdco Ltd. t/a Rightside Registry	12 August 2014	ICANN's Response
Frances Beinecke to ICANN	The Natural Resources Defense Council	29 July 2014	
Anselika Smoljar to Cherine Chalaby	I-REGISTRY Ltd.	27 July 2014	ICANN's Response
Cherine Chalaby to Steve DelBianco	ICANN	24 July 2014	
Bruce MacPherson to Cherine Chalaby	International Trademark Association	18 July 2014	ICANN's Response
Elisa Cooper, Keith Drazek, and Kristina Rosette to Cherine Chalaby and New gTLD Program Committee	Intellectual Property Committee	17 July 2014	ICANN's Response
Rubens Kühl to the ICANN Board and New gTLD Program Committee	NTAG Name Collision Framework Working Group	17 July 2014	ICANN's Response
Steve Israel to Steve Crocker	House of Representatives, Congress of the United States	14 July 2014	ICANN's Response
Mohammed Al Ghanim to Fadi Chehadé	Telecommunications Regulatory Authority, United Arab Emirates	9 July 2014	ICANN's Response
John Frankenheimer to Steve Crocker and Fadi Chehadé	Loeb & Loeb LLP	3 July 2014	
John M. Genga to the Economist Intelligence Unit and CPE Panel	The IP and Technology Legal Group, P.C.	2 July 2014	
Ger Hatton to ICANN	ICMP	2 July 2014	
Constantine Roussos to Steve	DotMusic Limited	1 July	

Crocker et al.		2014	
Johan Vande Lanotte to Fadi Chehadé and Steve Crocker	Minister of Economy and Consumer Affairs and North Sea	1 July 2014	ICANN's Response
John W. Styll to Christine Willett	.music LLC	27 June 2014	
Ichiro Matsui to ICANN	Osaka Prefectural Government	26 June 2014	
NTAG to Akram Atallah	New TLD Applicant Group (NTAG)	25 June 2014	ICANN's Response
Anna G. Eshoo to Fadi Chehadé	House of Representatives, Congress of the United States	25 June 2014	ICANN's Response
Keith Besgrove to Stephen Crocker	Department of Communications, Government of Australia	20 June 2014	
Antonello Giacomelli to Fadi Chehadé and Stephen D. Crocker	Ministry of Economic Development, Government of Italy	19 June 2014	ICANN's Response
Susan Payne to Akram Atallah	Valideus	18 June 2014	
Nuno Crato to the ICANN Board	Government of Portugal	18 June 2014	ICANN's Response
Axelle Lemaire to the ICANN Board	France	18 June 2014	ICANN's Response
Benji Rogers to Steve Crocker et al.	PledgeMusic	17 June 2014	
Keith Drazek and Jacob Malthouse to Akram Atallah	Registries Stakeholder Group (RySG) & New gTLD Applicant Group	17 June 2014	
Victor Calvo-Sotelo Ibáñez-Martín to Fadi Chehadé, Stephen Crocker, and Cherine Chalaby	Government of Spain	17 June 2014	ICANN's Response
Neelie Kroes to the ICANN Board	European Commission	17 June 2014	ICANN's Response
Cherine Chalaby to Jonathan Robinson	Board New gTLD Program Committee	16 June 2014	
Rami Schwartz to the ICANN	Latin American Telecom LLC	16 June	ICANN's

Board		2014	Response
Lawrence E. Strickling to Stephen D. Crocker	United States Department of Commerce	13 June 2014	
Constantine Roussos to Stephen Crocker, the ICANN Board, GAC Chair, Ombudsman, and General Counsel to ICANN	DotMusic Limited	13 June 2014	ICANN's Response
Peter J. Murray to Stephen Crocker, Fadi Chehadé, and Cherine Chalaby	International Medical Informatics Association (IMIA)	2 June 2014	
Dr. Elham M. A. Ibrahim to Mr. Fadi Chehadé	African Union	2 June 2014	
Jamie Baxter to ICANN	dotgay LLC	27 May 2014	
Mike Thompson to Steve Crocker	U.S. House of Representatives	21 May 2014	
Joshua S. Wattles to Christine Willett	deviantART, Inc.	21 May 2014	
Anton Vidokle to Christine Willett	EFLUX.ART, LLC	21 May 2014	
Lawrence E. Strickling to Stephen D. Crocker	United States Department of Commerce	21 May 2014	ICANN's Response
Dr. Marie-Paule Kieny to Dr. Stephen Crocker, Mr. Fadi Chehadé, and Mr. Cherine Chalaby	World Health Organization	16 May 2014	
Jean-Sébastien Lascary to the ICANN Board, NGPC, and Fadi Chehadé	Personal Capacity	14 May 2014	
Jonathan Robinson to Cherine Chalaby	ICANN GNSO Council	9 May 2014	
Keith Besgrove to Stephen Crocker	Digital Services, Department of Communications, Australian Government	8 May 2014	ICANN's Response
Jamie Baxter to ICANN	dotgay LLC	7 May 2014	
Bob Wiegand to Russ Weinstein and Allen Grogan	Web.com Group LLC	5 May 2014	
Jamie Baxter to ICANN	dotgay LLC	5 May	

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Jamie Baxter to ICANN	dotgay LLC	5 May 2014	
Jamie Baxter to ICANN	dotgay LLC	5 May 2014	
Scott Seitz to ICANN	dotgay LLC	5 May 2014	
Scott Seitz to ICANN	dotgay LLC	5 May 2014	
Riccardo Ricci Curbastro to Jean-Jacques Sahel and Andrea Beccalli	European Federation of Origin Wines (EFOW)	5 May 2014	
Christian de Barrin to Cherine Chalaby	HOTREC	2 May 2014	ICANN's Response
David Gudelunas to ICANN and Economist Intelligence Unit Evaluators	Fairfield University	30 April 2014	
Bruce Parkes to Stephen Crocker	New Zealand Ministry of Business, Innovation and Employment	30 April 2014	ICANN's Response
Riccardo Ricci Curbastro to Nigel Hickson	European Federation of Origin Wines (EFOW)	18 April 2014	
Scott Hayden to Steve Crocker, Fadi Chehadé, Cherine Chalaby, and the New gTLD Program Committee	Amazon	14 April 2014	
Benedicto Fonseca Filho and Virgilio Fernandes Almeida to Stephen D. Crocker	Government of Brazil	14 April 2014	ICANN's Response
Fernando Rojas Samanez to Mr. Stephen D. Crocker	Ministerio de Relaciones Exteriores	11 April 2014	ICANN's Response
Morgan McLaughlin to Members of the NGPC, Members of the ICANN Board, Members of the GAC, and Country Representatives of the GAC	Santa Barbara Vintners	7 April 2014	
Cherine Chalaby to Ms. Lorna Jean Gradden	ICANN Board New gTLD Program Committee	7 April 2014	
Jacob (Changjie) Chen to Cherine Chalaby, Steve Crocker, Fadi Chehadé,	Lusheng Law Firm	4 April 2014	

Christine Willett, and the ICANN Board Governance Committee			
Leslie Reynolds to ICANN	National Association of Secretaries of State	4 April 2014	
Cherine Chalaby to Mr. Jonathan Robinson	ICANN Board New gTLD Program Committee	3 April 2014	
Manuel de Novaes Cabral to ICANN Board of Directors	Instituto dos Vinhos do Douro e Porto	3 April 2014	
Steven L. Bate to ICANN Board of Directors	Long Island Wine Council	3 April 2014	
Linda Reiff to Stephen D. Crocker	Napa Valley Vintners	3 April 2014	
César Saldaña to ICANN Board of Directors	Consejo Regulador of the "Jerez-Xérès-Sherry" Denomination of Origin	3 April 2014	
Brian J. Winterfeldt to the ICANN Board Governance Committee	Kosher Marketing Assets, LLC	2 April 2014	
José Luis Lapuente to Members of the NGPC, Members of the ICANN Board, Members of the GAC, and Country Representatives of the GAC	Consejo Regulador de la Denominación de Origen Calificada Rioja	2 April 2014	
Jean-Luc Barbier to ICANN Board of Directors	Comité Interprofessionnel du Vin de Champagne	2 April 2014	
Linda Corugedo Steneberg to ICANN Board of Directors	European Commission	2 April 2014	
Sergio Zingarelli to Cherine Chalaby, Fadi Chehadé and Stephen D. Crocker	Consorzio Vino Chianti Classico	1 April 2014	
Gretchen M. Olive to Stephen Crocker, Fadi Chehadé, and Cherine Chalaby	Corporation Service Company (CSC)	26 March 2014	
Linda Corugedo Steneberg to ICANN Board of Directors	Directorate-General for Communications Networks, Content and Technology, European Commission	26 March 2014	
Don C. Moody to ICANN CPE Panel	Little Birch, LLC	26 March 2014	
Jim Leape to ICANN	WWF International	26 March 2014	
Robby Ramlakhan to Steve	Amazon Cooperation Treaty	25 March	

Crocker	Organization	2014	
Hejjo Ruijsenaars to Christine Willett	European Broadcasting Union (EBU)	25 March 2014	
Michael Menis to Fadi Chehadé and Stephen D. Crocker	Hotel Consumer Protection Coalition	24 March 2014	ICANN's Response
Brian J. Winterfeldt to ICANN Board New gTLD Program Committee	Katten Muchin Rosenman UK LLP	21 March 2014	
Dr. Martine Berger, Garance Upham, Patti Rundall, Alan Leather, and Dr. Frederique Carrie to Steve Crocker, Fadi Chehadé, and Cherine Chalaby	Health Innovation in Practice; Safe Observer International; Baby Milk Action/IBFAN UK; NGO Forum for Health, Beziers Hospital (France)	21 March 2014	
Herbert C. Wamsley to Akram Atallah	Intellectual Property Owners Association	20 March 2014	ICANN's Response
Johan Vande Lanotte to Fadi Chehadé and Steve Crocker	Minister of Economy and Consumer Affairs and North Sea	20 March 2014	ICANN's Response
Lesley Cowley to Christine Willett	Nominet	20 March 2014	ICANN's Response
Emilie Dessens to Fadi Chehadé	Domainoo	20 March 2014	ICANN'S Response
Jacob (Changjie) Chen to Cherine Chalaby, Steve Crocker, Fadi Chehadé, Christine Willet, and ICANN Board Governance Committee	Lusheng Law Firm	20 March 2014	
Jeffrey W. Bullock to Stephen Crocker	State of Delaware	20 March 2014	
Martin Schulz to Stephen Crocker, Fadi Chehadé, and Cherine Chalaby	European Parliament	19 March 2014	
Jonathan L. Nevelt to Stephen Crocker	Donuts Inc.	18 March 2014	
Patrick Weber to Steve Crocker, Fadi Chehadé, and Cherine Chalaby	European Federation of Medical Information	18 March 2014	
Thomas Schwarz to Stephen Crocker, Fadi Chehadé, and Cherine Chalaby	Medicus Mundi International Network	17 March 2014	

David Wright to Stephen Crocker	International Organization of Securities Commissions	13 March 2014	ICANN's Response
John D. Rockefeller IV to Stephen D. Crocker	Committee on Commerce, Science, and Transportation, United States Senate	12 March 2014	
Gunther Eysenbach to Stephen Crocker, Fadi Chehadé, and Cherine Chalaby	Journal of Medical Internet Research	11 March 2014	
Dr. Otmar Kloiber to Dr. Stephen Crocker, Mr. Fadi Chehadé, and Mr. Cherine Chalaby	World Medical Association, Inc.	11 March 2014	
Prof. S. Yunkap Kwankam to Dr. Stephen Crocker, Mr. Fadi Chehadé, and Mr. Cherine Chalaby	International Society for Telemedicine & eHealth	11 March 2014	
R. Shawn Gunnarson to Christine Willett	Kirton McConkie	11 March 2014	
Rabbi Moshe Elefant, Dr. Avrom Pollak, Rabbi Sholem Fishbane, Rabbi Ari Senter, and Rabbi S. Adler to the ICANN New gTLD Program Committee	Union of Orthodox Jewish Congregations of America (OU K kosher), STAR-K Kosher Certification, Inc. (STAR-K), Chicago Rabbinical Council, Inc. (cRc), Kosher Supervision Service, Inc. (K of-K), and The Kashruth Council of Canada (COR)	6 March 2014	
Philippe Laurent to Fadi Chehadé and Steve Crocker	Marx Van Ranst Vermeersch & Partners	6 March 2014	ICANN's Response
Brian J. Winterfeldt to ICANN Community Evaluation Panel	Aremi Group S.A.	6 March 2014	
Joshua S. Wattles to Christine Willett	DeviantART, Inc.	6 March 2014	
Anton Vidokle to Christine Willett	E-Flux, Inc.	6 March 2014	
Qing Song to Fadi Chehadé	China Organizational Name Administration Center (CONAC)	5 March 2014	ICANN's Response
George T. Bundy to Christine Willett	BRS Media, Inc.	5 March 2014	
Andrés Patetta to ICANN	Despegar Online SRL	5 March 2014	

Brian J. Winterfeldt to ICANN Community Evaluation Panel	Aremi Group S.A.	4 March 2014	
Shweta Sahjwani to Cherine Chalaby and Christine Willett	Radix Registry	4 March 2014	
R. Shawn Gunnarson to Christine Willett	Kirton McConkie	3 March 2014	
R. Shawn Gunnarson to Christine Willett	Kirton McConkie	3 March 2014	
R. Shawn Gunnarson to Christine Willett	Kirton McConkie	3 March 2014	
John M. Genga to Christine Willett	Donuts Inc.	3 March 2014	
John M. Genga to Christine Willett	Donuts Inc.	3 March 2014	
John M. Genga to Christine Willett	Donuts Inc.	3 March 2014	
John M. Genga to Christine Willett	Donuts Inc.	3 March 2014	
Reg Levy to Christine Willett	Minds + Machines	3 March 2014	
Reg Levy to Christine Willett	Minds + Machines	3 March 2014	
Robert Hoffman to ICANN	A1 Media USA LLC	3 March 2014	
Thomas Mörz to ICANN	Domain Robot Enterprises Inc.	3 March 2014	
Fernando Rojas Samanez to Steve Crocker, Fadi Chehadé, and Cherine Chalaby	Ministry of Foreign Affairs, Peru	3 March 2014	
Dr. Imad Y. Hoballah to Cherine Chalaby, ICANN Board New gTLD Program Committee, and ICANN Board Members	Telecommunications Regulatory Authority, Republic of Lebanon	28 February 2014	ICANN's Response
Andrew Merriam to Christine Willett	Top Level Design, LLC	28 February 2014	
Andrew Merriam to Akram Atallah	New TLD Applicant Group (NTAG)	28 February 2014	
Ingrid Baele to Fadi Chehadé, Cherine Chalaby, and Akram	Philips International B.V.	24 February	ICANN's Response

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Thomas Mörz to ICANN	InterNetX GmbH	20 February 2014	
Thomas Mörz to ICANN	InterNetX GmbH	20 February 2014	
Thomas Mörz to ICANN	InterNetX GmbH	20 February 2014	
Ron Andruff, Marilyn Cade, Olivier Crépin-Leblond, Alan Greenberg, and Evan Leibovitch to Cherine Chalaby	RNA Partners	14 February 2014	ICANN's Response
Robert Hoffman to ICANN	1&1 Internet Inc.	11 February 2014	
Gordon Innes to Akram Atallah	London & Partners	6 February 2014	
Liz Schoff to Stephen Crocker, Fadi Chehadé, and Cherine Chalaby	Health Informatics New Zealand (HINZ)	6 February 2014	
Lawrence E. Strickling to Stephen D. Crocker	United States Department of Commerce	4 February 2014	
Linda Corugedo Steneberg to Stephen D. Crocker, Fadi Chehadé, and Cherine Chalaby	European Commission	3 February 2014	
Mme Bertie Hawa Diakite to Dr. Steve Crocker	Ministère de la Communication et des Nouvelles Technologies de L'Information, Republique du Mali	3 February 2014	
New gTLD Applicant Group to Cherine Chalaby	New gTLD Applicant Group (NTAG)	31 January 2014	
Lawrence E. Strickling to Stephen D. Crocker	United States Department of Commerce	30 January 2014	
Olivier MJ Crépin-Leblond to Steve Crocker	At-Large Advisory Committee (ALAC)	30 January 2014	
Lucas Blanque Rey to ICANN	Abogacía Española	29 January 2014	ICANN's Response

Urban Forsum to Stephen Crocker, Fadi Chehadé, and Cherine Chalaby	Swedish Federation of Medical Informatics	29 January 2014	
Craig Schwartz to Christine Willett	Community TLD Applicant Group (CTAG)	29 January 2014	ICANN's Response
Ron Andruff, Marilyn Cade, Olivier Crépin-Leblond, Alan Greenberg, and Evan Leibovitch to Cherine Chalaby	RNA Partners	27 January 2014	ICANN's Response
Luciano Saez Ayerra to Stephen Crocker, Fadi Chehadé, and Cherine Chalaby	Spanish Society of Health Informatics	26 January 2014	
Peter J. Murray to Stephen D. Crocker, Fadi Chehadé, and Cherine Chalaby	International Medical Informatics Association (IMIA)	21 January 2014	
Burt Kaliski Jr. and Patrick S. Kane to Akram Atallah and John Crain	VeriSign, Inc.	17 January 2014	ICANN's Response
Yves Daccord and Bekele Gelata to Steve Crocker	International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies	14 January 2014	
Letter from Steve Crocker to Ekmeleddin İhsanoğlu	Chair ICANN Board of Directors	13 January 2014	
Stacey King to Steve Crocker, Fadi Chehadé, and Cherine Chalaby	Amazon.com	10 January 2014	
Craig S. Schwartz to Christine Willett	Community TLD Applicant Group (CTAG)	10 January 2014	ICANN's Response
Barbara McCullough-Jones to Cherine Chalaby, Akram Atallah, and Christine Willett	Q Center	8 January 2014	
Rami Schwartz to Cherine Chalaby et al.	Latin American Telecom LLC	7 January 2014	
Rubens Kuhl, Reg Levy, Jacob Malthouse, and Andrew Merriam to Cherine Chalaby and Fadi Chehadé [Updated version published 27 January 2014; original removed at senders' request.]	New gTLD Applicant Group	6 January 2014	

Elisa Cooper to the New gTLD Program Committee	ICANN Business Constituency	30 December 2013	
Letter from Mehdi Abbasnia to Stephen D. Crocker	Asia Green IT System	30 December 2013	
Letter from Célia Boyer to Fadi Chehadé	Health On the Net Foundation	25 December 2013	
Letter from Basuki Yusuf Iskandar to Cherine Chalaby	Ministry of Communication and Information Technology, Republic of Indonesia	24 December 2013	ICANN's Response
Letter from Fernando Rojas Samanez to Steve Crocker	Ministry of Foreign Affairs, Peru	24 December 2013	
Letter from Scott Hemphill to Christine Willett	Afilias	24 December 2013	
Letter from the New TLD Applicant Group to the New gTLD Program Committee	New TLD Applicant Group (NTAG)	20 December 2013	
Letter from Ekmeleddin Ihsanoglu to Stephen D. Crocker	Organisation of Islamic Cooperation	19 December 2013	
Letter from Mark McFadden to Russ Weinstein	InterConnect Communications	18 December 2013	
Letter from Andrew Maurer to Stephen Crocker	Government of Australia	17 December 2013	
Email from Erik Wilbers to Christine Willett	WIPO Arbitration and Mediation Center	11 December 2013	
Letter from Ralf Ganser to Stephen D. Crocker	City and State of Berlin	11 December 2013	ICANN's Response
Letter from Michael Beckerman to Stephen Crocker	The Internet Association	10 December 2013	
Letter from Mehdi Abbasnia to Stephen D. Crocker	Asia Green IT System Ltd.	4 December 2013	
Letter from Stacey King to Steve Crocker, Fadi Chehadé, and	Amazon.com	3 December	

Cherine Chalaby		2013	
Letter from Richard Phillips to Fadi Chehadé	Intellectual Property Owners Association	2 December 2013	ICANN's Response
Letter from Rabbi Don Yoel Levy to Fadi Chehadé	OK Kosher Certification	27 November 2013	
Letter from Godefroy Jordan to Christine Willett	Starting Dot	26 November 2013	ICANN's Response
Letter from Jonathan Zuck et al. to Stephen D. Crocker, Fadi Chehadé, and Cherine Chalaby	Association for Competitive Technologies et al.	21 November 2013	ICANN's Response
Letter from Peter Young to ICANN	Famous Four Media	20 November 2013	
Letter from Donuts Inc. to ICANN	Donuts Inc.	20 November 2013	
Letter from Saeed Mahdioun to Fadi Chehadé, Steve Crocker, and Cherine Chalaby	Ministry of ICT, Islamic Republic of Iran	20 November 2013	
Letter from Rabbi Moshe Elefant, Dr. Avrom Pollak, Rabbi Sholem Fishbane, Rabbi Ari Senter, and Rabbi S. Adler to Dr. Stephen D. Crocker	Union of Orthodox Jewish Congregations of America (OU Kosher), STAR-K Kosher Certification, Inc. (STAR-K), Chicago Rabbinical Council, Inc. (cRc), Kosher Supervision Service, Inc. (K of-K), and The Kashruth Council of Canada (COR)	19 November 2013	ICANN's Response
Letter from Peter Young to Cherine Chalaby	Famous Four Media	19 November 2013	
Letter from John Kane to ICANN Board of Directors	Afilias	18 November 2013	
Email from Burt Kaliski to Akram Atallah	VeriSign Inc.	15 November 2013	
Letter from Clovis Baptista to Steve Crocker	Secretariat of the Inter-American Telecommunication Commission (CITEL) of the Organization of American States (OAS)	15 November 2013	

Letter from Greg Aaron, Rod Rasmussen, Peter Cassidy, and Dave Jevans to Akram Atallah	Anti-Phishing Working Group	14 November 2013	ICANN's Response
Letter from Rabbi Moshe Elefant, Dr. Avrom Pollak, Rabbi Sholem Fishbane, Rabbi Ari Senter, and Rabbi S. Adler to Mr. Fadi Chehadé	Union of Orthodox Jewish Congregations of America (OU Kasher), STAR-K Kasher Certification, Inc. (STAR-K), Chicago Rabbinical Council, Inc. (cRc), Kosher Supervision Service, Inc. (K of-K), and The Kashruth Council of Canada (COR)	14 November 2013	ICANN's Response
Letter from Shaul Jolles to Stephen D. Crocker and Cherine Chalaby	Dot Registry, LLC	13 November 2013	
Letter from Dirk Krischenowski to Stephen D. Crocker	TLDDOT GmbH	13 November 2013	
Letter from Thomas Mörz to ICANN Board	InterNet GmbH	13 November 2013	
Letter from Jason Du to Steve Crocker and Cherine Chalaby	Stable Tone Limited	10 November 2013	
Letter from Craig Schwartz to Stephen D. Crocker	fTLD Registry Services, LLC	8 November 2013	
Letter from J. Satyanarayana to Fadi Chehadé	Government of India	7 November 2013	
Letter from Neelie Kroes to ICANN Board Members	Vice President of the European Commission	7 November 2013	
Email from Rob Schlein to Fadi Chehadé and the ICANN Board of Directors	Metroplex Republicans of Dallas	6 November 2013	
Letter from Andrew Merriam to Cherine Chalaby and Christine Willett	Top Level Design, LLC	6 November 2013	
Letter from Burk Kaliski Jr. to Akram Atallah and John L. Crain	VeriSign Inc.	5 November 2013	
Letter from Statton Hammock to Cherine Chalaby	United TLD Holdco Ltd.	4 November 2013	

Letter from Shweta Sahjwani et al. to Cherine Chalaby, Fadi Chehadé, Akram Atallah, and Christine Willett	Radix FZC et al.	1 November 2013	
Letter from François Naef to Cherine Chalaby	Merck KGaA	29 October 2013	
Letter from Donuts Inc. to ICANN	Donuts Inc.	23 October 2013	
Letter from Donuts Inc. to ICANN	Donuts Inc.	23 October 2013	
Letter from Elisa Cooper to the New gTLD Program Committee	ICANN GNSO Business Constituency	22 October 2013	
Letter from Peter Young and Mike Rodenbaugh to Bruce Tonkin	Famous Four Media Limited; AC Webconnecting Holding B.V.	18 October 2013	
Letter from Chuck Gomes to Cyrus Namazi	Verisign	18 October 2013	
Letter from Albert Dubler to Akram Atallah	International Union of Architects	13 October 2013	ICANN's Response
Letter from Jamie Baxter to ICANN	dotgay LLC	10 October 2013	
Letter from Godefroy Jordan to Christine Willett	Starting Dot	8 October 2013	
Letter from Constantine Roussos to Steve Crocker et al.	.MUSIC	8 October 2013	ICANN's Response
Letter from Ernesto H. F. Araújo to Fadi Chehadé	Brazilian Embassy	4 October 2013	
Letter from Craig Schwartz to Christine Willett	fTLD Registry Services, LLC	30 September 2013	
Letter from Dan Jaffe to Stephen D. Crocker and ICANN Board of Directors	Association of National Advertisers	26 September 2013	
Email from Ron Andruff to Cherine Chalaby	RNA Partners	25 September	

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Letter from Craig Schwartz to Christine Willett	fTLD Registry Services, LLC	25 September 2013	
Letter from Craig Schwartz to Christine Willett	Community TLD Applicant Group	25 September 2013	
Letter from Gord Archibald to ICANN	Association of Regina Realtors	24 September 2013	
Letter from Shweta Sahjwani and Jay Westerdal to Cherine Chalaby, Fadi Chehadé, and Christine Willett	Radix Registry; Fegistry, LLC	24 September 2013	
Letter from Peter Weber to Fadi Chehadé	Industrie – und Handelskammer Regensburg für Oberpfalz	23 September 2013	
Letter from Christopher D. Barnard to Steve Crocker and Cherine Chalaby	MARQUES Limited	23 September 2013	
Letter from Shweta Sahjwani, Reg Levy, and Jay Westerdal to Cherine Chalaby, Fadi Chehadé, and Christine Willett <i>[Updated version published 24 September 2013; original removed at sender's request]</i>	Radix Registry, Top Level Domain Holdings / Minds & Machines, and Fegistry, LLC	23 September 2013	
Letter from August Ortmeyer and Stephan F. Wernicke to Fadi Chehadé	Deutscher Industrie – und Handelskammertag	13 September 2013	
Letter from Stefanos Tsimikalis to Stephen Crocker and Cherine Chalaby	Tsimikalis Kalonarou	13 September 2013	
Letter from Neelie Kroes to Fadi Chehadé and Stephen Crocker	European Commission	12 September 2013	
Letter from Axel Pawlik to Fadi Chehadé	RIPE Network Coordination Centre	11 September 2013	
Letter from Peter Young to Cherine Chalaby	Famous Four Media Limited	9 September 2013	
Letter from Nikom Wairatpanij to Steve Crocker	Government of Thailand	9 September	ICANN's Respons

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Letter from Ashley Roberts to Cherine Chalaby	Valideus	6 September 2013	
Letter from Dr. Imad Y. Hoballah to Mr. Cherine Chalaby, New gTLD Program Committee, and ICANN Board	Telecommunications Regulatory Authority, Republic of Lebanon	4 September 2013	
Letter from Dr. Ajay Kumar to Ms. Heather Dryden and Dr. Steve Crocker	Ministry of Communications and IT, Government of India	2 September 2013	
Letter from Brian Beckham to Akram Atallah	Valideus	30 August 2013	ICANN's Response
Letter from Marlon Williams to ICANN	True Massage Therapy	30 August 2013	
Letter from Ron Goerler, Jr. to Steve Crocker	Long Island Wine Council	29 August 2013	
Letter from Dirk Krischenowski to Christine Willett	dotBERLIN GmbH & Co.	28 August 2013	ICANN's Response
Letter from Dan Jaffe to Cyrus Namazi	Association of National Advertisers	27 August 2013	
Letter from Elizabeth Sweezey to Christine Willett, Fadi Chehadé, and Cherine Chalaby	FairWinds Partners	21 August 2013	
Letter from Sarah Deutsch to Fadi Chehadé	Verizon Communications Inc.	21 August 2013	
Letter from Riccardo Ricci Curbastro and Bernard Farges to Steve Crocker, Cherine Chalaby, Fadi Chehadé, and Akram Atallah	European Federation of Origin Wines (EFOW) and National Appellation of Origin Wines and Brandy Producers (CNAOC)	19 August 2013	
Letter from Shaul Jolles to Cherine Chalaby	Dot Registry, LLC	16 August 2013	
Letter from Rabbi Don Yoel Levy to Mr. Fadi Chehadé	OK Kosher Certification	13 August 2013	
Letter from New TLD Applicant Group (NTAG) to Cherine Chalaby	New TLD Applicant Group (NTAG)	12 August 2013	
Letter from Ken Burlington and Thomas J. Embrescia to Cherine Chalaby	National Association of Realtors and Real Estate Domains, LLC	12 August 2013	

Letter from David Tennenhouse to Cherine Chalaby	Microsoft Corporation	12 August 2013	
Letter from Dirk Krischenowski to Cherine Chalaby and Patrick Fälström	dotBERLIN GmbH & Co. KG	11 August 2013	ICANN's Response
Letter from Carolin Silbernagl to Akram Atallah	dotHIV gemeinnütziger e.V.	10 August 2013	
Letter from Saeed Mahdoiun to Cherine Chalaby and ICANN Board	Ministry of ICT, Islamic Republic of Iran	9 August 2013	
Letter from Nicola Bonucci to Cherine Chalaby	Organisation for Economic Co-operation and Development	9 August 2013	
Letter from Dan Jaffe to Fadi Chehadé	Association of National Advertisers	9 August 2013	
Letter from Bruce Cakebread to Steve Crocker	Napa Valley Vintners	8 August 2013	
Letter from Andy Burton to Stephen Crocker, Fadi Chehadé, and Cherine Chalaby	Cloud Industry Forum	2 August 2013	
Letter from Jason Kander to Steve Crocker and Cherine Chalaby	State of Missouri	1 August 2013	
Letter from Craig S. Schwartz to Christine Willett	Community TLD Applicant Group (CTAG)	1 August 2013	ICANN's Response
Email from Leslie Reynolds to ICANN Board Members	National Association of Secretaries of State	26 July 2013	
Letter from Abdullah J. Al-Shibli to ICANN and ICC International Centre for Expertise	Cooperation Council for the Arab States of the Gulf	25 July 2013	
Letter from Eng. Hameed H. Al-Qattan to ICANN and ICC International Centre for Expertise	Ministry of Communications, State of Kuwait	25 July 2013	
Letter from Jacques Rogge to Dr. Stephen D. Crocker	International Olympic Committee	23 July 2013	
Letter from Martin Sutton to Steve Crocker	Brand Registry Group (BRG)	18 July 2013	ICANN's Response
Letter from Etienne Sanz de Acedo to ICANN Board of Directors	International Trademark Association	17 July 2013	

Letter from Community TLD Applicant Group to Christine Willett	Community TLD Applicant Group (CTAG)	17 July 2013	ICANN's Response
Letter from Cristiana De Paoli to Fadi Chehadé	European NGO Alliance for Child Safety Online (eNACSO)	17 July 2013	
Letter from Constantine Roussos to Dr. Steve Crocker et al.	DotMusic	12 July 2013	ICANN's Response
Fabien Betremieux et al.	Geographic gTLD Applicants	12 July 2013	
Letter from Patrick Kane to Christine Willett	VeriSign, Inc.	11 July 2013	
Letter from Sarah Falvey to Akram Atallah	Charleston Road Registry	11 July 2013	
Letter from Michael Thiel and Brian Johnson to Christine Willett and Heather Dryden	National Association of Realtors	11 July 2013	
Letters from Yves Daccord and Bekele Gelata to Akram Atallah, Fadi Chehadé, Cherine Chalaby, and Steve Crocker	International Committee of the Red Cross (ICRC) and International Federation of Red Cross and Red Crescent Societies (IFRC)	10 July 2013	
Letter from Ramón González Figueroa et al. to Stephen D. Crocker, Cherine Chalaby, Fadi Chehadé, and Bruce Tonkin	Organisation for an International Geographical Indications Network (oriGIn)	9 July 2013	
Letter from Bärbel Vogel-Middeldorf to Fadi Chehadé	Federal Ministry of Economics and Technology, Germany	9 July 2013	
Letter from Stacey King to Stephen Crocker, Fadi Chehadé, and Cherine Chalaby	Amazon.com	4 July 2013	
Letter from Adrian Kinderis to Akram Atallah	ARI Registry Services	3 July 2013	
Letter from Johan Vande Lanotte to Fadi Chehadé and Steve Crocker	Government of Belgium	1 July 2013	
Letter from Rabbi Ari Senter, Rabbi Moshe Elefant, Dr. Avrom Pollak, Rabbi Sholem Fishbane, and Rabbi S. Adler to Mr. Fadi Chehadé	Kosher Supervision Service, Inc. (K of-K), Union of Orthodox Jewish Congregations of America (OU Kosher), STAR-K Kosher Certification, Inc. (STAR-K), Chicago Rabbinical Council, Inc. (cRc), and The Kashruth Council of Canada (COR)	28 June 2013	

Letter from U.S. Senator John D. Rockefeller IV to Dr. Stephen D. Crocker	United States Senate Committee on Commerce, Science, and Transportation	26 June 2013	
Letter from Beth Chapman to ICANN	State of Alabama	25 June 2013	
Letter from Group Captain Anudith Nakornthap to Dr. Stephen D. Crocker	Ministry of Information and Communication, Thailand	24 June 2013	ICANN's Response
Email from Tom LaFaille to Steve Crocker	Wine Institute	20 June 2013	
Letter from Robin Gross to ICANN Board of Directors	Non-Commercial Stakeholder Group	17 June 2013	
Letter From Richard H. Goshorn to John Jeffrey (Including Email Exchange Re: Letter)	VeriSign, Inc.	14 June 2013	
Letter from Jonathan Zuck to Stephen D. Crocker and Fadi Chehadé	Association for Competitive Technology (ACT)	13 June 2013	
Letter from Ben Hammer to Fadi Chehadé and Stephen Crocker	FairSearch.org	13 June 2013	
Letter from J. Scott Evans to Stephen Crocker, Fadi Chehadé, and Cherine Chalaby	Yahoo! Inc.	13 June 2013	ICANN's Response
Letter from Lord Alan Watson to Mr. Fadi Chehadé and Dr. Stephen Crocker	Initiative for a Competitive Online Marketplace (ICOMP)	13 June 2013	
Letter from Adrian Kinderis to Christine Willett	ARI Registry Services	12 June 2013	
Letter from Craig Schwartz to Christine Willett	Community TLD Applicant Group (CTAG)	7 June 2013	ICANN's Response
Letter from David Tennenhouse to Stephen D. Crocker and Fadi Chehadé	Microsoft Corporation	6 June 2013	ICANN's Response
Letter from Keith Drazek to Akram Atallah	Registry Stakeholder Group (RySG)	3 June 2013	ICANN's Response
Letter from Mr. James Lowe to Mr. Steve Crocker and Mr. Fadi Chehadé	International Sugar Organization	29 May 2013	
Email from Andrew Gardner to ICANN	Personal Capacity	19 May 2013	

Letter from Kristina Rosette to John Jeffrey	Covington & Burling LLP	17 May 2013	
Letter from David Tennenhouse to Stephen Crocker, Fadi Chehadé, and Cherine Chalaby	Microsoft Corporation	17 May 2013	
Letter from Ben Hammer to Fadi Chehadé and Christine Willett	FairSearch.org	14 May 2013	
Letter from Mr. Rob Steele to Dr. Stephen D. Crocker	ISO Central Secretariat	13 May 2013	
Letter from Elaine Marshall to ICANN	State of North Carolina	3 May 2013	
Letter from Jean-Luc Barbier to Steve Crocker, Cherine Chalaby, Fadi Chehadé, and Akram Atallah	Comité Interprofessionnel du Vin de Champagne (CIVC)	26 April 2013	
Letter from Craig S. Schwartz to Christine Willett	Community TLD Applicant Group (CTAG)	23 April 2013	
Letter from Riccardo Ricci Curbastro to Steve Crocker, Cherine Chalaby, Fadi Chehadé, and Akram Atallah	European Federation of Origin Wines (EFOW)	23 April 2013	
Letter from Bernard Farges to Steve Crocker, Cherine Chalaby, Fadi Chehadé, and Akram Atallah	National Appellation of Origin Wines and Brandy Producers (CNAOC)	19 April 2013	
Letter from Fahad AlShirawi to Steve Crocker and Cherine Chalaby	GCCIX WLL	15 April 2013	
Letter from A. Ralph Mollis	State of Rhode Island and Providence Plantations	12 April 2013	
GAC Communiqué – Beijing, People's Republic of China	GAC	11 April 2013	
Letter from Wang Jingyu to Steve Crocker, Fadi Chehadé and Cherine Chalaby	China Unicom	9 April 2013	ICANN's Response
Letter from Sarah Falvey to Christine Willett	Charleston Road Registry	6 April 2013	
Montevideo Declaration from Fourth Ministerial Conference on the Information Society in Latin America and the Caribbean	eLAC2015	3-5 April 2013	
Letter from Jean Guillon to Fadi	Project DotVinum for Wine	3 April	

Chehadé	Registries	2013	
Letter from Ms. Sophia Bekele to Mr. Fadi Chehadé and Dr. Stephen Crocker	DotConnectAfrica Trust	2 April 2013	
Letter from Kent Nyström to Cherine Chalaby and Fadi Chehadé (with annexes)	HOTREC	2 April 2013	
Letter from Lawrence Strickling to Steve Crocker	United States Department of Commerce	2 April 2013	
Email from Dr. Ben Fuller to Mr. Fadi Chehadé	Namibian Network Information Centre (Pty) Ltd	26 March 2013	
Letter from Michael Weber to Fadi Chehadé	Hot Maps Medien GmbH	25 March 2013	
Letter from Anne Bouverot to Fadi Chehadé	GSMA	22 March 2013	
Letter from Joël Guerriau to Steve Crocker	Republique Française	18 March 2013	
Letter from Euro-Cities AG to Fadi Chehadé	Euro-Cities AG	15 March 2013	
Letter from Mohammed At-Twajiri to Steve Crocker and Heather Dryden	League of Arab States	13 March 2013	
Letter from John Thomson to Steve Crocker, Fadi Chehadé and Cherine Chalaby	Antiquarian Booksellers' Association of America, Inc.	13 March 2013	
Email from Jeffrey Smith to Christine Willett	Commercial Connect, LLC.	12 March 2013	ICANN's Response
Letter from Riccardo Ricci Curbastro to Steve Crocker, Cherine Chalaby, Fadi Chehadé and Akram Atallah	European Federation of Origin Wines	12 March 2013	
Letter from Ross Miller to ICANN	State of Nevada	8 March 2013	
Letter from Gustavo Adolfo Palacio to Steve Crocker	APDIF Colombia	8 March 2013	
Letter from Francisco Nieto G. to Steve Crocker	Sociedad de Productores Fonográficos y Videográficos de Chile	7 March 2013	
Letter from Rakuten, Inc. to Steve Crocker, Fadi Chehadé and Cherine Chalaby	Rakuten, Inc.	7 March 2013	

Letter from Kwee Tiang Ang to Steve Crocker	International Federation of the Phonographic Industry (IFPI)	6 March 2013	
Letter from Rich Bengloff to Steve Crocker, Fadi Chehadé, Cherine Chalaby, Heather Dryden, Olivier M.J. Crépin-Leblond, John Jeffrey, Suzanne Sene, Fiona Alexander, Lawrence E. Strickling and Erik Wilbers	American Association of Independent Music (A2IM)	6 March 2013	
Letter from Jeffrey Bullock to Heather Dryden and Suzanne Radell	Delaware Department of State	5 March 2013	
Letter from Stacey King to Steve Crocker, Fadi Chehadé and John Jeffrey	Amazon.com	5 March 2013	
Letter from Nick Catros to Steve Crocker, Fadi Chehadé, Cherine Chalaby and Karen Lentz	Kobo Inc.	5 March 2013	
Letter from Kathleen Flynn to Steve Crocker, Fadi Chehadé, Cherine Chalaby and Karen Lentz	Indigo Books & Music Inc.	5 March 2013	
Letter from Al Jaeger to Jamie Hedlund	State of North Dakota	4 March 2013	
Letter from AXA to Steve Crocker, Fadi Chehadé and Cherine Chalaby	AXA	4 March 2013	
Letter from Dan Jaffe to Fadi Chehadé	Association of National Advertisers	26 February 2013	
Letter from Tre Hargett to ICANN	State of Tennessee	22 February 2013	
Letter from Eugene DeFelice and Bradley Feuer to Fadi Chehadé and Steve Crocker	Barnes & Noble Booksellers	21 February 2013	
Letter from Thomas C. Indelicato to John Jeffrey	VeriSign, Inc.	20 February 2013	
Letter from Nick Laul and Paul Mussell to ICANN	GED Domain LLC	18 February 2013	

Letter from Thomas C. Indelicarto to John Jeffrey	VeriSign, Inc.	15 February 2013	
Letter from Dave Wilkes to Steve Crocker, Fadi Chehadé, Cherine Chalaby and Karen Lentz	Retail Council of Canada (RCC)	15 February 2013	
Letter from Mark Ritchie to ICANN	State of Minnesota	13 February 2013	
Letter from Abolghasem Tahmasebi to Steve Crocker, Fadi Chehadé and Heather Dryden	Economic Cooperation Organization (ECO)	13 February 2013	ICANN's Response
Letter from Heather Dryden to Fadi Chehadé and Stephen Crocker	Governmental Advisory Committee (GAC)	11 February 2013	ICANN's Response
Letter from Lena Carlsson to Christine Willett	Melbourne IT	8 February 2013	ICANN's Response
Letter from CTAG to Christine Willett and John Jeffrey	Community TLD Applicant Group (CTAG)	8 February 2013	ICANN's Response
Letter from Kathryn Barrett Park to Fadi Chehadé	General Electric Company	5 February 2013	
Letter from Jason Kander to ICANN	State of Missouri	5 February 2013	
Letter from IFOAM to Fadi Chehadé, Steve Crocker, Cherine Chalaby and Christine Willett	International Federation of Organic Agriculture Movements (IFOAM)	5 February 2013	
Letter from Matthieu De Monchalain to Steve Crocker, Cherine Chalaby and Karen Lentz	Syndicat de la Librairie Française	4 February 2013	
Letter from Russell Pangborn to Steve Crocker, Fadi Chehadé, and Cherine Chalaby	Microsoft Corporation	31 January 2013	
Letter from Jonathan Spencer to John Jeffrey	VeriSign, Inc.	30 January 2013	
Letter from Dan Jaffe to Fadi Chehadé	Association of National Advertisers	30 January 2013	

Letter from Christophe Depreter to Steve Crocker	SABAM	25 January 2013	
Letter from Michele Neylon, et al. to Cherine Chalaby, Akram Atallah, Steve Crocker, Fadi Chehadé, The New gTLD Committee and the ICANN Board	Blacknight, et al.	22 January 2013	
Letter from Craig Schwartz to Christine Willett	fTLD Registry Services, LLC	15 January 2013	
Letter from Annalisa Roger to Fadi Chehadé, Steve Crocker, Cherine Chalaby, Xavier Calvez	DotGreen Community Inc.	3 January 2013	
Letter from NTAG to Christine Willett	New gTLD Applicant Group	21 December 2012	
Letter from Rinat Zakirov to Steve Crocker	The World Congress of Tatars	18 December 2012	
Letter from Carwyn Jones to Fadi Chehadé	Welsh Government	29 November 2012	ICANN's Response
Letter from Linda Corugedo Steneberg to ICANN Board of Directors (With Annexes)	European Commission	27 November 2012	
Letter from Carmen A. Catizone to Steve Crocker and Heather Dryden	National Association of Boards of Pharmacy	21 November 2012	
Letter from Jeffrey Smith to Fadi Chehadé	Commercial Connect, LLC	16 November 2012	
Letter from BIO et al. to Fadi Chehadé	The Biotechnology Industry Organization (BIO) et al.	16 November 2012	ICANN's Response
Letter from Eduardo Paes to Fadi Chehadé and Cherine Chalaby	City of Rio de Janeiro	9 November 2012	ICANN's Response
Letter from NCSG to ICANN	Non-Commercial Stakeholders Group (NCSG)	1 November 2012	
Letter from David Panos to ICANN	United TLD Holdco Ltd.	30 October	

		2012	
Letter from NTAG to ICANN	New gTLD Application Group	24 October 2012	
Joint ALAC/NCSG Statement on the Uniform Rapid Suspension (URS) System	ALAC & NCSG	18 October 2012	
Email from Steve Metalitz to Kurt Pritz	GNSO Intellectual Property Constituency	17 October 2012	
Letter from ICANN to Drafting Group Members	ICANN	8 October 2012	
Letter from Jian Zhang to ICANN	Asia Pacific Top Level Domain Association (APTLD)	1 October 2012	
Letter from Rinat Zakirov to Dr. Steve Crocker	The World Congress of Tatars	1 October 2012	
Letter from NTAG in response to BC letter on the Objection Filing Period	New gTLD Application Group	26 September 2012	
Open Letter from Kathryn Kleiman Regarding TLD Concerns	Fletcher, Heald, & Hildreth	25 September 2012	
Letter to Fadi Chehade, Steve Crocker, Akram Atallah, Alain Pellet, and Heather Dryden re Single Registrant Generic TLDs	Multiple	24 September 2012	
Letter from Reince Priebus and J. Christopher Jankowski to ICANN	The Republican National Committee and The Republican State Leadership Committee	14 September 2012	
Letter from David Panos to Akram Atallah, Kurt Pritz, and John Jeffrey	United TLD Holdco, Ltd.	10 September 2012	
Letter from Marilyn Cade to Cherine Chalaby	The GNSO Business Constituency	5 September 2012	
Letter from NTAG regarding Communications and Support	New gTLD Applicant Group	5 September 2012	
Letter from David Maher to Cherine Chalaby, Akram Atallah, and Kurt Pritz	Registry Stakeholders Group	1 September 2012	
Letter from Ambassador Alfredo Morelli to Steve Crocker	Unit of Technology and Energy, Ministry of Foreign Affairs of	3 August 2012	

	Argentina		
Letter from Steve Metalitz to Kurt Pritz	Intellectual Property Constituency (IPC)	3 August 2012	
Letter from Juan Manuel Cid to Stephen D. Crocker	Province of Cordoba in the Argentinean Republic	July 2012	
Letter from Robert D. Liodice to Akram Atallah	The Association of National Advertisers	30 July 2012	
Letter from Jeffrey M. Stoler to Steve Crocker	McCarter & English, LLP	28 July 2012	
Email from Alain Berranger to NPOC	CECI	26 July 2012	
Letter from NTAG to Cherine Chalaby on Sequencing of Applications	New gTLD Applicant Group	26 July 2012	
Letter from Benoit Battistelli to Rod Beckstrom	European Patent Office	25 July 2012	
Letter from Abdulaziz Al-Zoman to Akram Atallah	Personal Capacity	24 July 2012	
Letter from Annalisa Roger to the GAC	The DotGreen Community, Inc.	21 July 2012	
Letter from Dmitry Burkov to the ICANN Board	Foundation for Assistance for Internet Technologies and Infrastructure Development (FAITID)	16 July 2012	
Letter from Ms. Sophia Bekele to H.E. Ambassador John Shinkaiye	DotConnectAfrica Trust & DCA Registry Services (Kenya) Limited	12 July 2012	
Letter from Greg Simeri to Rod Beckstrom		5 July 2012	
Letter from Ernst Stocker to Dr. Stephen D. Crocker	Canton of Zurich	27 June 2012	ICANN's Response
Letter from Theo Hnarakis to Cherine Chalaby	Melbourne IT Ltd	25 June 2012	
Letter from Franz Josef Pschierer to Dr. Stephen D. Crocker	Der IT-Beauftragte der Bayerischen Staatsregierung	19 June 2012	ICANN's Response
Letter from Nacho Amadoz to New gTLD Programme Committee	ECLID	8 June 2012	
Letter from Adrian Kinderis to	ARI Registry Services	6 June	

Cherine Chalaby		2012	
Letter from Theo Hnarakis to ICANN Board New gTLD Program Committee	Melbourne IT Limited	30 May 2012	
Letter from Internet Society of China to ICANN CEO and Chair 来自中国互联网协会的意见	Internet Society of China	10 May 2012	ICANN's Response
Letter from Günther Platter to Dr. Stephen D. Crocker	Tirol Unser Land	30 April 2012	ICANN's Response
Letter from Chen Yin to ICANN CEO and Chair	China Ministry of Industry and Information Technology	19 April 2012	ICANN's Response
Letter from Dirk Krischenowski to New gTLD Program Committee	dotBERLIN GmbH & Co. KG	18 April 2012	
Letter from Dr. Marie-Paule Kieny to Rod Beckstrom, Steve Crocker, Kurt Pritz	World Health Organization	11 April 2012	ICANN's Response
Letter from Jim Gibbons to Kurt Pritz	Goodwill Industries International, Inc.	10 April 2012	
Letter from Beth Chapman to Rod Beckstrom	National Association of Secretaries of State	30 March 2012	ICANN's Response
Letter from Nick Wood and Caroline Perriard to ICANN CEO and Chair	MARQUES Association of European	20 March 2012	
Letter from Jeffrey W. Bullock to ICANN	Delaware Department of State	20 March 2012	ICANN's Response
Letter from Carsten Brosda to Dr. Stephen D. Crocker	Senat der Freien und Hansestadt Hamburg	5 March 2012	ICANN's Response
Letter from Jean-Louis Missika to ICANN Chairman	Office of the Mayor of Paris, France	8 February 2012	
Letter to ICANN Chairman	26 Private Sector Supporters of New gTLD Program	6 January 2012	
Letter from Colin Campbell to ICANN Board	.CLUB Domains, LLC	6 January 2012	
Letter from Annalisa Roger to ICANN	DotGreen Community Inc.	29 December 2011	

Open Letter to ICANN Board	The Association of National Advertisers	21 December 2011	
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Resp. Ex. 25

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

INDEPENDENT REVIEW PROCESS

Case No. 01-14-0000-9604

MERCK KGaA
(Claimant)

-v-

Internet Corporation for Assigned Names and Numbers
(Respondent)

**FINAL DECLARATION OF THE INDEPENDENT REVIEW PROCESS
PANEL**

Section I – Procedural History

1. The Claimant, Merck KGaA (“Merck”), of Frankfurter Straße 250 64293 Darmstadt, Germany, is represented in this matter by Bettinger Schneider Schramm, Cuvilliesstraße 14, 81679 Munich, Germany.
2. The Respondent, Internet Corporation for Assigned Names and Numbers (“ICANN”), of Suite 300 12025 E. Waterfront Dr., Los Angeles, CA 90094, USA, is represented in this matter by Jones Day, 555 South Flower Street Fiftieth Floor Los Angeles, CA 90071, USA.
3. A Notice of Independent Review dated July 17, 2014 was filed by Merck with the International Centre for Dispute Resolution, together with its Request.
4. ICANN filed its Response on August 29, 2014.
5. The Panel held a preliminary hearing call on April 1, 2015 and issued the following direction by email thereafter:

Merck KGaA V. ICANN - Case 01-14-0000-9604

The Preliminary Hearing Call in this matter took place at 9am, Pacific Time, on April 1, 2015, and was duly notified and convened. Counsel (Bettinger, with Gray, for Merck KGaA; LeVee for ICANN) for both parties made observations on the procedure to be adopted in this Independent Review Process. At the conclusion of the Preliminary Hearing Call the parties were asked whether there was anything further they wished to raise, and the answer from each side was no.

*The Panel (Dinwoodie, Matz, and Reichert) now, bearing these observations in mind together with the materials already filed by the parties to date, **issues the following directions:***

- 1. Merck KGaA shall file its Reply Submission on May 20, 2015.*
- 2. ICANN shall file its Rejoinder Submission on July 8, 2015.*
- 3. A page limit of 20 pages applies to both Submissions (the page limit does not apply to matters such as tables of contents).*

4. *The Submissions should only attach any additional evidentiary exhibit which is strictly necessary for the purpose of reply/rejoinder. Also, the parties must focus their Submissions on matters which are strictly for the purposes of reply/rejoinder, and not seek to reformulate the case as already presented.*

5. *If there is any dispute as to acronyms or other defined terms, the Submissions should clearly flag these in order that there is no misunderstanding.*

6. *As soon as possible after July 8, 2015, the Panel will communicate with the parties as to the next stages of this Independent Review Process.*

As noted on the Preliminary Hearing Call by the ICDR representative, communications will now take place directly between the Panel and the parties, with a copy at all times to the ICDR.

For and on behalf of the Panel.

Klaus Reichert SC

6. On May 20, 2015, Merck filed its Reply.
7. On July 9, 2015, ICANN filed its Rejoinder.
8. On July 12, 2015, the Panel issued the following direction by email:

Dear Counsel,

The Panel has considered the submissions received.

Having considered the submissions made to date, do the parties wish to have an oral hearing? If the answer from a party is yes, we would like to know the likely duration of such a hearing, and whether there is a preference for it to be conducted in person, or by telephone.

Once we have received your responses to the foregoing we will consider the future conduct of this matter and revert to the parties.

We do not set a particular deadline for your responses, rather we ask that you reply as soon as possible.

Klaus Reichert

9. On July 14, 2015, ICANN indicated that it believed that a hearing by telephone would be useful.
10. On July 21, 2015, Merck indicated that a hearing would be unnecessary.
11. On July 21, 2015, the Panel issued the following direction by email:

Dear Counsel,

Noting Article 4 of the Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process ("the Procedures"), the Panel has determined that a telephone hearing will not be necessary.

Noting Article 11 of the Procedures, we invite each side to submit their respective claims for costs by July 29, 2015. Thereafter an opportunity will be afforded to each side to comment on the claim for costs of the other.

Klaus Reichert

12. On July 28, 2015, Merck stated that ICANN should be held responsible for (a) the fees and expenses of the panelists, and, (b) the fees and expenses of the administrator, the ICDR.
13. On July 28, 2015, ICANN stated that Merck should be held responsible for costs (identifying the same headings as those identified by Merck).
14. On July 28, 2015, the Panel issued the following direction by email:

Dear Parties,

Thank you both for your letters on costs.

We now ask each side for any final observations they might wish to make on costs in light of the letters received today. The deadline is 4 August 2015.

Klaus Reichert

15. On July 31, 2015, Merck stated that it had no comment on ICANN's letter regarding costs. ICANN did not make any final observations on costs.

Section II – The Panel's Authority

16. The Panel's authority and mandate is as follows (from Article IV, Section 3.4 of ICANN's Articles of Incorporation and Bylaws):

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?*
17. The analysis which the Panel is mandated to undertake is one of comparison. More particularly, a contested action¹ of the Board is compared to the Articles of Incorporation and Bylaws in order to ascertain whether there is consistency. The analysis required for a comparison exercise requires careful assessment of the action itself, rather than its characterization by either the complainant or ICANN. The Panel, of course, does take careful note of the characterizations that are advanced by the Claimant and ICANN.
18. As regards the substantive object of the comparison exercise, namely, whether there was consistency as between the action and the Articles of Incorporation and Bylaws, the parameters of the evaluation for consistency are informed by the final part of Article IV, Section 3.4, which is explicit

¹ The Panel is of the view that inaction, depending upon the circumstances, may constitute an action within the meaning of Article IV, Section 3.4.

in focusing on three specific elements. The phrase “defined standard of review” undoubtedly relates to the exercise of comparison for consistency, and informs the meaning of the word “consistent” as used in Article IV, Section 3.4. The mandatory focus on the three elements (a-c) further informs the exercise of comparison.

19. The parties dwell in various ways on whether the Panel’s approach is deferential or *de novo*. The Panel does not find this debate to be of assistance as it diverts attention from the precise parameters of its authority, namely, to do exactly what it is mandated to do by Article IV, Section 3.4.
20. Nothing in the language of Article IV, Section 3.4, suggests that there be any deference afforded to the contested action. Either the action was consistent with the Articles of Incorporation and Bylaws, or it was not.
21. Discussion as regards whether the Panel should engage in a *de novo* standard of review is also apt to mislead. However, it is clear that the Panel may not substitute its own view of the merits of the underlying dispute.
22. In summary, the Independent Review Process is a bespoke process, precisely circumscribed. The precise language used in Article IV, Section 3.4 requires the party seeking to contest an action of the Board to identify exactly such action, and also identify exactly how such action is not consistent with the Articles of Incorporation and Bylaws. Thus, a panel is required to consider only the precise actions contested. Such a contesting party also bears the burden of persuasion.

Section III – Analysis

23. The **first contested action**, as characterized and raised by Merck in paragraph 46 of the Request is:

The ICANN Board has accepted three expert determinations which suffer from palpable mistakes and manifest disregard of its own LRO standards, without due diligence and care to prevent the acceptance of such determinations, resulting in fundamental unfairness and a failure of due process for the Claimant.

24. Merck says that this is a violation of ICANN’s Articles of Incorporation and Bylaws, Article I, Section 2.8, which provide as follows:

In performing its mission, the following core values should guide the decisions and actions of ICANN..... 8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

25. The Panel will first describe, based on its appreciation of the materials put before it, the background leading up to the initiation of this Independent Review Process.
26. Merck is a long-established pharmaceutical and chemical business in Germany. In 1917 its then American business (now Merck & Co., Inc. (“MSD”)) was separated from it by the Trading with the Enemy Act arising from the entry of the United States as a belligerent into World War I. The co-existence of Merck and MSD has been the subject of a number of formal agreements over the years, and also a number of disputes.
27. Merck and MSD each filed applications with ICANN for new gTLDs incorporating the word “Merck”. As a result, Merck and MSD then filed a number of Legal Rights Objections (“LROs”) against each other with the WIPO Arbitration and Mediation Centre in accordance with the New gTLD Dispute Resolution Procedure. At the heart of Merck’s complaint was the point that MSD apparently was not intending to limit, through

geo-targeting, the potential global reach of its applied-for domains. In contrast, Merck made explicit its intention to use geo-targeting.

28. By Determinations issued in July and September 2013, the Sole Panel Expert rejected the LROs. The following extract from LRO2013-0068 is reflective of the reasoning common to all:

The starting point of this case is that Objector and Applicant are both bona fide users of the MERCK trademark, albeit for different territories.

The question is whether a bona fide trademark owner that owns trademark rights in certain countries but does not have rights to a certain trademark in all countries of the world, should for that reason be prevented from obtaining a gTLD. In the view of the Panel, such a proposition does not make sense. If the opposite view would be accepted, it would be expected from any trademark owner interested in a gTLD to have trademark registrations in all countries of the world as otherwise another party could register one trademark in an "uncovered" country and thus prevent the first trademark owner from applying for and using its own gTLD.

In essence there should not be a significant difference between the criteria for the legal rights objection as included in the Guidebook on the one hand and the provisions included in the Uniform Domain Name Dispute Resolution Policy ("UDRP"). If the applicant for a new gTLD is bona fide, it will not be likely that one of the three criteria will be met. It might be that advantage of the distinctive character or the reputation of the objector's registered trademark is taken, but it is then likely not unfair. It might be that the distinctive character or reputation of the objector's registered trademark is being impaired, but it is likely justified. It might be that a likelihood of confusion between the Disputed gTLD String and the objector's mark is created, but it is not necessarily impermissible.

Of course a rejection of the Objection does not preclude Objector from taking regular legal action should the use of the Disputed gTLD String by Applicant be infringing. It is, however, not for this Panel to anticipate on all the possible types of use Applicant could make of the Disputed gTLD.

It is also not for this Panel to interpret the existing coexistence agreements and arrangements between the Parties. Should the application of a new gTLD allegedly violate any such agreement or arrangement, it will be for the Parties to settle their dispute by means of the dispute resolution provisions of the contracts governing their relationship or as provided under applicable law.

For the aforementioned reasons the Panel rejects the Objection.

In reaching the above conclusion, the Panel has considered the following non-exclusive list of eight factors.

The Panel addresses each of them in turn:

i. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to Objector's existing mark.

[Sole Panel Expert analysis follows]

ii. Whether Objector's acquisition and use of rights in the mark has been bona fide.

[Sole Panel Expert analysis follows]

iii. 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 Objector, of Applicant or of a third party.

[Sole Panel Expert analysis follows]

iv. Applicant's intent in applying for the gTLD, including whether Applicant, at the time of application for the gTLD, had knowledge of Objector's mark, or could not have reasonably been unaware of that mark, and including whether 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.

[Sole Panel Expert analysis follows]

v. Whether and to what extent 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 Objector of its mark rights.

[Sole Panel Expert stated that this factor would be discussed together with the factor mentioned under vi.]

vi. Whether 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 Applicant is consistent with such acquisition or use.

[Sole Panel Expert analysis follows]

vii. *Whether and to what extent 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 Applicant is consistent therewith and bona fide.*

[Sole Panel Expert analysis follows]

viii. *Whether Applicant's intended use of the gTLD would create a likelihood of confusion with Objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.*

[Sole Panel Expert analysis follows]

29. On September 23, 2013, Merck raised with WIPO a number of points of its concern with the contents of three of the Determinations. First, Merck noted that the Sole Panel Expert referenced intended geo-targeting by MSD, when in fact it was Merck which was intending to do so. Secondly, Merck stated that the Sole Panel Expert did not consider the three elements of the LRO Policy but rather those contained in the UDRP. In addition, Merck stated the following:

There is no appeals process for incorrect decisions under the LRO procedure, and accordingly there is no clear way in which my client (Merck KgaA) can rectify the damage done by an inattentive Panel. No court can review these decisions, and indeed even ICANN likely has limited powers to overturn a decision, even where it has been entered based on a wholly erroneous review of the submitted facts and evidence.

30. The Sole Panel Expert issued an Addendum dated September 24, 2013. As regards geo-targeting, he stated:

It is correct that the Expert Determinations under 6. (Discussion and Findings) under the heading Trademark Infringement, under non-exclusive factor viii, should not have included the following sentence:

"Applicant has made it clear that it will take all necessary measures, including geo-targeting, to avoid that Internet users in the territories in which Objector has trademark rights, will be able to visit websites that use the Disputed gTLD String."

.....

Having noted this, the Panelist should make clear that, in reviewing LRO2013-0009, LRO2013-0010 and LRO2013-0011, he was in fact aware of the distinction in this regard, as reflected in the pleadings as cited and summarized in the Expert Determinations, between the latter three cases and cases LRO2013-0068 and LRO2013-0069 in relation to the competing applications at stake.

In any event, the Panelist considers it important to confirm that the above-mentioned sentence as such is immaterial to the conclusion which the Panelist reached in rejecting the Objections.

31. As regards his application of UDRP or LRO Policy, the Sole Panel Expert was of the view that, UDRP comparisons notwithstanding, he had applied the specific LRO criteria.
32. On February 27, 2014, ICANN informed Merck that it had updated the LRO Determinations together with the Sole Panel Expert's Addenda.
33. On March 13, 2014, Merck filed a Request for Reconsideration. It requested ICANN to reject the advice recorded in the Sole Panel Expert's Determinations, and "instruct a panel to make an expert determination that applies the standards defined by ICANN".
34. Merck's grounds for its Request for Reconsideration were summarized as follows:

In this case, the Expert Panel failed to take reasonable care in evaluating the parties' respective evidence and to make a correct application of the LRO standard developed by ICANN in the Applicant Guidebook, resulting in a denial of due process to the Requester in the context of its three LRO disputes.

35. On April 29, 2014, the Board Governance Committee of ICANN ("BGC") made its Determination dismissing the Request for Reconsideration. The initial part of that Determination summarized the reasons:

Merck Registry Holdings, Inc. applied for .MERCK and MSD Registry Holdings, Inc. applied for .MERCKMSD. The Requester, who also applied for .MERCK, objected to these applications and lost. The Requester claims that the Panel failed to comply with ICANN policies

and processes in reaching its determinations. Specifically, the Requester contends that the Panel:

(i) improperly interpreted the factors governing legal rights objections in light of “wholly inapplicable” Uniform Domain Name Dispute Resolution Policy (“UDRP”) standards; and

(ii) failed to “accurately assess critical facts concerning the Parties’ pleadings, leading to mis-attribution of party intent [concerning geo-targeting commitments] and a material misrepresentation of the parties’ respective positions.” (Request, §§ 6, 8, Pgs. 6, 18.)

With respect to the claims submitted by the Requester, there is no evidence that the Panel either applied the improper standard or failed to properly evaluate the parties’ evidence. First, the Panel correctly referenced and analyzed the eight factors set out in the Applicant Guidebook relevant to legal rights objections and considered the UDRP only as a means to further provide context to one of the eight factors. The Requester does not identify any policy or process that was violated in this regard. Second, after the Requester brought the Panel’s mis-attribution of geo-targeting commitments to the attention of WIPO, the Panel issued an Addendum to the Determinations, confirming that the misstatement was “inadvertent,” that the Panel “was in fact aware of the distinction,” and that the misstatement was not material to the Determinations in all events. Because the Requester has failed to demonstrate that the Panel acted in contravention of established policy or procedure, the BGC concludes that Request 14-9 be denied.

36. On April 29, 2014, the BGC held a meeting and the minutes note the following:

Reconsideration Request 14-9– Ram Mohan abstained from participation of this matter noting conflicts. Staff briefed the BGC regarding Merck KGaA’s Request seeking reconsideration of the Expert Determinations, and ICANN’s acceptance of those Determinations, dismissing Merck KGaA’s legal rights objections to Merck Registry Holdings, Inc.’s application for .MERCCK and MSD Registry Holdings, Inc.’s application for .MERCCKMSD. After discussion and consideration of the Request, the BGC concluded that the Requester has not stated proper grounds for reconsideration because the Request failed to demonstrate that the expert panel acted in contravention of established policy or procedure. The Bylaws authorize the BGC to make a final determination on Reconsideration Requests brought regarding staff action or inaction; the BGC still has the discretion, but is not required, to recommend the matter to the Board for consideration. Accordingly, the BGC concluded that its determination on Request 14-9 is final; no consideration by the NGPC is warranted. □

37. In light of the foregoing, this Panel now analyses the first contested action for the purposes of the comparison exercise. Although in paragraph 48 of its Request Merck characterizes the challenged action as the “acceptance” of by the Board of the BGC determination, it is clear from the Request as a whole that the focus of the complaint is the decision of the BGC. While this Panel’s focus is on the first contested action precisely as advanced by Merck (namely, “acceptance”), concomitant with that exercise will be an analysis (within the confines of this Panel’s jurisdiction) of the BGC’s Determination (noting ICANN’s Articles of Incorporation and Bylaws, Article I, Section 2.3(f)).
38. The question now arises as to whether the first contested action was consistent with Article I, Section 2.8, namely, was there a neutral and objective application, with integrity and fairness, by the Board of documented policies.
39. Assistance for this Panel is derived from the three elements defining the focus of the review in Article IV, Section 3.4, namely:
- 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?*
40. The Panel takes each of the three factors, a-c, in turn.
41. Factor (a): Did the Board act without conflict of interest in taking its decision? The Panel finds that there is no evidence whatsoever to suggest that there was any conflict of interest. Merck suggests that ICANN had a conflict of interest due to the potential for a financial windfall in the event of there being an Auction of Last Resort. This is a submission made without evidence, is speculative, and is unfounded. Moreover, this Panel

does not consider that this Independent Review was initiated (or capable of being initiated) to challenge, in substance, the policy decision of ICANN in 2012 to include the Auction of Last Resort.

42. The Panel finds that the answer to question “a” is yes.
43. Factor (b): Did the Board exercise due diligence and care in having a reasonable amount of facts in front of them? In the Panel’s assessment of the materials and arguments put before it, this appears to be at the heart of Merck’s complaints.
44. Merck criticizes severely the manner by which the Sole Panel Expert dealt with the issue of geo-targeting. Merck also takes particular issue with the application (or otherwise, as it suggests) by the Sole Panel Expert of LRO standards. It claims that these failings caused a denial of due process. Put another way, Merck is contending that the Sole Panel Expert got it so badly wrong, the process should be run again.
45. Merck’s criticisms of the Sole Panel Expert flow through into its complaints directed at the BGC.
46. Merck wanted the BGC to “reject the advice set forth in the Decisions, and instruct a panel to make an expert determination that applies the standards defined by ICANN”. Merck effectively wanted the BGC to overturn the Sole Panel Expert’s decisions and have the process re-run (which is what it, in substance, wants from this Panel). Its reasons for making that request of the BGC were that the Sole Panel Expert failed to decide the case on the basis of the correct and applicable LRO Standard, and moreover failed to decide the case on the basis of the true and accurate factual record which was presented to him in the course of the dispute. Merck then concludes from those points that it had “been denied fundamental due process, as its pleadings were not meaningfully taken into account in the course of the panel’s deliberations, and the panel elected to decide the case on inapplicable grounds”.

47. However, this basis for requesting relief does not sit easily with Merck's own stated position on September 23, 2013, noted above, and repeated here for emphasis:

There is no appeals process for incorrect decisions under the LRO procedure, and accordingly there is no clear way in which my client (Merck KgaA) can rectify the damage done by an inattentive Panel....

Merck plainly recognized that the sole recourse was by means of the Request for Reconsideration process (which Merck itself invoked). That process is of limited scope, with Article IV, Section 2.2, delineating that jurisdiction:

Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:

- a. one or more staff actions or inactions that contradict established ICANN policy(ies); or*
- b. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or*
- c. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.*

None of these three bases for the Request for Reconsideration process requires or even permits this Panel to provide for a substitute process for exploring a different conclusion on the merits.

48. The BGC recognized in its Determination that the Sole Panel Expert, in his Addenda, specifically noted the correct position as regards geo-targeting, and also that he further considered that his conclusions remained the same. In light of the Addenda, there is nothing to suggest that the Sole Panel Expert made his decision on the basis of incorrect facts. More importantly

for the purposes of this Review, the BGC analyzed whether he had done so.

49. Moreover, Merck's complaints about the Sole Panel Expert's application, or in its view, non-application of the LRO Standards lack merit. The BGC determined that the Sole Panel Expert did not apply the wrong standards. That is a determination which this Panel does not, because of the precise and limited jurisdiction we have, have the power to second guess. Rather, the critical question for this Panel is whether the BGC exercised due diligence and care in having a reasonable amount of facts in front of them. Merck complains that the BGC did not have "sufficient and accurate facts", and that Merck was thus deprived of an "accurate review of its complaints". These formulations miss the point, and indeed misstate the applicable test in proceedings such as these. The BGC had to have a reasonable amount of facts in front of it, and to exercise due diligence and care in ensuring that it did so. There is no evidence that the BGC did not have a reasonable amount of facts in front of it or consider them fully. It plainly had everything which was before the Sole Panel Expert. Nothing seems to have been withheld from the BGC.
50. Merck's complaints are, in short, not focused upon the applicable test by which this Panel is to review Board action, but rather are focused on the correctness of the conclusion of the Sole Panel Expert. Because this is not a basis for action by this Panel, the Panel answers question "b" with "yes".
51. Factor (c): Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company? The Panel does not see that Merck has mounted any attack through this route other than inferentially by vague references to the auction process. As regards that particular decision, there is no evidence (or indeed any concrete allegation) that the BGC or Board members did not exercise independent judgment.

52. In summary, therefore, the Claimant's first contested action complaint is dismissed.

53. The **second contested action** as characterized and raised by the Claimant in paragraph 46 of the Request is:

The ICANN Board improperly disposed of the Claimant's RFR as the BGC violated its competency and independence in its evaluation of the application of the LRO standard. Further, its assessment was incorrect and failed to take into account the global use of the gTLD by Merck & Co. Additionally, the ICANN Board has provided the possibility for third-party review of some prima facie erroneous expert determinations while denying the same to other, similarly situated parties, including the Claimant. This results in discrimination and unfairness to, and failure of due process for, the Claimant.

54. The Claimant says that this is a violation of ICANN's Articles of Incorporation and Bylaws, Article I, Section 2.8, which provide as follows:

In performing its mission, the following core values should guide the decisions and actions of ICANN..... 8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

55. The action of the Board, as precisely contested by Merck, is set out in paragraph 53 above. This particular action of the Board is developed by Merck as follows at paragraph 79 of the Request:

The BGC did not address the Claimant's concerns (i) competently, (ii) independently, and (iii) substantively on the basis of the Claimant's legal argument.

56. **Incompetence**: Merck asserts, at paragraph 82 of the Request that the BGC was incompetent because it had no alternative but to engage "in impermissible substantive analysis and interpretation". Merck then states that the BGC should have taken steps to address its concerns by, citing prior ICANN examples, appointing an independent legal advisor, or "recommending that the ICANN Board take appropriate measures that the

BGC is incompetent to make”. Drawing on these, Merck criticizes the fact that in some instances where there has been a prima facie erroneous determination ICANN provides for a review, whereas in others it does not. It says that this is a violation of the requirements of neutrality and fairness.

57. The Panel’s attention is drawn by Merck to a document recording the Resolutions of the Meeting of the New gTLD Program Committee (“NGPC”) on March 22, 2014, which notes that:

...the Board may wish to seek a clear understanding of the legally complex and politically sensitive background on its advice regarding .WINE and .VIN in order to consider the appropriate next steps of delegating the two strings.

58. A professor of law in Paris was commissioned to provide advice, and this was incorporated into the decision of the NGPC.
59. The Panel’s attention is also drawn to the Recommendation in relation to the Reconsideration Request 13-9 of October 10, 2013, made by the BGC. At the end of the Recommendation, the following is stated:

Though there are no grounds for reconsideration presented in this matter, following additional discussion of the matter the BGC recommended that staff provide a report to the NGPC, for delivery in 30 days, setting out options for dealing with the situation raised within this Request, namely the differing outcomes of the String Confusion Objection Dispute Resolution process in similar disputes involving Amazon’s Applied-for String and TLDH’s Applied-for String. In addition, the BGC suggested that the strings not proceed to contracting prior to staff’s report being produced and considered by the NGPC.

A proposed review mechanism is outlined thereafter.

60. Merck’s arguments are unavailing. If this Panel were to find that the BGC and Board are incompetent to assess the propriety of a Panel determination under the LRO this would effectively require a referral or appeal process for LRO decisions. Such a mechanism was not included in the delegation,

challenge and dispute resolution process adopted by ICANN and it is not open to this Panel to create it.

61. As to the claim of discrimination, this Panel finds that it was within the discretion of the BGC and Board, once the Sole Expert had revised his original determination to reflect his complete basis for the decision, to conclude that the Sole Expert had applied the correct legal standard to the correctly found set of facts. Of course, in different cases, the BGC and Board are entitled to pursue different options depending upon the nature of the cases at issue. It is insufficient to ground an argument of discrimination simply to note that on different occasions the Board has pursued different options among those available to it.
62. In conclusion, Merck was not discriminated against. These two examples, properly and fairly assessed, do not provide it with support for an allegation of discrimination.
63. Independence: Merck's complaint as to the lack of independence relies on the "Auction of Last Resort" argument which imputes to ICANN a financial interest, insinuating something improper. This is the same point, in substance, which was rejected by this Panel in paragraph 42 above. It is an argument which is speculative, and made without evidence to support it. In light of its dismissal above, it is also dismissed at this point.
64. Mischaracterization: Merck complains that the BGC mischaracterized its arguments. Merck describes its core concern as presented to the BGC as follows (paragraph 89 of the Request):

...did the LRO Panel fail to decide the case on the basis of the correct and applicable LRO Standard, which requires it to consider the potential use of the applied-for gTLD
65. This complaint is identical in substance to the matters already addressed by the Panel in paragraphs 43-50 above. In effect, Merck is running the same argument here as before, and it is therefore dismissed.

66. In summary, therefore, the Claimant's challenge to the second contested action complaint is dismissed.

67. The third contested action raised by Merck in paragraph 46 of the Request:

As the result of the prior two violations, the ICANN Board has accepted without due diligence and care, a dysfunctional expert determination procedure within the New gTLD Program which has not provided for the possibility to review or overturn determinations on the basis of substantial errors or manifest disregard of the LRO Standards, despite the foreseeable and forewarned possibility of such, resulting in fundamental unfairness and a failure of due process for the Claimant.

68. In light of the resolution of the first two contested actions against Merck, the Panel finds that this third contested action must also be dismissed. It is predicated for success upon the first two by use of the language “[A]s the result of the prior two violations”.

Section IV – Costs

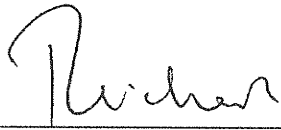
69. As ICANN is the prevailing party, Merck is held responsible for costs. Therefore the administrative fees and expenses of the International Centre for Dispute Resolution (ICDR) totaling US\$3,350.00 shall be borne by entirely by Merck KGaA, and the compensation and expenses of the Panelists totaling US\$97,177.08 shall be borne by entirely by Merck KGaA. Therefore, Merck KGaA shall reimburse ICANN the sum of US\$48,588.54, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by ICANN.

Section V – Declaration

1. Merck has not succeeded in this Independent Review Process. ICANN is the prevailing party. As per paragraph 69, Merck must pay ICANN costs in the amount of USD \$48,588.54.

This Final Declaration of the Independent Review Process Panel may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

December 10, 2015
Date



Klaus Reichert, Panelist/ Chair

Date

A. Howard Matz, Panelist

Date

Graeme Dinwoodie, Panelist

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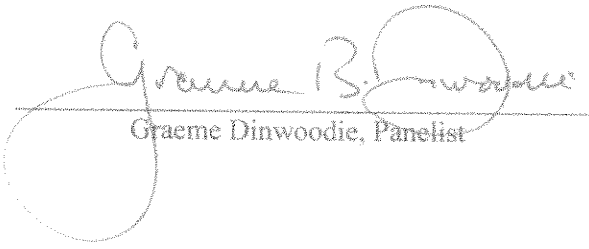
Date

Klaus Reichert, Panelist/ Chair

Date

A. Howard Matz, Panelist

December 10, 2015
Date



Graeme Dinwoodie, Panelist

Resp. Ex. 26

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

Independent Review Process Panel

In the Matter of an Independent Review Process

Between:

Booking.com B.V.

Applicant

-and-

ICDR Case No: 50-20-1400-0247

**Internet Corporation for Assigned Names
and Numbers (ICANN)**

Respondent

FINAL DECLARATION

The Panel:

Hon. A. Howard Matz

David H. Bernstein, Esq.

Stephen L. Drymer (Chair)

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DECLARATION

WE, THE UNDERSIGNED PANELISTS, members of the Independent Review Process Panel (“**IRP Panel**” or “**Panel**”), having been designated in accordance with ICANN Bylaws dated 11 April 2013, hereby issue the following Final Declaration (“**Declaration**”):¹

I. INTRODUCTION

1. This Declaration is issued in the context of an Independent Review Process (“**IRP**”) as provided for in Article IV, Section 3 of the Bylaws of the Internet Corporation for Assigned Names and Numbers (“**ICANN**”; “**ICANN Bylaws**” or “**Bylaws**”). In accordance with those Bylaws, the conduct of this IRP is governed by the International Arbitration Rules of the International Centre for Dispute Resolution as amended and in effect June 1, 2009 (“**ICDR**”; “**ICDR Rules**”) as supplemented by the Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (“**Supplementary Procedures**”).
2. The subject matter of the dispute here concerns alleged conduct by the ICANN Board in relation to one particular facet of the process by which new generic top-level domains (“**gTLDs**”, also known as gTLD “**strings**”) are applied for, reviewed and delegated into the Internet’s domain name system (“**DNS**”) root zone.
3. As explained in this Declaration, the Applicant, Booking.com, alleges that, in establishing and overseeing the process by which so-called *string similarity reviews* are conducted, and in refusing to reconsider and overturn a decision to place Booking.com’s applied-for gTLD string .hotels in a so-called *string contention set*, the Board acted in a manner inconsistent with applicable policies, procedures and rules as set out in ICANN’s Articles of Incorporation, Bylaws and gTLD Applicant Guidebook (“**Guidebook**”).
4. Reading between the lines of the parties’ submissions, the Panel senses that both sides would welcome the opportunity to contribute to an exchange that might result in enabling disputants in future cases to avoid having to resort to an IRP to resolve issues such as have arisen here. Certainly the Panel considers that the present matter would ideally have been resolved amicably by the parties. This is particularly true given that the matter here concerns two of ICANN’s guiding principles – transparency and fairness – as applied to one of ICANN’s most essential activities – the delegation of new gTLDs² – in circumstances in which various members of the Internet community, including certain members of the ICANN Board’s New gTLD Program Committee, have expressed their own concerns regarding the string similarity review process. That being the case, though, the Panel does not shy away from the duty imposed by the Bylaws to address the questions before it and to render the

¹ As requested by the ICDR, the Declaration was provided to the ICDR in draft form on 26 January 2015 for non-substantive comments on the text (if any). It was returned to the Panel on 2 March 2015.

² As stated in the very first sentence of the Guidebook: “New gTLDs have been in the forefront of ICANN’s agenda since its creation.”

present Declaration, in accordance with, and within the constraints of the Bylaws, the ICDR Rules and the Supplementary Procedures.

II. THE PARTIES

A. The Applicant: Booking.com

5. The Applicant, Booking.com, is a limited liability company established under the law of the Netherlands. Booking.com describes itself as “the number one online hotel reservation service in the world, offering over 435,605 hotels and accommodations.”³ Booking.com’s primary focus is on the U.S. and other English-language markets.
6. Booking.com is represented in this IRP by Mr. Flip Petillion and Mr. Jan Janssen of the law firm *Crowell & Moring* in Brussels, Belgium.

B. The Respondent: ICANN

7. The Respondent, ICANN, is a California not-for-profit public benefit corporation, formed in 1998. As set forth in Article I, Section 1 of its Bylaws, ICANN’s mission is “to coordinate, at the overall level, the global Internet’s system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet’s unique identifier systems.” ICANN describes itself as “a complex organization that facilitates input from a wide variety of Internet stakeholders. ICANN has a Board of Directors and staff members from around the globe, as well as an Ombudsman. ICANN, however, is much more than just the corporation—it is a community of participants.”⁴
8. ICANN is represented in this IRP by Mr. Jeffrey A. LeVee, Esq. and Ms. Kate Wallace, Esq. of the law firm *Jones Day* in Los Angeles, California, USA.

III. FACTUAL AND PROCEDURAL BACKGROUND – IN BRIEF

9. We recount here certain uncontested elements of the factual and procedural background to the present IRP. Other facts are addressed in subsequent parts of the Declaration, where the parties’ respective claims and the Panel’s analysis are discussed.

A. ICANN’s Adoption of the New gTLD Program and the Applicant Guidebook

10. Even before the introduction of ICANN’s New gTLD Program (“**Program**”), in 2011, ICANN had, over time, gradually expanded the DNS from the original six gTLDs (.com; .edu; .gov; .mil; .net; .org) to 22 gTLDs and over 250 two-letter country-code TLDs.⁵ Indeed, as noted above, the introduction of new gTLDs has been “in the forefront of ICANN’s agenda” for as long as ICANN has existed.

³ Request, ¶ 10.

⁴ Response, ¶ 11-12.

⁵ Request, ¶ 12; see also Guidebook, *Preamble*.

11. The Program has its origins in what the Guidebook refers to as “carefully deliberated policy development work” by the ICANN community.⁶
12. In 2005, ICANN’s Generic Names Supporting Organization (“GNSO”), one of the groups that coordinates global Internet policy at ICANN, commenced a policy development process to consider the introduction of new gTLDs.⁷ As noted in the Guidebook:

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.
13. In October 2007, the GNSO formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations.
14. In June 2008, the ICANN Board decided to adopt the policies recommended by the GNSO.⁸ As explained in the Guidebook, ICANN’s work next focused on implementation of these recommendations, which it saw as “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.”⁹
15. This process concluded with the decision by the ICANN Board in June 2011 to implement the New gTLD Program and its foundational instrument, the Guidebook.¹⁰
16. As described by ICANN in these proceedings, the Program “constitutes by far ICANN’s most ambitious expansion of the Internet’s naming system. The Program’s goals include

⁶ Guidebook, *Preamble*

⁷ Request, ¶ 13, Reference Material 7, “Public Comment Forum for Terms of Reference for New gTLDs (6 December 2005), <http://www.icann.org/en/news/announcements/announcement-06dec05-en.htm#TOR>; Reference Material 8, “GNSO Issues Report, Introduction of New Top-Level Domains (5 December 2005) at pp. 3-4. See also Guidebook, *Preamble*. Booking.com refers to the GNSO as “ICANN’s main policy-making body for generic top-level domains”. Article X of ICANN’s Articles of Incorporation provides: “There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains” (Section 1); the GNSO shall consist of “a number of Constituencies” and “four Stakeholder Groups” (Section 2).

⁸ Guidebook, *Preamble*. A review of this policy process can be found at <http://qns0.icann.org/issues/new-gtlds> (last accessed on January 15, 2015).

⁹ Guidebook, *Preamble*: “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.”

¹⁰ RM 10 (ICANN resolution). The Guidebook (in its 30 May 2011 version) is one of seven “elements” of the Program implemented in 2011. The other elements were: a draft communications plan; “operational readiness activities”; a program to ensure support for applicants from developing countries; “a process for handling requests for removal of cross-ownership restrictions on operators of existing gTLDs who want to participate in the [Program]”; budgeted expenditures; and a timetable.

enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs ...”¹¹

17. The Guidebook is “continuously iterated and revised”, and “provides details to gTLD applicants and forms the basis for ICANN’s evaluation of new gTLD applications.”¹² As noted by Booking.com, the Guidebook “is the crystallization of Board-approved consensus policy concerning the introduction of new gTLDs.”¹³

B. Booking.com’s Application for .hotels, and the Outcome

18. In accordance with the process set out in the Guidebook, Booking.com filed an application (Application ID 1-1016-75482) for the gTLD string .hotels.
19. At the same time, Despegar Online SRL (“Despegar”), a corporation established under the law of Uruguay, applied (Application ID 1-1249-87712) for the string .hoteis.
20. “Hoteis” is the Portuguese word for “hotels”.
21. According to Booking.com, Despegar is “a competitor of Booking.com”.¹⁴ Booking.com claims that it intends “to operate .hotels as a secure Internet environment providing hotel reservation services for consumers, hotels, and other stakeholders,”¹⁵ while Despegar similarly intends .hoteis to be dedicated primarily to “individuals that are interested in, and businesses that offer, hotel- and travel-related content.”¹⁶ That being said, a key difference between the two applications, as Booking.com acknowledges, is that Booking.com intends to focus the services it will offer under its proposed gTLD “on the U.S. (with its strongly Anglo-Saxon traditions) and other English-language markets,”¹⁷ whereas Despegar intends to target “Portuguese-speaking” markets.¹⁸
22. As part of the Initial Evaluation to which all applied-for gTLDs were subject, .hotels and .hoteis were each required to undergo so-called *string review* in accordance with the Guidebook, the first component of which is a process known as *string similarity review*. As provided by the Guidebook, the string similarity review was conducted by an independent

¹¹ Response, ¶ 14.

¹² Response, ¶ 14. The resolution (RM 10) adopting the Guidebook explicitly “authorizes staff to make further updates and changes to the Applicant Guidebook as necessary and appropriate, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process, and to prominently publish notice of such changes.”

¹³ Request, ¶ 13. See also Guidebook, Module 1-2: “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.”

¹⁴ Request, ¶ 17.

¹⁵ Request, ¶ 5.

¹⁶ Request, ¶ 17. See also Despegar Application for .hoteis (Request, Annex 2), § 18(a).

¹⁷ Request, ¶ 16.

¹⁸ Request, ¶ 17. See also Despegar Application for .hoteis (Request, Annex 2), § 18(a).

String Similarity Panel (“SSP”) selected and engaged by ICANN for this purpose. (Extracts of the relevant provisions of the Guidebook can be found below, at Part IV of this Declaration.) ICANN engaged InterConnect Communications Ltd. (“ICC”), a company registered under the law of England and Wales, specializing in communications sector strategy, policy and associated regulatory frameworks,¹⁹ in cooperation with University College London, to act as the SSP.

23. On 26 February 2013 ICANN published the results of all of the string similarity reviews for all of the applications for new gTLDs submitted as part of the Program. The announcement revealed, among other things, that two “non-exact match” contention sets had been created: .hotels & .hoteis; and .unicorn & .unicom.²⁰ Booking.com’s applied for string .hotels (as well as the .hoteis, .uncorn and .unicom strings) had thus failed the string similarity review.
24. The results of the string similarity review were notified to Booking.com by ICANN that same day. In its letter of 26 February 2013 ICANN wrote:

After careful consideration and extensive review performed against the criteria in Section 2.2.1.1 of the Applicant Guidebook, the String Similarity Panel has found that the applied-for string (.hotels) is visually similar to another applied-for string (.hoteis), creating a probability of user confusion.

*Due to this finding, the ... two strings have been placed in a contention set.*²¹

25. The impact of being put into a contention set is that the proposed strings in the set will not be delegated in the root zone unless and until the applicants reach agreement on which single string should proceed (with the other proposed string therefore rejected), or until after an auction is conducted, with the highest bidder being given the right to proceed to the next step in the review process.

C. DIDP Request and Request for Reconsideration

26. On 28 March 2013 Booking.com submitted a request for information under ICANN’s Documentary Information Disclosure Policy (“**DIDP Request**”) asking for “all documents directly and indirectly relating to (1) the standard used to determine whether gTLD strings are confusingly similar, and (2) the specific determination that .hotels and .hoteis are confusingly similar.”²²
27. On the same date, Booking.com also filed a formal Request for Reconsideration (“**Request for Reconsideration**”). The “specific action(s)” that Booking.com asked to be reconsidered were: the decision to place .hotels and .hoteis in a contention set; and the decision not to

¹⁹ See <http://www.icc-uk.com/>

²⁰ Request, Annex 3. ICANN published document dated 26 February 2013. As its name suggests, a “non-exact match” connotes a determination that two different (non-identical) strings are visually similar within the meaning of the Guidebook. Another 752 applied-for gTLDs were put into 230 identical contention sets.

²¹ Request, Annex 3, ICANN letter dated 26 February 2013.

²² Request, ¶ 30 and Annex 3.

provide a “detailed analysis or a reasoned basis” for the decision to place .hotels in contention.²³

28. ICANN responded to the DIDP Request on 27 April 2013. Although ICANN provided certain information regarding the review process, in its response to the DIDP Request, ICANN also noted:

*The SSP is responsible for the development of its own process documentation and methodology for performing the string similarity review, and is also responsible for the maintenance of its own work papers. Many of the items that are sought from ICANN within the [DIDP] Request are therefore not in existence within ICANN and cannot be provided in response to the DIDP Request. ICANN will, however, shortly be posting the SSP’s String Similarity Process and Workflow on the New gTLD microsite ...*²⁴

29. By letter dated 9 May 2013 Booking.com replied to ICANN, writing that “ICANN’s response fails to provide any additional information or address any of Booking.com’s concerns as conveyed in its DIDP Request or Request for Reconsideration.”²⁵ On 14 May 2013, ICANN answered that it “intends to post the string similarity process documentation on or before ... 17 May 2013.”²⁶ ICANN further informed Booking.com that “ICANN will afford you 30 days from the posting of the process document for the submission of a revised Request for Reconsideration.”²⁷
30. On 7 June 2013, ICANN published the “String Similarity New gTLD Evaluation Panel [i.e., the SSP] – Process Description” (“**SSP Process Description**”).²⁸
31. On 26 June 2013 Booking.com wrote to ICANN regarding both its DIDP Request and its 28 March 2013 Request for Reconsideration. In its letter, Booking.com noted among other things that “the generalized information ICANN thus far has provided does not explain a rationale for or analysis for the decision to put .hotels and .hoteis in a contention set and therefore does not allow Booking.com to appropriately amend its Request for Reconsideration.” The letter concluded by stating: “Considering ICANN’s obligations of transparency and accountability, there cannot be any ‘compelling reason for confidentiality’.

²³ Request, Annex 12, §3. The Request for Reconsideration (which appears to be in the form of a template) expressly states at §2 that it is a “Request for Reconsideration of ... Staff [vs. Board] action/inaction.” The cover letter attaching the Request states that, “[d]espite the fact that the origin of the decisions is unclear, this Reconsideration Request is being submitted as a reconsideration of a ‘Staff action’. In the event that the decisions referenced above are determined to be a ‘Board action’, this request may be amended.” As explained below, the Request for Reconsideration was amended on 7 July 2013. That amendment did not alter the stated nature of the request in §2 or the description of the specific actions that Booking.com sought to have reconsidered (§3). Unless otherwise indicated, all further references in this Declaration to the Request for Reconsideration are understood to be the *amended* Request for Reconsideration.

²⁴ Request, Annex 5.

²⁵ Request, Annex 6.

²⁶ Request, Annex 7.

²⁷ Request, Annex 7.

²⁸ Request, Annex 8.

And ... there are numerous compelling reasons for publication of [the information requested by Booking.com].”²⁹

32. ICANN responded on 25 July 2013, explaining among other things that “the evaluation of the .hotels string by the SSP panel was performed according to the [SSP Process Description] ...” and “[t]he SSP’s work was subjected to quality review, as has been publicly discussed.”³⁰ Approximately six months later, on 9 January 2014, ICANN posted a letter dated 18 December 2013 addressed to ICANN by the SSP Manager at ICC (Mr. Mark McFadden) providing a further “summary of the process, quality control mechanisms and some considerations surrounding the non-exact contention sets for the string similarity evaluation ...” (“**SSP Manager’s Letter**”).³¹ According to that Letter:

When ALL of the following features of a pairwise comparison [of non-exact match strings] are evident the evaluators found the string pair to be confusingly similar:

- *Strings of similar visual length on the page;*
- *Strings within +/- 1 character of each other;*
- *Strings where the majority of characters are the same and in the same position in each string; and*
- *The two strings possess letter combinations that visually appear similar to other letters in the same position in each string*

o For example m~m & l~i

33. Meanwhile, on 7 July 2013 Booking.com had submitted its amended Request for Reconsideration. In its letter attaching the amended Request for Reconsideration, Booking.com stated: “Booking.com reserves the right to further amend its Request for Reconsideration upon receipt of the information it previously requested and urges ICANN to publish the requested information as specified in our letter of 26 June 2013.”³²
34. By virtue of Article IV, Section 3 of the Bylaws, ICANN’s Board Governance Committee (“**BGC**”) is charged with evaluating and making recommendation to the Board with respect to requests for reconsideration. The Board’s New gTLD Program Committee (“**NGPC**”) receives and acts on such recommendations on behalf of the ICANN Board. In accordance with this procedure, Booking.com’s Request for Reconsideration was evaluated by the BGC. In a detailed analysis dated 1 August 2013, the BGC “conclude[d] that Booking.com has not

²⁹ Request, Annex 9.

³⁰ Request, Annex 10.

³¹ Request, Annex 11.

³² Request, Annex 13.

stated proper grounds for reconsideration and we therefor recommend that Booking.com's request be denied" ("**BGC Recommendation**").³³

35. At a telephone meeting held on 10 September 2013 the NGPC, "bestowed with the powers of the Board", considered, discussed and accepted the BGC Recommendation. Booking.com's Request for Reconsideration was denied.³⁴

D. The Cooperative Engagement Process

36. Booking.com thereafter filed a request for a Cooperative Engagement Process ("**CEP**") on 25 September 2013, with a view to attempting to reach an amicable resolution of its dispute with ICANN. In its CEP request, Booking.com wrote:

*Booking.com is of the opinion that Resolution 2013.09.10.NG02 [the Board resolution denying its Request for Reconsideration] violates various provisions of ICANN's Bylaws and Articles of Incorporation. In particular Booking.com considers that ICANN's adoption of [the Resolution] is in violation of Articles I, II(3), II and IV of the ICANN Bylaws as well as Article 4 of ICANN's Articles of Incorporation. In addition, Booking.com considers that ICANN has acted in violation of Articles 3, 5, 7 and 9 of ICANN's Affirmation of Commitment ...*³⁵

37. The CEP ultimately did not result in a resolution, and Booking.com duly commenced the present IRP.
38. One further point should be made, here, prior to describing the commencement and conduct of the present IRP proceedings: The determination by the SSP that .hotels and .hoteis are so visually similar as to give rise to the probability of user confusion, and the resulting placement of those applied-for strings into a contention set, does *not* mean that Booking.com's application for .hotels has been denied or that .hotels will not proceed to delegation to the root zone. Rather, as noted above and explained in the extracts from the Guidebook reproduced below, the Guidebook establishes a process for resolving such contention, under which the applicants for the contending strings in the set – here, Booking.com and Despegar – may resolve the contention by negotiation, failing which the matter will proceed to auction. Ultimately, no matter the outcome of these IRP proceedings, Booking.com may yet be successful and .hotels may yet be delegated into the Internet root zone. However, the fact that .hotels has been put into a contention set does raise the risk that .hotels may never be delegated into the root zone, or that it may be more costly for Booking.com to obtain approval of its proposed string. It also has caused a significant delay in the potential delegation of the string into the root zone (which could prove to be detrimental to the ultimate success of Booking.com's proposed string if other applicants

³³ Request, Annex 14, BGC Recommendation dated 1 August 2013, p.9. See also Request, Annex 15, NGPC Resolution dated 10 September 2013. As noted in footnote 1 to the BGC Recommendation, the Recommendation was ultimately finalized and submitted for posting on 21 August 2013.

³⁴ Request, Annex 15, NGPC Resolution dated 10 September 2013.

³⁵ Request, Annex 17.

whose strings were not put into a contention set are able to establish themselves as pioneer providers of hotel- and travel-related services under a different new gTLD).

E. The IRP Proceedings

39. On 19 March 2014, Booking.com submitted a Notice of Independent Review, dated 18 March 2014, as well as a Request for Independent Review Process (“**Request**”) accompanied by numerous supporting documents and reference materials.
40. In accordance with Article IV, Section 3(9) of the ICANN Bylaws, Booking.com requested that a three-member IRP panel be constituted to consider and determine the Request. As the omnibus standing panel referred to in Article IV, Section 3(6) of the ICANN Bylaws had yet to be established, Booking.com further proposed, in accordance with Article 6 of the ICDR Rules, that each party appoint one panelist, with the third (the Chair of the panel) to be appointed by the two party-appointed panelists.
41. On 25 April 2014, ICANN submitted a Response to ICANN’s Request with supporting documents (“**Response**”).
42. The parties having thereafter agreed on the number of panelists and the method of their appointment, David H. Bernstein, Esq. was duly appointed as panelist by Booking.com on 1 May 2014, and the Hon. A Howard Matz was duly appointed as panelist by ICANN on 30 May 2014.
43. On 17 July 2014, the ICDR notified the parties that Mr. Stephen L. Drymer had been duly nominated by the two party-appointed panelists as Chair of the Panel. Mr. Drymer’s appointment became effective and the Panel was duly constituted as of 1 August 2014.
44. On 21 August 2014, further to consultations among the panelists and between the Panel and the parties, the Panel convened a preparatory conference with the parties (by telephone) for the purpose of discussing organizational matters, including a timetable for any further written statements or oral argument. Both parties requested the opportunity to make supplemental submissions and to present oral argument.
45. On 22 August 2014 the Panel issued Procedural Order No. 1 in which, among other things, it established a Procedural Timetable for the IRP. As specifically requested by the parties, the Procedural Order and Timetable provided for the submission of additional written statements by the parties as well as for a brief oral hearing to take place by telephone, all on dates proposed by and agreed between the parties.³⁶
46. In accordance with the Procedural Timetable, on 6 October 2014 Booking.com submitted its Reply to ICANN’s Response, accompanied by additional documents (“**Reply**”).

³⁶ Paragraph 6 of Procedural Order No. 1 provided that, in its forthcoming Reply to ICANN’s Response, “Booking.com shall only address two issues raised in Respondent’s Response: (1) the nature and scope of the IRP requested; (2) the nature of the relief sought by Claimant.” Paragraph 7 of Procedural Order No. 1 provided that “Respondent’s Sur-Reply ... shall address only the issues raised in the Reply.”

47. In accordance with the Procedural Timetable, ICANN submitted a Sur-Reply on 20 November 2014 (“**Sur-Reply**”).

F. The Hearing

48. As provided by Procedural Order No. 1 and the Procedural Timetable, a hearing was held (by telephone) on 10 December 2011, commencing at 9:00 PST/18:00 CET.
49. In the light of the significance of the issues raised by the parties, and given the many questions prompted by those issues and by the parties’ extensive written submissions and supporting materials, the Panel indicated that it would allow the hearing to continue beyond the approximately one hour originally envisaged. The hearing ultimately lasted two and one-half hours. Counsel for each party made extensive oral submissions, including rebuttal and sur-rebuttal submissions, and responded to the panelists’ questions.
50. Prior to the close of the hearing each party declared that it had no objection concerning the conduct of the proceedings, that it had no further oral submissions that it wished to make, and that it considered that it had had a full opportunity to present its case and to be heard.
51. As agreed and ordered prior to the close of the hearing, the parties were provided the opportunity to file limited additional materials post-hearing, in relation to a certain question asked of them by the Panel. This was done, and, on 13 December 2014, the proceedings were declared closed.

IV. ICANN ARTICLES, BYLAWS AND POLICIES – KEY ELEMENTS

52. We set out here the key elements of ICANN’s Articles of Association, Bylaws and policies on which the parties rely in their submissions and to which the Panel will refer later in this Declaration.

A. Articles of Association

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.

[Underlining added]

B. Bylaws

ARTICLE I: MISSION AND CORE VALUES

Section 1. MISSION

The mission of The Internet Corporation for Assigned Names and Numbers (“ICANN”) is to coordinate, at the overall level, the global Internet’s systems of unique identifiers,

and in particular to ensure the stable and secure operation of the Internet's unique identifier systems.

[..]

Section 2. CORE VALUES

In performing its mission, the following core values should guide the decisions and actions of ICANN:

- 1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.*
- 2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.*
- 3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.*
- 4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.*
- 5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.*
- 6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.*
- 7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.*
- 8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.*
- 9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.*
- 10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.*
- 11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.*

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN

body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

[...]

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

[...]

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 1. PURPOSE

In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in Article I of these Bylaws. The provisions of this Article, creating processes for reconsideration and independent review of ICANN actions and periodic review of ICANN's structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article III and the Board and other selection mechanisms set forth throughout these Bylaws.

Section 2. RECONSIDERATION

1. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board.

2. Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:

a. one or more staff actions or inactions that contradict established ICANN policy(ies); or

b. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or

c. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

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.*

[...]

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. *In addition to the reconsideration process described in Section 2 of this Article, ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.*

2. *Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.*

3. *A request for independent review must be filed within thirty days of the posting of the minutes of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation. Consolidated requests may be appropriate when the causal connection between the circumstances of the requests and the harm is the same for each of the requesting parties.*

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

- 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 [ICANN]?*

[...]

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, 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.

[...]

14. Prior to initiating a request for independent review, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. [...]

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. [...]

16. Cooperative engagement and conciliation are both voluntary. However, if the party requesting the independent review does not participate in good faith in the cooperative engagement and the conciliation processes, if applicable, and ICANN is the prevailing party in the request for independent review, the IRP Panel must award to ICANN all reasonable fees and costs incurred by ICANN in the proceeding, including legal fees.

[...]

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.

[Underlining added]

53. Lest there be any misunderstanding as regards the proper subject matter of IRP proceedings or the role of the Panel, we note that, as was clearly established during the hearing, it is common ground between the parties that the term "action" (or "actions") as used in Article IV, Section 3 of the Bylaws is to be understood as action(s) or inaction(s) by the ICANN Board. The Panel observes that this understanding comports not only with the provisions of Article

IV, Section 2 of the Bylaws concerning “Reconsideration”, which expressly refer to “actions or inactions of the ICANN Board”, but with the clear intent of Section 3 itself, which stipulates at sub-section 11 that “[t]he IRP Panel shall have the authority to: ... (c) declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws.”

C. The gTLD Applicant Guidebook

54. As noted above and as understood by all, the Guidebook is (to borrow Booking.com’s phrase) “the crystallization of Board-approved consensus policy concerning the introduction of new gTLDs.”³⁷
55. The Guidebook is divided into “Modules”, each of which contains various sections and sub-sections. The three Modules of primary relevance here are Modules 1, 2 and 4. Module 1, titled “Introduction to the gTLD Application Process,” provides an “overview of the process for applying for a new generic top-level domains.”³⁸ Module 2, titled “Evaluation Procedures,” describes the “evaluation procedures and criteria used to determine whether applied-for gTLDs are approved for delegation.”³⁹ Module 4, titled “String Contention Procedures,” concerns “situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.”

(i) *Initial Evaluation*

56. As explained in Module 1, “[i]mmediately following the close of the application submission period, ICANN will begin checking all applications for completeness.”⁴⁰ Initial Evaluation begins “immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation.”⁴¹
57. Initial Evaluation is comprised of two main elements or types of review: *string review*, which concerns the applied-for gTLD string; and *applicant review*, which concerns the entity applying for the gTLD and its proposed registry services. It is the first of these – string review, including more specifically the component known as *string similarity review* – that is particularly relevant.

(ii) *String Review, including String Similarity Review*

58. String review is itself comprised of several components, each of which constitutes a separate assessment or review of the applied-for gTLD string, conducted by a separate reviewing body or panel. As explained in Module 2:

The following assessments are performed in the Initial Evaluation:

³⁷ Request, ¶ 13.

³⁸ Module 1-2. Each Module of the Guidebook is paginated separately. “Module 1-2” refers to Guidebook Module 1, page 2.

³⁹ Module 2-2.

⁴⁰ Guidebook, §1.1.2.2: “Administrative Completeness Check”, Module 1-5.

⁴¹ Guidebook, §1.1.2.5: “Initial Evaluation”, Module 1-8 (underlining added).

- *String Reviews*
 - *String similarity*
 - *Reserved names*
 - *DNS stability*
 - *Geographic names*

[...]

*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.*⁴²

59. As indicated, all complete applications are subject to Initial Evaluation, which means that all applied-for gTLD strings are subject to string review. String review is further described in Module 2 as follows:

[String 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.*⁴³

60. The various assessments or reviews (i.e., string similarity, reserved names, DNS stability, etc.) that comprise string review are elaborated at Section 2.2.1 of Module 2. As mentioned, the most relevant of these reviews for our purposes is *string similarity review*, which is described in detail at Section 2.2.1.1. Because of the central importance of the string similarity review process in the context of the present dispute, this section of the Guidebook is reproduced here at some length:

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.

⁴² Module 2-2. The same is true of applicant review, which is also comprised of various assessments concerning the applicant entity.

⁴³ Guidebook, §2.2: “Initial Evaluation”, Module 2-4 (underlining added). See also Module 1-9: “String reviews include a determination that the applied-for gTLD string is not likely to cause security or stability problems in the DNS ...”

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 other applied-for gTLD strings;

[...]

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.

[...]

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. [footnote in the original: See <http://icann.sword-group.com/algorithm/>] Applicants will have the ability to test their strings and obtain algorithmic results through the application system prior to submission of an application.

[...]

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

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

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

2.2.1.1.3 Outcomes of the String Similarity Review

An application that fails the String Similarity review due to similarity to an existing TLD will not pass the Initial Evaluation, and no further reviews will be available. Where an application does not pass the String Similarity review, the applicant will be notified as soon as the review is completed.

An application for a string that is found too similar to another applied-for gTLD string will be placed in a contention set.⁴⁴

[Underlining added]

61. Module 4 of the Guidebook, as mentioned, concerns “situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.” As explained in Module 4:

4.1 String Contention

String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called *contending strings*. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

⁴⁴ Module 2-5 to 2-9. As regards the concept of string contention, see also Guidebook, §1.1.2.10: “String Contention”, Module 1-13: “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.”

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

4.1.1 Identification of Contention Sets

Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

Applications for identical gTLD strings will be automatically assigned to a contention set.

[...]

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets ...

[...]

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation [NB: community priority evaluation applies only to so-called “community” applications; it is not relevant here] or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

[...]

62. As provided in Module 4, the two methods relevant to resolving a contention such as between .hotels and .hoteis are *self-resolution* (i.e., an agreement between the two applicants for the contending strings) and *auction*:

4.1.3 Self-Resolution of String Contention

Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications.

[...]

4.3 Auction: Mechanism of Last Resort

It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

63. Module 5 of the Guidebook, titled *Transition to Delegation*, describes “the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.”⁴⁵ Section 5.1 states:

*ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.*⁴⁶

[Underlining added]

V. SUMMARY OF THE PARTIES' POSITIONS

64. The following brief summary of the parties' respective positions is provided with a view solely to assisting the reader to understand the present Declaration. It is *not* intended to recapitulate – and it does not recapitulate – the entirety of the parties' allegations and arguments. Additional references to the parties' positions, including submissions made by them in the course of the proceedings, are contained in the discussion at Part VI below.

A. Booking.com's position

(i) *The Panel's Authority*

65. Booking.com submits that the mandate of the Panel is “to determine whether the contested actions of the ICANN Board are consistent with applicable rules”.⁴⁷ According to Booking.com:

*The set of rules against which the actions of the ICANN Board must be assessed includes: (i) ICANN's Articles of Incorporation and Bylaws – both of which must be interpreted in light of ICANN's Affirmation of Commitments, and both of which require compliance with inter alia International law and generally accepted good governance principles – and (ii) secondary rules created by ICANN, such as the Applicant Guidebook. In setting up, implementing and supervising its policies and processes, the Board must comply with the fundamental principles embodied in these rules. That obligation includes a duty to ensure compliance with its obligations to act in good faith, transparently, fairly, and in a manner that is non-discriminatory and ensures due process.*⁴⁸

⁴⁵ Module 5-2.

⁴⁶ Module 5-4.

⁴⁷ Reply, ¶ 3.

⁴⁸ Reply, ¶ 3.

66. Booking.com submits that IRP panels have broad authority to evaluate actions of the ICANN Board. An overly restrictive interpretation of the standard of review, such as proposed by ICANN in these proceedings, would, says Booking.com, “fail to ensure accountability on the part of ICANN and would be incompatible with ICANN’s commitment to maintain (and improve) robust mechanisms for accountability, as required by Article 9.1 of ICANN’s Affirmation of Commitments and ICANN’s core values.”⁴⁹

(ii) Booking.com’s Claims

67. The purpose of the IRP initiated by Booking.com is, in its own words, “to challenge the ICANN Board’s handling of Booking.com’s application for the new gTLD .hotels.”⁵⁰ This includes the determination of the SSP to place .hotels and .hoteis in contention and the refusal of the Board (and its committees) to revise that determination. Elsewhere in its submissions, Booking.com makes an even broader claim; it asserts that it challenges the conduct of the ICANN Board in relation to what Booking.com refers to as the *setting up, implementation, supervision and review* of the entire of string similarity review process, and the Board’s alleged failure “to ensure due process and to respect its fundamental obligations to ensure good faith, transparency, fairness and non-discrimination” throughout.⁵¹
68. In effect, Booking.com’s specific claims can be divided into two broad categories: claims related to the string similarity review process generally; and claims related to the particular case of .hotels.
69. Booking.com professes that this case “is not about challenging a decision on the merits [i.e., the decision to place .hotels in contention]”; it is about “ICANN’s failure to respect fundamental [procedural] rights and principles in handling New gTLD applications, in particular in the context of String Similarity Review.”⁵²
70. Booking.com also repeatedly emphasizes – and this is crucial – that *it does not challenge the validity or fairness of the process as set out in the Guidebook*. Rather, as indicated, it contests “the way in which that process was established, implemented and supervised by (or under the authority of) the ICANN Board.”⁵³ Equally crucial, as will be seen, is Booking.com’s acknowledgment that *the established process was followed* in the case of the review of .hotels.

a. The string similarity review process

71. According to Booking.com, the problem began when the ICANN Board failed to “provide transparency in the SSP selection process,” in particular by failing “to make clear how

⁴⁹ Reply, ¶ 6.

⁵⁰ Reply, ¶ 7.

⁵¹ Reply, ¶ 15.

⁵² Reply, ¶ 14.

⁵³ Reply, ¶ 17.

[ICANN] would evaluate candidate responses or how it ultimately did so.”⁵⁴ The problem was compounded by the selection of ICC/University College London to perform string similarity reviews as the independent SSP. In Booking.com’s words:

*[T]he identities of the unsuccessful candidates (if any) to perform the String Similarity Review remain unknown. Applicants have never been given any information in relation to the candidate responses that were submitted. ... There is no indication that any other candidate expressed an interest in performing the String Similarity Review. No information has been provided as to the steps (if any) taken by ICANN to reach out to other potential candidates. Numerous questions remain: How did ICANN deal with the situation if there was only one (or only a very few) respondent(s) wishing to perform the String Similarity Review? How did this impact on the discussions with InterConnect Communications? What are the terms of ICANN’s contract with InterConnect Communications?*⁵⁵

72. Booking.com also faults ICANN for “allowing the appointed SSP to develop and perform an unfair and arbitrary review process”, specifically, by allowing the SSP “to perform the String Similarity Review (i) without any (documented) plan or methodology ... (ii) without providing any transparency regarding the evaluators or the evaluation criteria ... and (iii) without informing applicants of its reasoning ...”.⁵⁶
73. Among other things, Booking.com takes ICANN to task for establishing and posting the SSP Process Description and the SSP Manager’s Letter (see Part III.C above) only long after the string similarity review process had ended.⁵⁷
74. It also alleges that the factors identified in the SSP Manager’s Letter are “arbitrary and baseless ... not supported by any methodology capable of producing compelling and defensible conclusions ... [which] has allowed applications with at least equally serious visual string similarity concerns – such as .parts/.paris, .maif/.mail, .srt/.srl, .vote/.voto and .date/.data ... – to proceed while singling out .hotels/.hoteis.”⁵⁸ According to Booking.com: “The failure to take actual human performance into account is at odds with the standard for assessment, *i.e.*, the likelihood of confusion on the part of the average Internet user. Hence, the approach is directly contrary to ICANN’s own policy.”⁵⁹
75. Booking.com further contends that the SSP process is unfair and non-transparent due to the fact that the identity of SSP members has never been publicly disclosed.⁶⁰
76. Further, Booking.com argues that the process is unfair, non-transparent and arbitrary – and thus violates ICANN policy – for failing to provide for a “well-documented rationale” for each

⁵⁴ Reply, ¶ 20.

⁵⁵ Reply, ¶ 20.

⁵⁶ Reply, ¶ 23.

⁵⁷ Reply, ¶ 24.

⁵⁸ Reply, ¶ 25.

⁵⁹ Reply, ¶ 25.

⁶⁰ Reply, ¶ 26-27.

SSP determination. In the absence of reasons for each string similarity determination, says Booking.com, “there is no basis on which decisions can be evaluated and, where appropriate, challenged.”⁶¹

77. Another ground for Booking.com’s challenge is the alleged failure by the ICANN Board to providing “effective supervision or quality control” of the SSP: “If nobody but the evaluator has any insight into how the evaluation was carried out, no effective quality control can be performed.”⁶² Nor, according to Booking.com, does the quality review of the SSP’s work supposedly performed by JAS Advisers (the independent consultant engaged by ICANN for this purpose) overcome the problem of a lack of transparency:

*Booking.com is not aware that any selection process was put in place in relation to the appointment of JAS Advisors to perform the String Similarity Review quality control. No criteria for performing the quality control were published. When ICANN was looking for evaluators, no call for expressions of interest or similar document was issued for the selection of quality controllers.*⁶³

78. In any case, says Booking.com, the “quality control review over a random sampling of applications to, among other things, test whether the process [set out in the Guidebook] was followed,” which ICANN claims was performed on the SSP’s work,⁶⁴ could not provide adequate quality control of the string similarity review process.⁶⁵ Finally, Booking.com argues that the arbitrary and unfair result of the string similarity review concerning .hotels – i.e., the decision to place .hotels and .hoteis in contention – demonstrates that, “whatever quality control review ICANN may have engaged in ... must therefore have been deficient.”⁶⁶

b. The case of .hotels

79. Booking.com argues, in part on the basis of expert evidence which it adduces in this IRP proceeding,⁶⁷ that “[t]here is no probability of user confusion if both .hotels and .hoteis were delegated as gTLD strings into the Internet root zone ... The SSP could not have reasonably found that the average reasonable Internet user is likely to be confused between the two strings.”⁶⁸ It continues:

⁶¹ Reply, ¶ 28-29.

⁶² Reply, ¶ 30.

⁶³ Reply, ¶ 31. Booking.com states that it “doubts” that any quality review was in fact performed, whether by JAS Advisers or any other entity.

⁶⁴ Response, ¶ 30.

⁶⁵ Reply, ¶ 34.

⁶⁶ Reply, ¶ 38.

⁶⁷ Request, Annex 20, Expert Report of Prof. Dr. Piet Desmet of the Faculty of Arts, Department of Linguistics of Leuven University, dated 10 March 2014. Portions of the work underlying Prof. Desmet’s report were performed by Dr. Emmanuel Keuleers, Research Fellow in the Department of Experimental Psychology at Ghent University.

⁶⁸ Request, ¶ 58.

Since .hotels and .hoteis are not confusingly similar, the determination that they are is contradictory to ICANN policy as established in the Applicant Guidebook. Acceptance of the determination, and repeated failure to remedy the wrongful determination, is a failure to act with due diligence and independent judgment, and a failure to neutrally and fairly apply established policies as required by Bylaws and Articles of Incorporation.⁶⁹

80. According to Booking.com, the Board should have acted to overturn the determination of the SSP either in the context of the Request for Reconsideration or under the authority accorded it by Module 5-4 of the Guidebook to “individually consider a gTLD application”.⁷⁰
81. Booking.com claims that its DIDP Request alerted the Board to the need to intervene to “correct the errors in the process” related to .hotels, and that its Request for Reconsideration of the SSP determination further informed the Board of the many errors in the SSP’s review of .hotels, “giving the Board ample opportunity to correct those errors.”⁷¹ Booking.com claims that the Board’s failure, when responding to the DIDP Request, “to offer any insight into the SSP’s reasoning”, its refusal to reconsider and overturn the SSP determination regarding .hotels on the sole ground (says Booking.com) that “the Reconsideration process ‘is not available as a mechanism to re-try the decisions of evaluation panels’”, and its failure to investigate Booking.com’s complaints of a lack of fairness and transparency in the SSP process, constitute violations of ICANN’s governing rules regarding string similarity review.⁷²
82. According to Booking.com, among the most compelling evidence of ICANN’s failure in this regard are the statements made on the record by several members of the NGPC during its 10 September 2013 meeting at which Booking.com’s Request for Reconsideration was denied.⁷³ Given the importance that the Panel attaches to these statements, they are addressed in some detail in the Analysis in Part VI, below.
83. In its written submissions Booking.com asks the Panel to grant the following relief:

Finding that ICANN breached its Articles of Incorporation, its Bylaws, and the gTLD Applicant Guidebook;

Requiring that ICANN reject the determination that .hotels and .hoteis are confusingly similar and disregard the resulting contention set;

Awarding Booking.com its costs in this proceeding; and

⁶⁹ Request, ¶ 59.

⁷⁰ Reply, ¶ 39.

⁷¹ Reply, ¶ 41.

⁷² Reply, ¶ 41. In the passage of Booking.com’s submissions referred to here (as elsewhere), Booking.com speaks of violations of ICANN’s obligations of “due process”, which, it says, comprise concepts such as the right to be heard, the right to receive reasons for decisions, publicity, etc. For reasons explained in Part VI, below, the Panel prefers to use the terms *fairness* and *transparency* to connote the essence of ICANN’s obligations under review in this IRP.

⁷³ See Part II.C, above.

Awarding such other relief as the Panel may find appropriate or Booking.com may request.

84. At the hearing Booking.com *further* requested that the Panel not only require ICANN to disregard the SSP determination regarding .hotels/.hoteis, but also order ICANN to “delegate both .hotels and .hoteis.”

B. ICANN's position

85. ICANN's position is best summed up by ICANN itself:

Booking.com's IRP Request is really about Booking.com's disagreement with the merits of the String Similarity Panel's conclusion that .hotels and .hoteis are confusingly similar. But the Panel's determination does not constitute Board action, and the Independent Review Process is not available as a mechanism to re-try the decisions of an independent evaluation panel. The IRP Panel is tasked only with comparing contested actions of the ICANN Board to ICANN's Bylaws and Articles of Incorporation; it is not within the IRP Panel's mandate to evaluate whether the String Similarity Panel's conclusion that .hotels and .hoteis are confusingly similar was wrong.⁷⁴

86. According to ICANN, the Board “did exactly what it was supposed to do under its Bylaws, its Articles of Incorporation, and the Guidebook.”⁷⁵

(i) The Panel's Authority

87. Throughout its submissions ICANN repeatedly stresses what it says is the very limited authority enjoyed by IRP panels.
88. As provided in Article IV, Section 3(4) of ICANN's Bylaws, ICANN observes that this Panel (as all IRP panels) is charged only 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.”⁷⁶
89. ICANN notes that, in undertaking this *compare-and-declare* mission, the Panel is further constrained to apply the very specific “standard of review” set out in Bylaw Article IV, Section 3(4), which requires the Panel to focus on three particular questions: “did the Board act without conflict of interest in taking its decision?”; “did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?”; and “did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company [ICANN]?”⁷⁷

⁷⁴ Response, ¶ 9.

⁷⁵ Response, ¶ 8. Both parties agree that, as submitted by Booking.com, the “rules” at issue, against which the conduct of the ICANN Board is to be assessed, include the relevant provisions of the Guidebook.

⁷⁶ See for example Response, ¶2, ¶ 9.

⁷⁷ Response, ¶ 2.

90. ICANN further asserts that the IRP process “is not available as a mechanism to challenge the actions or inactions of ICANN staff or third parties that may be involved in ICANN activities,”⁷⁸ such as the action of the SSP which resulted in .hotels and .hoteis being placed in contention. Nor, says ICANN, may the IRP process be used as an “appeal mechanism” by which to overturn substantive decisions – such as the determination that .hotels and .hoteis are confusingly visually similar – with which an applicant may disagree.⁷⁹
91. In this regard ICANN states that the affirmative relief sought by Booking.com – specifically, a declaration requiring that ICANN “reject the determination that .hotels and .hoteis are confusingly similar and disregard the resulting contention set” and (as requested at the hearing) that ICANN “delegate both .hotels and .hoteis” – exceeds the authority of the Panel.⁸⁰

(ii) ICANN's Response to Booking.com's Claims

a. The string similarity review process

92. According to ICANN, “[e]arly on in the iterations of the Guidebook, it was determined that, in the initial evaluation stage, the String Similarity Panel would only examine strings for visual confusion;” and “[i]f applied-for strings are determined to so nearly resemble each other visually that it is likely to deceive or cause confusion, the string will be placed in a contention set, which is then resolved pursuant to the contention set resolution processes in Module 4 of the Guidebook.”⁸¹
93. According to ICANN, it was also determined early on that, as stated in Section 2.2.1.1 of the Guidebook, “[t]his similarity review will be conducted by an independent String Similarity Panel,” not by ICANN itself. ICC was duly selected to perform the string similarity review further to “an open and public request for proposals,” pursuant to which, as the successful bidder, “ICC was responsible for the development of its own process documents and methodology for performing the String Similarity Review consistent with the provisions of the Guidebook.”⁸² ICANN emphasizes that “the Guidebook does not provide for any process by which ICANN (or anyone else) may conduct a substantive review of ICC’s results.”⁸³
94. In ICANN’s submission, the alternative proposed by Booking.com, that “the ICANN Board – and the ICANN Board alone – was obligated to perform the String Similarity Review for the more than 1,900 new gTLD applications submitted,” is “untenable and is not supported by ICANN’s Bylaws or Articles.”⁸⁴ As noted by ICANN, the Guidebook defines six distinct

⁷⁸ Response, ¶ 3.

⁷⁹ Response, ¶ 49.

⁸⁰ Response, ¶ 55.

⁸¹ Response, ¶ 15 (underlining in original).

⁸² Response, ¶ 16.

⁸³ Response, ¶ 17.

⁸⁴ Sur-Reply, ¶ 7.

review processes that every gTLD application is required to go through, including string similarity review; each of those review processes was conducted by independent experts specifically engaged by ICANN staff for the purpose.

95. ICANN submits that “there simply is no requirement – under ICANN’s governing documents or imposed by law – that would mandate that the ICANN Board inject itself into the day-to-day affairs of the evaluation process in the manner Booking.com proposes.”⁸⁵ It asserts that, consistent with well-settled legal principles, “neither ICANN’s Bylaws, nor the Articles, nor the Guidebook requires the ICANN Board to conduct any analysis of the decisions of third party experts retained to evaluate string similarity.”⁸⁶
96. Moreover, ICANN asserts that “[s]imply because the ICANN Board has the discretion [under Section 5.1 (Module 5-4) of the Guidebook] to consider individual applications does not mean it is required to do so or that it should do so, particularly at an initial evaluation stage.”⁸⁷
97. ICANN claims that that Booking.com’s repeated invocation of the Board’s so-called obligation to ensure “due process” in the administration of the New gTLD Program is misplaced. First, neither applicable California law nor any provision of the Bylaws, Articles of Incorporation or Guidebook “specifically affords any gTLD applicant a right to procedural ‘due process’ similar to that which is afforded in courts of law.”⁸⁸ Second, because ICANN conducts its activities in the public interest it nevertheless provides “more opportunity for parties to be heard and to dispute actions taken”⁸⁹ than most private corporate entities. Third, the “decision to proceed with the New gTLD Program followed many years of discussion, debate and deliberation within the ICANN community, including participation from end users, civil society, technical experts, business groups, governments and others.”⁹⁰ Fourth, and perhaps most importantly, “ICANN adhered to the policies and procedures articulated in its Bylaws, Articles of Incorporation, and the Guidebook, the latter of which was adopted only after being publicly vetted with ICANN’s stakeholders and the broader Internet community.”⁹¹
98. ICANN’s response to Booking.com’s various allegations regarding particular elements of the string similarity review process – including for example the selection of the SSP, the publication of the SSP’s methodology, the anonymity of the individuals SSP members, the supposed lack of quality control – is essentially three-fold: first, the actions challenged by Booking.com are *not Board actions*, but actions of ICANN staff or third parties, which cannot

⁸⁵ Sur-Reply, ¶ 10.

⁸⁶ Sur-Reply, ¶ 10.

⁸⁷ Sur-Reply, ¶ 11. It was established during the hearing that the several references to this discretionary authority in ICANN’s written and oral submissions refer specifically to the authority conferred by Section 5.1 (Module 5-4) of the Guidebook.

⁸⁸ Sur-Reply, ¶ 18.

⁸⁹ Sur-Reply, ¶ 18.

⁹⁰ Sur-Reply, ¶ 18, fn 18.

⁹¹ Sur-Reply, ¶ 18, fn 18.

be challenged by means of IRP proceedings; second, in any case, Booking.com’s claims are *factually incorrect*, and there has been no violation of the Bylaws, Articles of Incorporation or Guidebook; third, Booking.com’s claims are *time-barred* given that Article IV, Section 3(3) of the Bylaws requires that IRP requests “must be filed within thirty days of the posting of the minutes of the Board meeting ... that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation.”⁹²

b. The case of .hotels

99. ICANN’s position as regards the determination to place .hotels and .hoteis in contention is similar in many respects to its position regarding the string similarity review process generally. ICANN argues that the Board played no role whatsoever in performing the review of .hotels; that the SSP’s determination was in any event well supported and there was no violation of applicable rules; and that the Guidebook does not provide for any process by which ICANN (or any other body, including an IRP panel) may conduct a substantive review of a string similarity determination.
100. In any event, ICANN asserts that .hotels and .hoteis in fact meet every one of the visual similarity criteria applied by the SSP, as set out in the SSP Manager’s Letter. Moreover, .hotels and .hoteis scored a stunning 99% for visual similarity under the publicly available SWORD algorithm which, as provided by Section 2.2.1.1.2 (Module 2-7) of the Guidebook, establishes “one objective measure for consideration by the [SSP]”. According to ICANN (in response to a question posed by the Panel during the hearing), this was the highest algorithmic score among the comparison of all non-identical pairs within the 1917 new gTLD applications received by ICANN;⁹³ the only other pair of non-exact match strings found to be confusingly visually similar – .unicorn and .unicom – scored only 94%.⁹⁴
101. According to ICANN, “it was not clearly ‘wrong,’ as Booking.com argues, for the [SSP] to find that .hotels/.hoteis are confusingly similar.”⁹⁵
102. In conclusion, ICANN states that its conduct with respect to Booking.com’s application for .hotels, including in evaluating Booking.com’s Request for Reconsideration, was fully consistent with ICANN’s Articles of Incorporation, its Bylaws and the procedures established in the Guidebook; and the fact that Booking.com disagrees with the SSP’s determination to put .hotels and .hoteis in a contention set does not give rise to an IRP.
103. ICANN asks the Panel to deny Booking.com’s IRP Request.

VI. ANALYSIS

A. The Panel’s Authority

⁹² Sur-Reply, ¶¶ 20-42.

⁹³ A number of these applications were subsequently withdrawn.

⁹⁴ Identical pairs, of course, received a score of 100% for visual similarity under the SWORD algorithm.

⁹⁵ Response, ¶¶ 53.

104. The jurisdiction and authority of an IRP panel is expressly prescribed – and expressly limited – by the ICANN Bylaws. To recap, Article IV, Section 3 of the Bylaws provides:

4. [The IRP Panel] 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 [ICANN]?*

[...]

11. *The IRP Panel shall have the authority to:*

[...]

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;

[...]

18. [...] *The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties [...]*

[Underlining added]

105. Similarly, Article 8 of the Supplementary Procedures reads:

8. Standard of Review

The IRP is subject to the following standard of review: (i) did the ICANN Board act without conflict of interest in taking its decision; (ii) did the ICANN Board exercise due diligence and care in having sufficient facts in front of them; (iii) did the ICANN Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

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.

106. There is no dispute as regards the Panel's duty to compare the actions of the Board to ICANN's Articles of Incorporation and Bylaws (and, in this case, Guidebook) with a view to

declaring whether those actions are inconsistent with applicable policies. Where the parties disagree is with respect to the standard of review to be applied by the Panel in assessing Board conduct.

107. ICANN submits that its Bylaws “specify that a deferential standard of review be applied when evaluating the actions of the ICANN Board ... the rules are clear that the appointed IRP Panel is neither asked to, nor allowed to, substitute its judgment for that of the Board.”⁹⁶ Booking.com argues that this “is simply wrong. No such specification is made in ICANN’s Bylaws or elsewhere, and a restrictive interpretation of the standard of review would ... fail to ensure accountability on the part of ICANN and would be incompatible with ICANN’s commitment to maintain (and improve) robust mechanisms for accountability.”⁹⁷
108. In the opinion of the Panel, there can be no question but that the provisions of the ICANN Bylaws establishing the Independent Review Process and defining the role of an IRP panel specify that the ICANN Board enjoys a large degree of discretion in its decisions and actions. So long as the Board acts without conflict of interest and with due care, it is entitled – indeed, required – to exercise its independent judgment in acting in what it believes to be the best interests of ICANN. The only substantive check on the conduct of the ICANN Board is that such conduct may not be inconsistent with the Articles of Incorporation or Bylaws – or, the parties agree, with the Guidebook. In that connection, the Panel notes that Article 1, Section 2 of the Bylaws also clearly states that in exercising its judgment, the Board (indeed “[a]ny ICANN body making a recommendation or decision”) shall itself “determine which core values are most relevant and how they apply to the specific circumstances of the case at hand.”
109. In other words, in making decisions the Board is required to conduct itself reasonably in what it considers to be ICANN’s best interests; where it does so, the only question is whether its actions are or are not consistent with the Articles, Bylaws and, in this case, with the policies and procedures established in the Guidebook.
110. There is also no question but that the authority of an IRP panel to compare contested actions of the Board to the Articles of Incorporation and Bylaws, and to declare whether the Board has acted consistently with the Articles and Bylaws, does not extend to opining on the nature of those instruments. Nor, in this case, does our authority extend to opining on the nature of the policies or procedures established in the Guidebook. In this regard it is recalled that Booking.com itself repeatedly stresses that it does not contest the validity or fairness of the string similarity review process as set out in the Guidebook, but merely whether ICANN’s actions were consistent with various elements of that process. Stated differently, our role in this IRP includes assessing whether the applicable rules – in this case, the rules regarding string similarity review – were followed, not whether such rules are appropriate or advisable.
111. Nevertheless, this does not mean that the IRP Panel may only review ICANN Board actions or inactions under the deferential standard advocated by ICANN in these proceedings. Rather, as explained below, the IRP Panel is charged with “objectively” determining whether

⁹⁶ Response, ¶ 24.

⁹⁷ Reply, ¶ 6.

or not the Board's actions are in fact consistent with the Articles, Bylaws and Guidebook, which the Panel understands as requiring that the Board's conduct be appraised independently, and without any presumption of correctness.

112. In the only other IRP of which the Panel is aware in which such questions were addressed in a published decision, the distinguished members of the IRP panel had this to say about the role of an IRP panel, and the applicable standard of review, in appraising Board action:

The Internet Corporation for Assigned Names and Numbers is a not-for profit corporation established under the law of the State of California. That law embodies the 'business judgment rule'. Section 309 of the California Corporations Code provides that a director must act 'in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders...' and shields from liability directors who follow its provisions. However ICANN is no ordinary non-profit California corporation. The Government of the United States vested regulatory authority of vast dimension and pervasive global reach in ICANN. In 'recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization' – including ICANN -- ICANN is charged with 'promoting the global public interest in the operational stability of the Internet...' ICANN '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...' Thus, while a California corporation, it is governed particularly by the terms of its Articles of Incorporation and Bylaws, as the law of California allows. Those Articles and Bylaws, which require ICANN to carry out its activities in conformity with relevant principles of international law, do not specify or imply that the International [sic] Review Process provided for shall (or shall not) accord deference to the decisions of the ICANN Board. The fact that the Board is empowered to exercise its judgment in the application of ICANN's sometimes competing core values does not necessarily import that that judgment must be treated deferentially by the IRP. In the view of the Panel, the judgments of the ICANN Board are to be reviewed and appraised by the Panel objectively, not deferentially. The business judgment rule of the law of California, applicable to directors of California corporations, profit and nonprofit, in the case of ICANN is to be treated as a default rule that might be called upon in the absence of relevant provisions of ICANN's Articles and Bylaws and of specific representations of ICANN ... that bear on the propriety of its conduct. In the instant case, it is those Articles and Bylaws, and those representations, measured against the facts as the Panel finds them, which are determinative.⁹⁸

[Underlining added.]

113. While on no way bound by that decision, we agree with its conclusions in this respect.
114. At the end of the day we fail to see any significant difference between the parties' positions in this regard. The process is clear, and both parties acknowledge, that the Panel is tasked with determining whether or not the Board's actions are consistent with ICANN's Articles of Incorporation, Bylaws and the Guidebook. Such a determination calls for what the panel in

⁹⁸ ICDR Case No. 50 117 T 00224 08, *ICM Registry, LLC v. ICANN*, Declaration dated 19 February 2010 ("*ICM Registry*"), ¶ 136.

the *ICM Registry* matter called an “objective” appraisal of Board conduct as measured against the policies and rules set out in those instruments; all agree that it is the Articles, Bylaws and Guidebook which are determinative.

115. That being said, we also agree with ICANN to the extent that, in determining the consistency of Board action with the Articles, Bylaws and Guidebook, an “IRP Panel is neither asked to, nor allowed to, substitute its judgment for that of the Board.” In other words, it is not for the Panel to opine on whether the Board could have acted differently than it did; rather, our role is to assess whether the Board’s action was consistent with applicable rules found in the Articles, Bylaws and Guidebook. Nor, as stated, is it for us to purport to appraise the policies and procedures established by ICANN in the Guidebook (since, again, this IRP is not a challenge to those policies and procedures themselves⁹⁹), but merely to apply them to the facts.
116. With the foregoing firmly in mind, the Panel turns now to the issues to be determined in order to resolve the present dispute.

B. The String Similarity Review Process

117. The Panel is not unsympathetic to Booking.com’s complaints regarding the string similarity review process as established by the Guidebook. There is no question but that that process lacks certain elements of transparency and certain practices that are widely associated with requirements of fairness. For example, the Guidebook provides no means for applicants to provide evidence or make submissions to the SSP (or any other ICANN body) and so be fully “heard” on the substantive question of the similarity of their applied-for gTLD strings to others.
118. Indeed, as stated at the outset of this Declaration, these observations and the concerns that they engender were voiced by several members of the ICANN Board’s New gTLD Program Committee which voted to accept the BGC’s Recommendation to deny Booking.com’s Request for Reconsideration. The Panel can do no better than reproduce the statements made by the NGPC members in this respect, as recorded in the minutes of the NGPC’s 10 September 2013 meeting.¹⁰⁰

⁹⁹ As discussed in more detail in the following section (at para. 117 and following) and again at Part IV of this Declaration, the important questions that Booking.com highlights in its pleadings, as to whether the string similarity review process is consistent with ICANN’s guiding principles of transparency and fairness, and regarding the published views of various members of ICANN’s NGPC in this respect, are matters which the ICANN Board, in its discretion, may wish to consider on its own motion in the context of the present case, in accordance with its authority under Section 5.1 (Module 5-4) of the Guidebook, or when it issues the Guidebook for round two of the New gTLD Program. Those questions include a lack of clarity surrounding the way in which the string similarity review is conducted by the SSP, and the absence of any means for applicants to be heard in the string similarity review process where they may have evidence to adduce or arguments to make (such as the evidence and arguments presented by Booking.com to this Panel), which could in fact be relevant to the SSP’s determination.

¹⁰⁰ Request, Annex 16.

- Mr. George Sadowski stated his intention to abstain from the vote because, although “he understood that the BGC did the right thing, [he] thought the end result that was contrary to ICANN’s ... and the user’s best interests.”
 - Ms. Olga Madruga-Forti also stated her intention to abstain from voting on the BGC recommendation “because there was not sufficient rationale provided for why the string similarity review panel made its determination.”
 - In response to a comment by the Chair that the Request for Reconsideration deserved to be denied “[b]ecause the process was followed,” Mr. Ray Plzak “agreed that the process was followed, but noted that the process needs to be reviewed to potentially add a mechanism that would allow persons who don’t agree with the outcome to make an objection, other than using a Reconsideration Request.”
 - Mr. Plzak “recommended the Committee send a strong signal to the BGC, or adopt a resolution recommending that the BGC consider development of a different mechanism to provide an avenue for the community to appeal the outcome of a decision based on the merits.”
 - Ms. Madruga-Forti agreed and “recommended that in the future, a remand or appeals mechanism may help alleviate the concerns noted.”
 - Mr. Bill Graham also agreed with Mr. Plzak’s suggestion, and noted that “generally, there is a considerable level of discomfort and dissatisfaction with the process as expressed by Committee members.”
 - The Chair “agreed with [Mr. Graham’s] sentiment.”
 - The General Counsel and Secretary noted that ICANN ... “has tried to encourage more use of the ombudsman, or other accountability mechanisms for these types of concerns.”
119. Ultimately, five members of the NGPC voted in favour of the resolution accepting the BGC’s Recommendation; two members were unavailable to vote; and four members abstained. The abstaining members offered the following voting statements:
- Mr. Plzak stated that he abstained from voting “because he is disappointed in what is being done to remedy the situation. [He] would like to see more resolve to fix the process.”
 - Ms. Madruga-Forti stated that:

[T]he BGC has done an appropriate job of applying a limited review standard to the application for reconsideration, but unfortunately, in this circumstance, to apply that limited review accompanied by a lack of information regarding the rationale of the string similarity review panel is not possible in a logical and fair manner. The public interest would not be served by applying the limited review standard without proper information on the basis and reasoning for the decision of the panel. In my opinion, the public interest would be better served by abstaining and continuing to explore ways to

establish a better record of the rationale of the string similarity review panel in circumstances such as this.

- Mr. Kuo-Wei Wu agreed with Ms. Madruga-Forti's and Mr. Plzak's voting statements.
- Mr. Sadowsky provided the following detailed statement:

I have a strong concern regarding the ratification of the BGC recommendation to deny the reconsideration request regarding string contention between .hoteis and .hotels, and I therefore have therefore abstained when the vote on this issue was taken.

The reconsideration process is a very narrowly focused instrument, relying solely upon investigating deviations from established and agreed upon process. As such, it can be useful, but it is limited in scope. In particular, it does not address situations where process has in fact been followed, but the results of such process have been regarded, sometimes quite widely, as being contrary to what might be best for significant or all segments of the ... community and/or Internet users in general.

The rationale underlying the rejection of the reconsideration claim is essentially that the string similarity process found that there was likely to be substantial confusion between the two, and that therefore they belonged in a contention set. Furthermore, no process has been identified as having been violated and therefore there is nothing to reconsider. As a Board member who is aware of ICANN's ... Bylaws, I cannot vote against the motion to deny reconsideration. The motion appears to be correct based upon the criteria in the Bylaws that define the reconsideration process and the facts in this particular case. However, I am increasingly disturbed by the growing sequence of decisions that are based upon a criterion for user confusion that, in my opinion, is not only both incomplete and flawed, but appears to work directly against the concept that users should not be confused. I am persuaded by the argument made by the proponents of reconsideration in this case that users will in fact not be confused by .hoteis and .hotels, since if they enter the wrong name, they are very likely to be immediately confronted by information in a language that they did not anticipate.

Confusion is a perceptual issue. String similarity is only one consideration in thinking about perceptual confusion and in fact it is not always an issue. In my opinion, much more perceptual confusion will arise between .hotel and .hotels than between .hotels and .hoteis. Yet if we adhere strictly to the Guidebook and whatever instructions have or have not been given to string similarity experts, it is my position that we work against implementing decisions that assist in avoiding user confusion, and we work in favor of decisions that are based upon an incorrect, incomplete and flawed ex ante analysis of the ICANN Network real issues with respect to user confusion.

The goal of the string similarity process is the minimization of user confusion and ensuring user trust in using the DNS ... The string similarity exercise is one of the means in the new gTLD ... process to minimize such confusion and to strengthen user trust. In placing our emphasis, and in fact our decisions, on string similarity only, we are unwittingly substituting the means for the goal, and making decisions regarding the goal on the basis of a means test. This is a disservice to the Internet user community.

I cannot and will not vote in favor of a motion that reflects, directly or indirectly, an unwillingness to depart from what I see as such a flawed position and which does not reflect in my opinion an understanding of the current reality of the situation.

120. These statements reflect to an important degree the Panel's own analysis.
121. The elements of the string similarity review process were established and widely published several years ago, after extensive consultation and debate among ICANN stakeholders and the Internet community. Booking.com correctly describes the process established (or "crystallized") in the Guidebook as a component of "a consensus policy" concerning the introduction of new gTLDs.¹⁰¹
122. The Guidebook makes clear that, as part of the initial evaluation to which all applied-for gTLDs are subject, each string would be reviewed for a number of factors, one of which is "string similarity", which involves a determination of "whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion"¹⁰². The term "user" is elaborated elsewhere in the Guidebook, which speaks of confusion arising "in the mind of the average, reasonable Internet user."¹⁰³
123. The Guidebook explains that string similarity review comprises merely a "visual similarity check",¹⁰⁴ with a view to identifying only "visual string similarities that would create a probability of user confusion."¹⁰⁵
124. The Guidebook makes clear that string similarity reviews would be conducted by an independent third party – the SSP – that would have wide (though not complete) discretion both in formulating its methodology and in determining string similarity on the basis of that methodology.
125. Section 2.2.1.1.2 of the Guidebook, titled "Review Methodology", provides that the SSP "is informed in part by an algorithmic score for ... visual similarity," which "will provide one objective measure for consideration by the [SSP]." Section 2.2.1.1.2 further states that, in addition to "examin[ing] all the algorithm data," the SSP will "perform its own review of similarities between strings and whether they rise to the level of string confusion." It is noted that the objective algorithmic score is to be treated as "only indicative". Crucially, "the final determination of similarity is entirely up to the [SSP's] judgment." (Underlining added)
126. In sum, the Guidebook calls for the SSP to determine whether two strings are so "visually similar" as to create a "probability of confusion" in the mind of an "average, reasonable Internet user." In making this determination, the SSP is informed by an "algorithmic score", to ensure that the process comprises at least one "objective measure". However, the algorithmic score is not determinative. The SSP also develops and performs "its own review". At the end of the day, the determination is entirely a matter of "the [SSP's] judgment."

¹⁰¹ Request, ¶ 13.

¹⁰² Guidebook, §2.2 (Module 2-4).

¹⁰³ Guidebook, §2.2.1.1.2. (Underlining added)

¹⁰⁴ Guidebook, §2.2.1.1. (Underlining added)

¹⁰⁵ Guidebook, §2.2.1.1.1. (Underlining added)

127. By its very nature this process is highly discretionary. It is also, to an important degree, subjective. The Guidebook provides no definition of “visual similarity”, nor any indication of how such similarity is to be objectively measured other than by means of the SWORD algorithm. The Guidebook provides no definition of “confusion,” nor any definition or description of an “average, reasonable Internet user.” As Mr. Sadowski of the NGPC put it: “Confusion is a perceptual issue.” (Mr. Sadowski further noted: “String similarity is only one consideration in thinking about perceptual confusion, and in fact it is not always an issue.) The Guidebook mandates the SSP to develop and apply “its own review” of visual similarity and “whether similarities rise to the level of user confusion”, in addition to SWORD algorithm, which is intended to be merely “indicative”, yet provides no substantive guidelines in this respect.
128. Nor does the process as it exists provide for gTLD applicants to benefit from the sort of procedural mechanisms – for example, to inform the SSP’s review, to receive reasoned determinations from the SSP, or to appeal the merits of those determinations – which Booking.com claims are required under the applicable rules. Clearly, certain ICANN NGPC members themselves consider that such input would be desirable and that changes to the process are required in order for the string similarity review process to attain its true goal, which Mr. Sadowski referred to as “the minimization of user confusion and ensuring user trust in using the DNS”. However, as even the abstaining members of the NGPC conceded, the fact is that the sort of mechanisms that Booking.com asserts are required (and which those NGPC members believe should be required) are simply not part of the string similarity review process as currently established. As to whether they *should* be, it is not our place to express an opinion, though we note that such additional mechanisms surely would be consistent with the principles of transparency and fairness.
129. We add that we agree with ICANN that the time has long since passed for Booking.com or any other interested party to ask an IRP panel to review the actions of the ICANN Board in relation to the establishment of the string similarity review process, including Booking.com’s claims that specific elements of the process and the Board decisions to implement those elements are inconsistent with ICANN’s Articles and Bylaws. Any such claims, even if they had any merit, are long since time-barred by the 30-day limitation period set out in Article IV, Section 3(3) of the Bylaws. As ICANN expressed during the hearing, if Booking.com believed that there were problems with the Guidebook, it should have objected at the time the Guidebook was first implemented.
130. When asked during the hearing about its failure to object timely, Booking.com argued that it could not have known how the Board’s actions – that is, how the process established in the Guidebook – would affect it prior to the submission of its application for .hotels. However, that is not a persuasive or meritorious answer. As did all stakeholders, Booking.com had the opportunity to challenge the Board’s adoption of the Guidebook, at the time, if it considered any of its elements to be inconsistent with ICANN’s Articles of Incorporation or Bylaws.

C. The Case of .hotels

131. In the light of the preceding analysis of Booking.com’s challenge concerning the ICANN Board’s actions in relation to the string similarity review process generally, the Panel is not

persuaded by its challenge concerning the Board’s conduct in relation to the review of .hotels specifically.

132. There are two principal elements to this part of Booking.com’s case: a challenge in relation to the process followed by the SSP; and a challenge in relation to the Board’s handling of Booking.com’s Request for Reconsideration of the SSP’s determination. However, the fundamental obstacle to Booking.com’s case is that *the established process was followed in all respects*.
133. Booking.com itself acknowledges that “the process was followed” by the SSP, which determined that .hotels and .hoteis were so visually similar as to warrant being placed in a contention set. So too did all of the NGPC members who commented on the matter recognize that “the process was followed” – for all their stated misgivings concerning the outcome of the process.
134. The same is true of the Request for Reconsideration. The Panel is struck by the extent and thoughtfulness not only of the NGPC’s consideration of the issue, certain aspects of which are discussed above, but of the BGC’s detailed analysis and its Recommendation to the NGPC, on the basis of which Booking.com’s Request for Reconsideration was denied. Contrary to Booking.com’s allegations, in neither instance was this merely a blind acceptance of a decision of a subordinate body. In fact, the reconsideration process itself, however limited and perhaps imperfect it may be, is inconsistent with Booking.com’s claims of lack of “due process”.
135. Although not addressed in great detail by the parties, the Panel considers several observations made by the BGC in its 1 August 2013 Recommendation to be particularly apposite:
- *These standing requirements [for Requests for Reconsideration] are intended to protect the reconsideration process from abuse and to ensure that it is not used as a mechanism simply to challenge an action with which someone disagrees, but that it is limited to situations where the staff [for the Board] acted in contravention of established policies.*¹⁰⁶
 - *Although the String Similarity Review was performed by a third party, ICANN has determined that the Reconsideration process can properly be invoked for challenges of the third party’s decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision.*¹⁰⁷
 - *Booking.com does not suggest that the process for String Similarity Review set out in the Applicant Guidebook was not followed, or that ICANN staff violated any established ICANN policy in accepting the [SSP] decision on placing .hotels and .hoteis in contention sets. Instead, Booking.com is supplanting what it believes the review*

¹⁰⁶ BGC Recommendation, p. 2.

¹⁰⁷ BGC Recommendation, p. 4. The BGC explains that “Because the basis for the Request is not Board conduct, regardless of whether the 20 December 2012 version, or the 11 April 2013 version, of the Reconsideration Bylaws is operative, the BGC’s analysis and recommendation below would not change.”

methodology for assessing visual similarity should have been, as opposed to the methodology set out at Section 2.2.1.1.2 of the Applicant Guidebook. In asserting a new review methodology, Booking.com is asking the BGC (and the Board through the New gTLD Program Committee (NGPC)) to make a substantive evaluation of the confusability of the strings and to reverse the decision. In the context of the New gTLD Program, the Reconsideration process is not however intended for the Board to perform a substantive review of [SSP] decisions. While Booking.com may have multiple reasons as to why it believes that its application for .hotels should not be in contention set with .hoteis, Reconsideration is not available as a mechanism to re-try the decisions of the evaluation panels.¹⁰⁸

▪ Booking.com also claims that its assertions regarding the non-confusability of the .hotels and .hoteis strings demonstrate that “it is contrary to ICANN policy to put them in a contention set.” (Request, pages 6-7.) This is just a differently worded attempt to reverse the decision of the [SSP]. No actual policy or process is cited by Booking.com, only the suggestion that – according to Booking.com – the standards within the Applicant Guidebook on visual similarity should have resulted in a different outcome for the .hotels string. This is not enough for Reconsideration.¹⁰⁹

▪ Booking.com argues that the contention set decision was taken without material information, including Booking.com’s linguistic expert’s opinion, or other “information that would refute the mistaken contention that there is likely to be consumer confusion between ‘.hotels’ and ‘.hoteis.’” (Request, page 7.) However, there is no process point in the String Similarity Review for applicants to submit additional information. This is in stark contrast to the reviews set out in Section 2.2.2 of the Applicant Guidebook, including the Technical/Operational review and the Financial Review, which allow for the evaluators to seek clarification or additional information through the issuance of clarifying questions. (AGB, Section 2.2.2.3 (Evaluation Methodology).)¹¹⁰

▪ Just as the process does not call for additional applicant inputs into the visual similarity review, Booking.com’s call for further information on the decision to place .hotels and .hoteis in a contention set ... is similarly not rooted in any established ICANN process at issue.[...] While applicants may avail themselves of accountability mechanism to challenge decisions, the use of an accountability mechanism when there is no proper ground to bring a request for review under the selected mechanism does not then provide opportunity for additional substantive review of decisions already taken.¹¹¹

▪ [W]hile we understand the impact that Booking.com faces by being put in a contention set, and that it wishes for more narrative information regarding the [SSP’s] decision, no such narrative is called for in the process.¹¹²

▪ The Applicant Guidebook sets out the methodology used when evaluating visual similarity of strings. The process documentation provided by the String Similarity Review Panel describes the steps followed by the [SSP] in applying the methodology

¹⁰⁸ BGC Recommendation, p. 5.

¹⁰⁹ BGC Recommendation, p. 6.

¹¹⁰ BGC Recommendation, p. 6.

¹¹¹ BGC Recommendation, pp. 6-7.

¹¹² BGC Recommendation, p. 7.

set out in the Applicant Guidebook. ICANN then coordinates a quality assurance review over a random selection of [SSP's] reviews to gain confidence that the methodology and process were followed. That is the process used for a making and assessing a determination of visual similarity. Booking.com's disagreement as to whether the methodology should have resulted in a finding of visual similarity does not mean that ICANN (including the third party vendors performing String Similarity Review) violated any policy in reaching the decision (nor does it support a conclusion that the decision was actually wrong).¹¹³

▪ *The [SSP] reviewed all applied for strings according to the standards and methodology of the visual string similarity review set out in the Applicant Guidebook. The Guidebook clarifies that once contention sets are formed by the [SSP], ICANN will notify the applicants and will publish results on its website. (AGB, Section 2.2.1.1.1.) That the [SSP] considered its output as "advice" to ICANN (as stated in its process documentation) is not the end of the story. Whether the results are transmitted as "advice" or "outcomes" or "reports", the important query is what ICANN was expected to do with that advice once it was received. ICANN had always made clear that it would rely on the advice of its evaluators in the initial evaluation stage of the New gTLD Program, subject to quality assurance measures. Therefore, Booking.com is actually proposing a new and different process when it suggests that ICANN should perform substantive review (instead of process testing) over the results of the String Similarity Review Panel's outcomes prior to the finalization of contention sets.¹¹⁴*

▪ *As there is no indication that either the [SSP] or ICANN staff violated any established ICANN policy in reaching or accepting the decision on the placement of .hotels and .hotelis in a non-exact contention set, this Request should not proceed.¹¹⁵*

136. These excerpts of the BGC Recommendation not only illustrate the seriousness with which Booking.com's Request for Reconsideration was heard, they mirror considerations to which we fully subscribe and which we find apply as well, with equal force and effect, in the context of Booking.com's IRP Request.
137. It simply cannot be said – indeed, it is not even alleged by Booking.com – that the established process was not followed by the ICANN Board or any third party either in the initial string similarity review of .hotels or in the reconsideration process.
138. Booking.com was asked at the hearing to identify *with particularity* the ICANN Board's actions (including inactions) in this case that it claims are inconsistent with ICANN's Articles of Incorporation, Bylaws or the Guidebook and regarding which it asks the Panel to render a declaration. It identified four:
- The Board's adoption of certain provisions of the Guidebook, including the allegedly ill-defined, unfair and non-transparent procedures for selecting the SSP and supervising the SSP's performance of the string similarity review process. As discussed, any claims in this regard are time-barred.

¹¹³ BGC Recommendation, p. 7.

¹¹⁴ BGC Recommendation, p. 8.

¹¹⁵ BGC Recommendation, p. 10.

- The Board’s acceptance of the SSP determination. As ICANN argues, there was no action (or inaction) by the Board here, no decision made (or not made) by the Board or any other body to accept the SSP’s determination. The Guidebook provides that applied-for strings “will be placed in contention set” where the SSP determines the existence of visual similarity likely to give rise to user confusion. Simply put, under the Guidebook the Board is neither required nor entitled to intervene at this stage to accept or not accept the SSP’s determination. Booking.com is correct that the Board could nevertheless have stepped in and reversed the SSP determination under Section 5.1 (Module 5-4) of the Guidebook, but did not do so; that inaction is addressed below.
 - The Board’s denial of Booking.com’s Request for Reconsideration. As discussed above, there is nothing in the evidence that even remotely suggests that ICANN’s conduct in this regard was inconsistent with its Articles, Bylaws or the Guidebook. On the contrary, we have already stated that the detailed analysis performed by the BGC and the extensive consideration of the BGC Recommendation by the NGCP undermine any claim that ICANN failed to exercise due care and independent judgment, or that its handling of the Request for Reconsideration was inconsistent with applicable rules or policy. As discussed above, just as in the present IRP, the question in the reconsideration process is whether the established process was followed. This was the question that the BGC and NGPC asked themselves in considering Booking.com’s Request for Reconsideration, and which they properly answered in the affirmative in denying Booking.com’s request.
 - The Board’s refusal to “step in” and exercise its authority under Section 5.1 (Module 5-4) of the Guidebook to “individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community.” As pointed out by ICANN during the hearing, the fact that the ICANN Board enjoys such discretion and may choose to exercise it any time does not mean that it is bound to exercise it, let alone at the time and in the manner demanded by Booking.com. In any case, the Panel does not believe that the Board’s inaction in this respect was inconsistent with ICANN’s Articles of Incorporation or Bylaws or indeed with ICANN’s guiding principles of transparency and fairness, given (1) Booking.com’s concession that the string similarity review process was followed; (2) the indisputable conclusion that any challenge to the adoption of the SSP process itself is time-barred; (3) the manifestly thoughtful consideration given to Booking.com’s Request for Reconsideration by the BGC; and (4), the fact that, notwithstanding its protestations to the contrary, Booking.com’s real dispute seems to be with the process itself rather than how the process was applied in this case (given that, as noted, Booking.com concedes that the process was indeed followed).
139. The Panel further considers that these – in addition to any and all other potential (and allegedly reviewable) actions identified by Booking.com during the course of these proceedings – fail on the basis of Booking.com’s dual acknowledgement that it does not challenge the validity or fairness of the string similarity review process, and that that process was duly followed in this case.

140. Finally, the panel notes that Booking.com’s claim – largely muted during the hearing – regarding alleged “discrimination” as regards the treatment of its application for .hotels also founders on the same ground. Booking.com acknowledges that the established string similarity review process was followed; and there is absolutely no evidence whatsoever that .hotels was treated any differently than any other applied-for gTLD string in this respect. The mere fact that the *result* of the string similarity review of .hotels differed from the results of the reviews of the vast majority of other applied-for strings does not suggest discriminatory treatment. In any event, the Panel cannot but note the obvious, which is that .hotels is not alone in having been placed in contention by the SSP. So too was .hoteis; and so too were .unicom and .unicorn. Moreover, and once again, it is recalled that Booking.com does not claim to challenge the merits of the string similarity review, that is, the determination that .hotels and .hoteis are so visually similar as to warrant placement in a contention set.

D. Conclusion

141. In launching this IRP, Booking.com no doubt realized that it faced an uphill battle. The very limited nature of IRP proceedings is such that any IRP applicant will face significant obstacles in establishing that the ICANN Board acted inconsistently with ICANN’s Articles of Incorporation or Bylaws. In fact, Booking.com acknowledges those obstacles, albeit inconsistently and at times indirectly.
142. Booking.com purports to challenge “the way in which the [string similarity review] process was established, implemented and supervised by (or under the authority of) the ICANN Board”; yet it also claims that it *does not challenge the validity or fairness of the string similarity review process as set out in the Guidebook*. It asks the Panel to overturn the SSP’s determination in this case and to substitute an alternate result, in part on the basis of its own “expert evidence” regarding similarity and the probability of user confusion as between .hotels and .hoteis; yet it claims that it *does not challenge the merits of the SSP determination and it acknowledges that the process set out in the Guidebook was duly followed* in the case of its application for .hotels.
143. In sum, Booking.com has failed to overcome the very obstacles that it recognizes exist.
144. The Panel finds that Booking.com has failed to identify any instance of Board action or inaction, including any action or inaction of ICANN staff or a third party (such as ICC, acting as the SSP), that could be considered to be inconsistent with ICANN’s Articles of Incorporation or Bylaws or with the policies and procedures established in the Guidebook. This includes the challenged actions of the Board (or any staff or third party) in relation to what Booking.com calls the implementation and supervision of the string similarity review process generally, as well as the challenged actions of the Board (or any staff or third party) in relation to the string similarity review of .hotels in particular.
145. More particularly, the Panel finds that the string similarity review performed in the case of .hotels was not inconsistent with the Articles or Bylaws or with what Booking.com refers to as the “applicable rules” as set out in the Guidebook.
146. To the extent that the Board’s adoption and implementation of specific elements of the new gTLD Program and Guidebook, including the string similarity review process, could

potentially be said to be inconsistent with the principles of transparency or fairness that underlie ICANN's Articles and Incorporation and Bylaws (which the Panel does not say is the case), the time to challenge such action has long since passed.

147. Booking.com's IRP Request must be denied.

VII. THE PREVAILING PARTY; COSTS

148. Article IV, Section 3(18) of the Bylaws requires that the Panel "specifically designate the prevailing party." This designation is germane to the allocation of costs, given that Article IV, Section 3(18) provides that the "party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider."
149. The same provision of the Bylaws also states that "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."
150. Similarly, the Supplementary Procedures state, at Article 11:

The IRP PANEL shall fix costs in its DECLARATION. The party not prevailing in an IRP shall ordinarily be responsible for bearing all costs of the proceedings, but under extraordinary circumstances the IRP PANEL may allocate up to half of the costs to the prevailing party, taking into account the circumstances of the case, including the reasonableness of the parties' positions and their contribution to the public interest.

In the event the Requestor has not availed itself, in good faith, of the cooperative engagement or conciliation process, and the requestor is not successful in the Independent Review, the IRP PANEL must award ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.

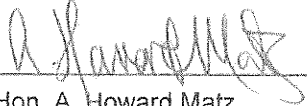
151. The "IRP Provider" is the ICDR, and, in accordance with the ICDR Rules, the costs to be allocated between the parties – what the Bylaws call the "costs of the IRP Provider", and the Supplementary Procedures call the "costs of the proceedings" – include the fees and expenses of the Panel members and of the ICDR (we refer to all of these costs as "**IRP costs**").
152. ICANN is undoubtedly the prevailing party in this case. That being said, the Panel considers that the nature and significance of the issues raised by Booking.com, and the contribution to the "public interest" of its submissions, are such that it is appropriate and reasonable that the IRP costs be shared equally by the parties. We consider that the extraordinary circumstances of case – in which some members of ICANN's New gTLD Program Committee have publicly declared that, in their view, the rules on the basis of which Booking.com's claims fail should be reconsidered by ICANN – warrants such a holding.
153. The Panel cannot grant Booking.com the relief that it seeks. A panel such as ours can only declare whether, on the facts as we find them, the challenged actions of ICANN are

or are not inconsistent with ICANN’s Articles of Incorporation and Bylaws. We have found that the actions in question are not inconsistent with those instruments. The process established by ICANN under its Articles of Incorporation and Bylaws and set out in the Guidebook was followed, and the time to challenge that process (which Booking.com asserts is not its intention in these proceedings in any event) has long passed.

154. However, we can – and we do – acknowledge certain legitimate concerns regarding the string similarity review process raised by Booking.com, discussed above, which are evidently shared by a number of prominent and experienced ICANN NGPC members. And we can, and do, encourage ICANN to consider whether it wishes to address these issues in an appropriate manner and forum, for example, when drafting the Guidebook for round two of the New gTLD Program or, more immediately, in the exercise of its authority under Section 5.1 (Module 5-4) of the Guidebook (which it may choose to exercise at any time, in its discretion) to consider whether, notwithstanding the result of the string similarity review of .hotels and .hoteis, approval of both of Booking.com’s and Despegar’s proposed strings would be in the best interest of the Internet community.

FOR THE FOREGOING REASONS, the Panel hereby declares:

- (1) Booking.com’s IRP Request is denied;
- (2) ICANN is the prevailing party;
- (3) In view of the circumstances, each party shall bear one-half of the costs of the IRP Provider, including the fees and expenses of the Panel members and the fees and expenses of the ICDR. As a result, the administrative fees and expenses of the ICDR, totaling US\$4,600.00, as well as the compensation and expenses of the Panelists totaling US\$163,010.05 are to be borne equally. Therefore, ICANN shall pay to Booking.com the amount of US\$2,300.00 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Booking.com
- (4) This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute the Final Declaration of this IRP Panel.



 Hon. A. Howard Matz
 Date: March 2, 2015

 David H. Bernstein
 Date:

 Stephen L. Drymer,
 Chair of the IRP Panel
 Date:

I, Hon. A. Howard Matz, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

March 2, 2015
Date


Hon. A. Howard Matz

I, David H. Bernstein, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

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Stephen L. Drymer


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Date:



David H. Bernstein
Date: March 2, 2015

Stephen L. Drymer,
Chair of the IRP Panel
Date:

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March 2, 2015
Date



David H, Bernstein

I, Stephen L. Drymer, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

Stephen L. Drymer

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154. However, we can – and we do – acknowledge certain legitimate concerns regarding the string similarity review process raised by Booking.com, discussed above, which are evidently shared by a number of prominent and experienced ICANN NGPC members. And we can, and do, encourage ICANN to consider whether it wishes to address these issues in an appropriate manner and forum, for example, when drafting the Guidebook for round two of the New gTLD Program or, more immediately, in the exercise of its authority under Section 5.1 (Module 5-4) of the Guidebook (which it may choose to exercise at any time, in its discretion) to consider whether, notwithstanding the result of the string similarity review of .hotels and .hoteis, approval of both of Booking.com's and Despegar's proposed strings would be in the best interest of the Internet community.

FOR THE FOREGOING REASONS, the Panel hereby declares:

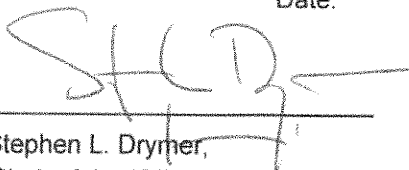
- (1) Booking.com's IRP Request is denied;
- (2) ICANN is the prevailing party;
- (3) In view of the circumstances, each party shall bear one-half of the costs of the IRP Provider, including the fees and expenses of the Panel members and the fees and expenses of the ICDR. As a result, the administrative fees and expenses of the ICDR, totaling US\$4,600.00, as well as the compensation and expenses of the Panelists totaling US\$163,010.05 are to be borne equally. Therefore, ICANN shall pay to Booking.com the amount of US\$2,300.00 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Booking.com
- (4) This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute the Final Declaration of this IRP Panel.

Hon. A. Howard Matz

Date:

David H. Bernstein

Date:



Stephen L. Drymer,
Chair of the IRP Panel

Date: 3 March 2015

I, Hon. A. Howard Matz, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

Hon. A. Howard Matz

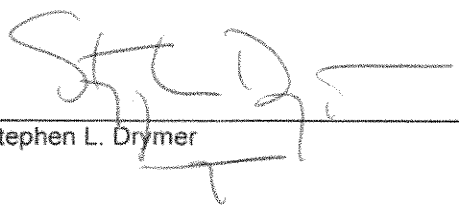
I, David H. Bernstein, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

David H. Bernstein

I, Stephen L. Drymer, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

3 March 2015
Date



Stephen L. Drymer

Resp. Ex. 27

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

DESPEGAR ONLINE SRL, DONUTS INC.,) ICDR CASE NO. 01-14-0001-5004
FAMOUS FOUR MEDIA LIMITED,)
FEGISTRY LLC, AND RADIX FZC,)
)
Claimants,)
)
and)
)
INTERNET CORPORATION FOR ASSIGNED)
NAMES AND NUMBERS,)
)
Respondent.)
_____)

**ICANN'S RESPONSE TO CLAIMANTS DESPEGAR ONLINE SRL, DONUTS INC.,
FAMOUS FOUR MEDIA LIMITED, FEGISTRY LLC, AND RADIX FZC'S
REQUEST FOR INDEPENDENT REVIEW PROCESS**

Jeffrey A. LeVee
Rachel Zernik
JONES DAY
Contact Information
Redacted

Counsel to Respondent
The Internet Corporation
For Assigned Names and Numbers

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INTRODUCTION

The Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby submits this Response to the Request for Independent Review Process (“IRP Request”) submitted by claimants Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, and Radix FZC (collectively, “Claimants”) on 10 March 2015.

1. The Claimants each applied to ICANN for the opportunity to operate the new generic top level domain (“gTLD”) .HOTEL. HOTEL Top-Level-Domain S.a.r.l (“HOTEL TLD”) also submitted an application for .HOTEL (“Application”), which was a “community application,” meaning that it proposes to operate .HOTEL “for the benefit of a clearly delineated community.”¹

2. Where, as here, a community-based application is in “contention” with other applications for the same proposed new gTLD, the community-based application is invited to participate in Community Priority Evaluation (“CPE”).² If the application prevails in CPE, only that application (and any other community-based applicants for the same string that have prevailed in CPE) is permitted to proceed.³ The New gTLD Applicant Guidebook (“Guidebook”) that ICANN and the community developed in order to evaluate new gTLD applications specifically states that the requirements to prevail in CPE are “very stringent” because a qualifying community-based application “eliminates all directly contending standard applications, regardless of how well qualified the latter may be.”⁴ In other words, it is intentionally difficult for applications to prevail in CPE.

¹ Guidebook § 1.2.3.1 (Cls. Ex. RM-5). Claimants submitted two sets of numbered exhibits with their IRP Request: (1) “Annexes”; and (2) “Reference Materials”. Citations to “Cls. Ex. Annex- ___” refer to exhibits submitted in Claimants’ Annexes, citations to “Cl. Ex. RM-___” refer to exhibits submitted in Claimants’ Reference Materials. Citations to “Resp. Ex. ___” refer to exhibits submitted by ICANN.

² *Id.* § 4.2

³ *Id.* § 4.2.2.

⁴ *Id.* § 4.2.3.

3. The CPE panel evaluating HOTEL TLD's Application ("CPE Panel") issued a report (the "Report") finding that the Application met the criteria set forth in the Guidebook to establish priority and therefore prevailed in CPE. Accordingly, the contention for .HOTEL has been resolved and only HOTEL TLD's Application will proceed.

4. Disappointed with this result, Claimants asked ICANN's Board Governance Committee ("BGC") to reconsider the CPE Panel's Report. The BGC denied the Claimants' request for reconsideration because the Claimants did not state a proper basis for reconsideration as defined in ICANN's Bylaws. The BGC also denied a second reconsideration request filed by Claimants, seeking reconsideration of ICANN staff's determination, pursuant to ICANN's Documentary Information Disclosure Policy ("DIDP"), that certain documents related to the CPE Panel's Report were not appropriate for public disclosure under the DIDP criteria.

5. In this IRP, the Claimants challenge the BGC's denial of their two reconsideration requests, as well as ICANN's appointment of the Economist Intelligence Unit ("EIU") as the third party provider to conduct CPEs. Claimants also challenge details of the CPE process set forth in the Guidebook, which Claimants argue violate their rights of "due process."

6. Booking.com (also represented by Claimant's counsel) made nearly identical claims in an IRP proceeding filed against ICANN in 2014. In that IRP, Booking.com, which had applied for the new generic top level domain .HOTELS, argued that ICANN's Board should have intervened with respect to a third-party expert report issued by one of ICANN's vendors in conjunction with the New gTLD Program.⁵ Booking.com also challenged the selection of the vendor and ICANN's rules, set forth in the Guidebook, establishing how the vendor would make

⁵ *Booking.com v. ICANN*, ICDR Case No. 50-20-1400-0247, Final Determination ("*Booking.com* Final Determination") ¶ 80 (Resp. Ex. 1).

its determination.⁶

7. In its Final Declaration dated March 3, 2015, the Booking.com IRP Panel unanimously rejected Booking.com’s claims, determining that Booking.com improperly sought to challenge the independent judgment of ICANN’s Board and that Booking.com’s challenges to the Guidebook, which was issued in 2012, were time-barred.⁷ In this memorandum, ICANN explains why this Panel should reach the same result.

8. IRPs are conducted pursuant to Article IV, Section 3 of ICANN’s Bylaws, which provide for a non-binding method of evaluating certain actions of ICANN’s Board of Directors.⁸ This IRP Panel has one (and only one) responsibility: to provide a declaration stating the Panels’ opinion as to “whether the Board has acted consistently with the provisions of [ICANN’s] Articles of Incorporation and Bylaws.”⁹

9. As explained herein, Claimants’ IRP should be denied because the ICANN Board has not taken any action that violates any provision of ICANN’s Articles or Bylaws. IRPs are not a vehicle to challenge third-party expert reports. Even though such a challenge is undeniably the focus of Claimants’ request, the Board is not involved in the creation of such reports, was not involved in any way in this particular Report, and has no obligation to review (substantively or otherwise) any such report. Claimants essentially propose that the ICANN Board should have conducted a substantive review of the CPE Report (and perhaps all CPE expert reports and all other third-party expert reports that have been issued in conjunction with the New gTLD Program). However, the Board and the ICANN community, in adopting the Guidebook, made clear that the Board would not undertake such a responsibility, and nothing in the Articles or

⁶ *Id.* ¶¶ 71-78.

⁷ *Id.* ¶¶ 129, 138, 146.

⁸ ICANN’s Bylaws (“Bylaws”), Art. IV, § 3 (Cls. Ex. RM-2), *also available at* <http://www.icann.org/en/about/governance/bylaws>.

⁹ *Id.*, Art. IV, § 3.4.

Bylaws requires the Board to do so.

10. ICANN understands that Claimants are disappointed that their applications for .HOTEL will not proceed due to the fact that HOTEL TLD's Application prevailed in CPE. However, as recommended by ICANN's Generic Names Supporting Organization ("GNSO"), which is the part of the ICANN community designated by the Bylaws as "responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains,"¹⁰ those applications representing a community are given priority in string contention. The Guidebook makes this clear, and there is no basis to conclude that such a preference is somehow a violation of ICANN's Articles or Bylaws.

11. When an applicant submits a community-based application, it is not, as the Claimants imply, simply seeking to "game the application process." As set forth in the Guidebook, community-based applicants agree to operate the applied-for gTLD "for the benefit of a clearly delineated community."¹¹ This involves implementing "dedicated registration and use policies for registrants in [the applied-for gTLD],"¹² policies that substantially restrict the sorts of domain name registrations a gTLD may accept and thereby might significantly limit the potential profitability of a gTLD.

12. Ultimately, neither the creation nor the acceptance of the CPE Panel's Report regarding HOTEL TLD's Application for .HOTEL constitutes ICANN Board action; nor does the appointment of the EIU by ICANN staff following a public request for proposals from interested firms. Moreover, ICANN's retention of the EIU was announced in 2011, meaning that any IRP challenge to that selection would have had to be filed within 30 days thereafter pursuant to ICANN's Bylaws. Just as in the Booking.com IRP, Claimants are years late in challenging

¹⁰ *Id.*, Art. X, § 1 .

¹¹ Guidebook, § 1.2.3.1 (Cls. Ex. RM-5).

¹² *Id.*

the retention of the EIU or the provisions of the Guidebook.

13. The only Board actions at issue here are the Board’s acceptance of the Guidebook and the decisions by the Board to reject Claimants’ two Reconsideration Requests. As discussed herein, in making those decisions, the Board followed ICANN Articles and Bylaws.

BACKGROUND FACTS

Background Information On ICANN

14. ICANN was formed in 1998. It is a California not-for-profit public benefit corporation. As set forth in its Bylaws, ICANN’s mission “is to coordinate, at the overall level, the global Internet’s system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet’s unique identifier systems,” including the domain name system (“DNS”).¹³

15. ICANN is a complex organization that facilitates input from stakeholders around the globe. ICANN has an international Board of Directors and over 300 staff members. Yet, ICANN is much more than just the corporation—it is a community of participants. In addition to the Board, the staff, and an Ombudsman,¹⁴ the ICANN community includes a Nominating Committee,¹⁵ three Supporting Organizations,¹⁶ four Advisory Committees,¹⁷ a group of technical expert advisors,¹⁸ and a large, globally distributed group of community members who participate in ICANN’s processes.

16. In its early years, and in accordance with its Core Values, ICANN focused on increasing the number of companies that could sell domain name registrations to consumers (“registrars”). ICANN also focused on expanding, although more slowly, the number of

¹³ Bylaws, Art. I, § 1 (Cls. Ex. RM-2).

¹⁴ *Id.*, Art. V.

¹⁵ *Id.*, Art. VII.

¹⁶ *Id.*, Arts. VIII-X.

¹⁷ *Id.*, Art. XI.

¹⁸ *Id.*, Art. XI-A, § 2.

companies that operate gTLDs (“registries”). In 2000, ICANN approved seven gTLDs in a “proof of concept” phase that was designed to confirm that the addition of new gTLDs would not adversely affect the stability and security of the Internet. In 2004 and 2005, ICANN approved a handful of additional TLDs.

Background Information On The New gTLD Program

17. The New gTLD Program (the “Program”) constitutes by far ICANN’s most ambitious expansion of the Internet’s naming system. The Program’s goals include enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs, including both new ASCII gTLDs and new non-ASCII, internationalized domain name (“IDN”) gTLDs.¹⁹ In developing the Program with the ICANN community, numerous versions of the Guidebook were prepared, distributed for public comment, and then revised as a result of the public input received. That process repeated many times and over many years until ultimately, ICANN went forward with the Program based on the version of the Guidebook published on 4 June 2012, which provides detailed instructions to gTLD applicants and sets forth the procedures as to how new gTLD applications would be evaluated. As a result, the Program has been a great success at achieving its goals: ICANN received 1,930 gTLD applications, and as of this writing, almost 600 new gTLDs have been added to the Internet, with hundreds more to come.

18. The Guidebook provides that new gTLD applicants may designate their applications as either standard or community-based, *i.e.*, “operated for the benefit of a clearly delineated community.”²⁰ Applicants for community-based gTLDs are expected to, among other things, “demonstrate an ongoing relationship with a clearly delineated community” and “have

¹⁹ IDN gTLDs are gTLDs that include characters not within the US-ASCII (American Standard Code for Information Exchange) or Latin alphabets.

²⁰ Guidebook, § 1.2.3.1 (Cls. Ex. RM-5).

applied for a gTLD string strongly and specifically related to the community named in [their] application.”²¹ The Guidebook provides that “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.”²²

19. If two or more applicants apply for identical or “confusingly similar” new gTLDs and complete all preliminary stages of evaluation, they are placed in a “contention set.”²³ A community-based applicant that is placed in a contention set may elect to proceed with Community Priority Evaluation.²⁴ If the applicant elects to proceed with CPE, its application is forwarded to an independent, third-party provider—the EIU—for review.²⁵

20. A panel constituted of EIU panelists (known as a “CPE Panel”) then evaluates the application.²⁶ If the applicant is found to meet the CPE criteria—meaning, if the CPE Panel awards the application at least 14 out of 16 possible points on those criteria—the applicant will prevail in CPE.²⁷ ICANN selected the EIU to handle CPEs following a public request for applications from firms interested in performing the various third party evaluations of new gTLD applications.²⁸ ICANN’s Board had no role in selecting the EIU (much less the individual EIU panelists), nor does the Board have any role in the analysis of each of the criterion by a panel or in the scoring of an application.

21. If the applicant prevails in CPE, it (and any other community-based applications

²¹ *Id.*, § 1.2.3.1.

²² *Id.*, § 1.2.3.2.

²³ *Id.*, § 4.1.

²⁴ *Id.*, § 4.2.

²⁵ See <http://newgtlds.icann.org/en/applicants/cpe>.

²⁶ CPE Panel Process Document (Cls. Ex. RM-15).

²⁷ Guidebook, § 4.2.2 (Cls. Ex. RM-5). The four CPE criteria are: (i) community establishment; (ii) nexus between proposed string and community; (iii) registration policies; and (iv) community endorsement. Each criterion is worth a maximum of four points. *Id.* § 4.2.3.

²⁸ See “Preparing Evaluators for the New gTLD Application Process,” available at <http://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>.

in the contention set that prevail in CPE) will proceed to the next stage of evaluation.²⁹ Other standard applications in the contention set (such as those submitted by Claimants) will not proceed because the community-based applications will have achieved priority.³⁰ As discussed further below, this outcome is consistent with the recommendation of the GNSO that applications representing communities be awarded priority in string contention.³¹

Background Information Regarding the DIDP

22. A principal element of ICANN’s approach to transparency and information disclosure is its commitment to make publicly available on its website a comprehensive set of materials concerning ICANN’s operational activities. In that regard, ICANN has identified various categories of documents that are made public as a matter of due course.³² In addition, ICANN’s Documentary Information Disclosure Policy (DIDP) allows community members to request that ICANN make public documentary information “concerning ICANN’s operational activities, and within ICANN’s possession, custody, or control” that is not already publicly available.³³

23. In responding to a request submitted pursuant to the DIDP, ICANN adheres to the “Process For Responding To ICANN’s Documentary Information Disclosure Policy (DIDP) Requests.”³⁴ ICANN staff first identifies all documents responsive to the DIDP request. Staff then reviews those documents to determine whether they fall under any of the DIDP’s Nondisclosure Conditions, which include, among others: (i) “[i]nternal information that, if

²⁹ Guidebook, § 4.2.2.

³⁰ *Id.*

³¹ ICANN Board Rationales for the Approval of the Launch of the New gTLD Program (“ICANN Board Rationales”) at 94 (Cls. Ex. RM-11).

³² See Documentary Information Disclosure Policy (Resp. Ex. 2), also available at <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

³³ *Id.*

³⁴ Process for Responding to DIDP Requests (Resp. Ex. 3), also available at <https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf>.

disclosed, would or would be likely to compromise the integrity of ICANN’s deliberative and decision-making process”; and (ii) “[i]nformation exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates.”³⁵ If the documents do fall within any of those Nondisclosure Conditions, ICANN staff determines whether the public interest in the disclosure of those documents outweighs the harm that may be caused by such disclosure.³⁶

Relevant Facts Regarding the Applications for .HOTEL

24. The Claimants each submitted an application for .HOTEL. Their applications were placed in a contention set with HOTEL TLD’s Application, which sought community-based treatment.

25. On 19 February 2014, HOTEL TLD’s Application for .HOTEL was invited to participate in CPE for .HOTEL, and was forwarded to the EIU for evaluation.³⁷ On 11 June 2014, the CPE Panel from the EIU issued its Report.³⁸ The Panel determined that the Application received fifteen out of sixteen possible points on the CPE criteria (tying for the highest score any application has received in CPE), and thereby prevailed in CPE.³⁹ Pursuant to the procedures set forth in the Guidebook, because the Application prevailed in CPE, the .HOTEL contention set was resolved and only the Application will proceed to contracting.⁴⁰

26. On 28 June 2014, the Claimants filed Reconsideration Request 14-34, seeking reconsideration of the Report (“First Reconsideration Request”).⁴¹ On 4 August 2014, Claimants filed a DIDP request seeking the publication of documents relating to the CPE

³⁵ Documentary Information Disclosure Policy (Resp. Ex. 2).

³⁶ *Id.*

³⁷ See <http://newgtlds.icann.org/en/applicants/cpe>.

³⁸ CPE Report (Cls. Ex. Annex-8).

³⁹ *Id.*

⁴⁰ Guidebook, § 4.2.2 (Cls. Ex. RM-5).

⁴¹ Request 14-34 (Cls. Ex. Annex-9).

Panel's Report ("DIDP Request").⁴²

27. On 22 August 2014, the BGC denied Claimants' First Reconsideration Request, finding that the Claimants had "failed to demonstrate that the [CPE] Panel acted in contravention of established policy or procedure" in rendering the Report."⁴³ On 3 September 2014, ICANN responded to DIDP Request ("DIDP Response").⁴⁴ ICANN identified documents responsive to the DIDP Request that were already publicly available, and noted that many of the requested documents, such as "CVs for the CPE Panel," "documentation regarding the appointment of the specific CPE Panel for the .HOTEL CPE," and "communications . . . with the evaluators that identify the scoring for any individual CPE," did not exist or were not in ICANN's possession.⁴⁵ With respect to those requested documents that were in ICANN's possession and were not already publicly available, ICANN explained that those documents would not be made publicly available because they were subject to various DIDP Nondisclosure Conditions, including the nondisclosure conditions protecting "information exchanged, prepared for, or derived from the deliberative and decision-making process" and "confidential business information and/or internal policies and procedures."⁴⁶

28. On 22 September 2014, Claimants filed Reconsideration Request 14-39, seeking reconsideration of the DIDP Response ("Second Reconsideration Request").⁴⁷ On 11 October 2014, the BGC denied the Second Reconsideration Request, finding that the Claimants had "failed to demonstrate that ICANN staff acted in contravention of established policy or procedure in responding to the DIDP Request."⁴⁸

⁴² DIDP Request (Cls. Ex. Annex-10).

⁴³ BGC Determination on Request 14-34 at 2 (Cls. Ex. Annex-11).

⁴⁴ DIDP Response (Cls. Ex. Annex-12).

⁴⁵ *Id.* at 2.

⁴⁶ *Id.* at 2-3.

⁴⁷ Reconsideration Request 14-39 (Cls. Ex. Annex-13).

⁴⁸ BGC Determination on Request 14-39 at 2 (Cls. Ex. Annex-14).

29. Claimants then initiated a Cooperative Engagement Process (“CEP”) with ICANN,⁴⁹ and then subsequently filed this IRP.

STANDARD OF REVIEW

30. The IRP is a unique, non-binding 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, and only to the extent that Board action was inconsistent with ICANN’s Articles or Bylaws.⁵⁰ The IRP Panel is tasked with providing its opinion as to whether the challenged Board actions violated ICANN’s Articles or Bylaws.⁵¹ ICANN’s Bylaws specifically identify the 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?⁵²

31. The IRP Panel is not to substitute its judgment for that of the Board.⁵³ As the IRP panel in *Booking.com v. ICANN* explained:

[s]o long as the Board acts without conflict of interest and with due care, it is entitled—indeed, required—to exercise its independent judgment in acting in what it believes to be the best interests of ICANN [...]. In other words, in making decisions the Board is required to conduct itself reasonably in what it considers to be ICANN’s best interests; where it does so, the only question is whether its actions are or are not consistent with the Articles, Bylaws, and, in

⁴⁹ Bylaws, Art. IV, § 3.14 (Cls. Ex. RM-2). Claimants are encouraged to enter into CEP with ICANN prior to filing IRP requests in order to resolve or narrow the issues that are contemplated to be brought to the IRP. *See* Cooperative Engagement Process, *available at* <https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf>.

⁵⁰ *Id.*, Art. IV, §§ 3.1, 3.2.

⁵¹ *See id.* Art. IV, §§ 3.2, 3.4.

⁵² *Id.*, Art. IV, § 3.4.

⁵³ *See id.*

this case, with the policies and procedures established by the Guidebook.”⁵⁴

32. ICANN has appointed the International Centre for Dispute Resolution (“ICDR”) as ICANN’s IRP Provider. ICANN’s Bylaws and the Supplementary Procedures that the ICDR has adopted specifically for ICANN IRP proceedings apply here.⁵⁵ The Bylaws provide that the IRP be conducted via “email and otherwise via the Internet to the maximum extent feasible.”⁵⁶ The IRP Panel may also hold meetings via telephone where necessary, and “[i]n the unlikely event that a telephone 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.”⁵⁷

33. Consistent with ICANN’s Bylaws, the IRP Panel is to issue a written declaration designating, among other things, the prevailing party.⁵⁸ The Board will give serious consideration to the IRP Panel’s opinion and, “where feasible,” shall consider the IRP Panel’s declaration at the Board’s next meeting.⁵⁹

ARGUMENT

34. Although they contend otherwise, it is apparent that Claimants are challenging the Report’s substantive determination that HOTEL TLD’s Application prevailed in CPE. For example, Claimants compare the Report to reports issued by other CPE panels and conclude that the Panel that resolved the HOTEL TLD Application must have erred because there are alleged inconsistencies in the various CPE reports. Further, Claimants’ requested relief—that the IRP

⁵⁴ *Booking.com* Final Declaration, ¶¶ 108-109 (Resp. Ex. 1).

⁵⁵ Absent a governing provision in ICANN’s Bylaws or the ICDR’s Supplemental Procedures, the ICDR Rules apply. In the event of any inconsistency between the Supplementary Procedures and the ICDR’s Rules, the Supplementary Procedures shall govern. *Id.*, Art. IV, § 3.8; *see also* ICDR Supplementary Procedures for Internet Corporation for Assigned Names and Numbers, Independent Review Process (“Supplementary Procedures”) § 2, (Resp. Ex. 4), *also available at* <https://www.adr.org/cs/groups/international/documents/document/z2uy/mde0/~edisp/adrstage2014403.pdf>.

⁵⁶ Bylaws, Art. IV, § 3.12 (Cls. Ex. RM-2).

⁵⁷ *Id.*, Art. IV, § 3.12; Supplementary Procedures ¶ 10 (Resp. Ex. 4).

⁵⁸ Bylaws, Art. IV, § 3.18 (Cls. Ex. RM-2).

⁵⁹ *Id.*, Art. IV, § 3.21.

Panel “[d]eclare that ICANN must reject the determination that [HOTEL TLD’s] application for .hotel be granted community priority”—confirms that this IRP is nothing more than an attack on the Report issued by the EIU.⁶⁰ Nevertheless, as discussed herein and made clear in ICANN’s Bylaws, IRPs are not a forum for challenging third party expert reports, which involve no Board action whatsoever.

35. Claimants identify only two Board actions—the approval of the criteria set forth in the Guidebook and the denial of Claimants’ Reconsideration Requests—but in each instance, the Board’s actions were consistent with and in accordance with ICANN’s Articles and Bylaws.

I. THE BOARD DID NOT SELECT THE EIU, AND ANY CHALLENGE TO THE SELECTION OF THE EIU IS TIME-BARRED IN ALL EVENTS.

36. Claimants argue that the Board “did not provide transparency” in its selection of the EIU to act as independent provider for CPE reviews and “never demonstrated” that the EIU met the stated requirements for serving as ICANN’s CPE provider.⁶¹ Yet the Board was not involved in the selection of the EIU; it was ICANN staff that selected the EIU via a public solicitation for Expressions of Interest.⁶² Because the Board played no role in the selection of the EIU, there simply is no basis for Independent Review of this matter because ICANN’s Bylaws limit IRPs to the review of actions of the Board.

37. Even if the ICANN staff’s selection of the EIU were a basis for Independent Review, Claimants’ argument is time-barred. ICANN’s call for Expressions of Interest was issued in 2009, and ICANN announced that it had selected the EIU in October 2011. Both the selection process and the criteria for selection (set forth in detail in the call for Expressions of Interest)

⁶⁰ IRP Request ¶ 70. The IRP Panel has no authority to grant affirmative relief. Rather, the IRP Panel is limited to stating its opinion by “declaring whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws” and *recommending* 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. Bylaws, Art. IV, §§ 3.4, 3.11(c-d).

⁶¹ IRP Request ¶¶ 43-47.

⁶² See ICANN Call for Expressions of Interest for a New gTLD Comparative Evaluation Panel (Cls. Ex. Annex-18); see also <http://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>.

were made public.⁶³ If Claimants had concerns with the selection process or with the selection of the EIU, they were obligated to have raised those concerns at the time, not years later and only after the issuance of a CPE Report with which they disagree. ICANN’s Bylaws require that IRPs be initiated within 30 days of the Board decision to be reviewed, not over four years later.⁶⁴

38. Finally, even if the selection of the EIU could be deemed Board action (which it is not), and even if the Claimants’ argument were not time-barred (which it is), the Claimants offer no evidence that the EIU failed to meet the criteria set forth in ICANN’s solicitation for Expressions of Interest—specifically, that interested firms have a plan for “ensuring fairness, nondiscrimination, and transparency” and “ensuring that evaluation teams . . . consist of qualified individuals.”⁶⁵ Rather, since there is no such evidence, the Claimants claim that various CPE panels have had “failures,” and that this should create a “strong presumption that appropriate selection criteria were not met.”⁶⁶ However, the mere fact that Claimants disagree with the substantive conclusion of a CPE panel does not demonstrate any “failure,” much less constitute evidence that the EIU failed to meet the criteria set forth in ICANN’s solicitation for Expressions of Interest.

II. CLAIMANTS’ CHALLENGES TO THE GUIDEBOOK’S CPE PROCEDURES ARE UNSUPPORTED AND TIME BARRED.

39. Claimants argue that the CPE process set forth in the Guidebook is flawed because it does not provide for: (1) a substantive review or appeals mechanism; and (2) the identification of the specific EIU evaluators who constituted the CPE Panel.⁶⁷ Again, Claimants’

⁶³ Details and announcements regarding each stage of the selection process were posted on ICANN’s website. *See* <http://newgtlds.icann.org/en/about/evaluation-panels-selection-process>.

⁶⁴ Bylaws, Art. IV, § 3.3 (30-day limitation period for IRP claims) (Cls. Ex. RM-2).

⁶⁵ ICANN Call for Expressions of Interest for a New gTLD Comparative Evaluation Panel at 6 (Cls. Ex. Annex-18).

⁶⁶ IRP Request ¶ 47.

⁶⁷ *Id.* ¶¶ 57-62.

arguments find no support in the Articles or the Bylaws, and the time for Claimants to have objected to the procedures set forth in the Guidebook has long since passed.

40. As detailed in the Board's Rationales for the Approval of the Launch of the New gTLD Program, issued in June 2011, the application evaluation procedures, including the CPE procedure (and the decision to grant successful community-based applications priority in cases of string contention), were adopted by the ICANN Board after years of rigorous policy development and implementation that included extensive review and analysis by ICANN, as well as input and comment from legal counsel, numerous ICANN committees, Internet stakeholders, and community members from around the world, all in compliance with ICANN's Articles and Bylaws.⁶⁸

41. Specifically, in 2005, ICANN's GNSO began a policy development process to consider the widespread introduction of new gTLDs. Two years later, again in accordance with the ICANN Bylaws, the GNSO issued a set of policy recommendations regarding the New gTLD Program, which included a recommendation that applications representing communities be awarded priority in string contention.⁶⁹ In June 2008, the ICANN Board approved the GNSO's policy recommendations regarding the New gTLD Program, including its recommendation regarding community priority (as the Board is required to do under the Bylaws unless a supermajority of the Board believes that the recommendations are not in the best interests of the ICANN community or ICANN).⁷⁰

42. Between October 2008, when ICANN issued its first version of the Guidebook, and June 2012, when the current version of the Guidebook was issued, ICANN engaged with legal counsel, held numerous public comment sessions, and considered advice from ICANN

⁶⁸ ICANN Board Rationales at 93-105 (Cls. Ex. RM-11).

⁶⁹ *Id.* at 94.

⁷⁰ Board Resolutions 2008.06.26.02-03 (Cls. Ex. RM-8); Bylaws, Annex A, § 9(a) (Cls. Ex. RM-2).

supporting organizations and advisory committees.⁷¹ ICANN repeatedly revised the CPE process to reflect public comments received on each version of the Guidebook. For example, due to public comments on an early version of the Guidebook expressing “desire for greater clarity around the standards to be used for [community priority] evaluation,” ICANN added “detailed explanatory notes for each of the [CPE] criteria to give additional guidance to applicants” into the Guidebook.⁷²

43. Ultimately, the Board and the community approved the CPE process contained in the Guidebook, which specifically does not set forth either: (1) an appeals or substantive review mechanism; or (2) any requirement that the identities of individual evaluators be made public. This was based in part on the Board’s finding that the process was sufficient to “validate the designation given to community-based applications” and “assess a preference for community-based applications in a contention set.”⁷³

44. All of the policy development work, implementation, and decision-making that culminated in the current version of the Guidebook was open, fair and transparent; it led to clear and predictable procedures. All of this work and the results of this work are fully consistent with ICANN Articles and Bylaws.

45. Claimants’ attack on the CPE process is also deficient because the current version of the Guidebook was published on 4 June 2012 following an extensive review process, including public comment on multiple drafts, as set forth above.⁷⁴ Despite having ample opportunity to do so, Claimants did not object to CPE process at the time the Guidebook was

⁷¹ ICANN Board Rationales at 95-97 (Cls. Ex. RM-11).

⁷² *Id.* at 96.

⁷³ The Board approved the then-current version of the Guidebook in June 2011. *See* <https://www.icann.org/resources/board-material/resolutions-2011-06-20-en>. There are no substantive differences between the version of the Guidebook approved at that time and the current 4 June 2012 version of the Guidebook.

⁷⁴ *See* Guidebook, Preamble (Cls. Ex. RM-5).

implemented. If Claimants had concerns related to these issues, they were properly pursued at the time.

46. As the IRP Panel in *Booking.com v. ICANN* found:

the time has long since passed for Booking.com or any other interested party to ask an IRP panel to review the actions of the ICANN Board in relation to the establishment of the string similarity review process, including Booking.com’s claims that specific elements of the process and the Board decisions to implement those elements are inconsistent with ICANN’s Articles and Bylaws. Any such claims, even if they had any merit, are long since time-barred by the 30-day limitation period set out in Article IV, Section 3(3) of the Bylaws.⁷⁵

47. While the expert determination process at issue in this IRP is different—namely, the CPE process rather than the string similarity review process—the *Booking.com* IRP Panel’s reasoning applies equally. Because both processes were developed years ago and incorporated into a Guidebook issued in 2012, challenges to both are “long since” time-barred.

III. ICANN’S BOARD PROPERLY DENIED CLAIMANTS’ FIRST RECONSIDERATION REQUEST AND HAD NO OBLIGATION TO INTERVENE FURTHER WITH RESPECT TO THE EXPERT PANEL’S DETERMINATION.

48. Claimants argue that they are entitled to independent review because the Board “should have corrected” what Claimants view to be “the mistakes in the CPE process” leading to the CPE Report.⁷⁶ Claimants correctly note that the Guidebook provides that, in “exceptional circumstances,” such as when accountability mechanisms such as reconsideration or independent review are invoked, “the Board might individually consider an application.”⁷⁷ Indeed, that is precisely what occurred in this case. Claimants sought reconsideration of the CPE Report.⁷⁸ The BGC, which is delegated with the authority to make such determinations on behalf of the Board,

⁷⁵ *Booking.com.com* Final Declaration ¶ 129 (Resp. Ex. 1).

⁷⁶ IRP Request ¶ 64.

⁷⁷ Guidebook § 5.1 (Cls. Ex. RM-5).

⁷⁸ Reconsideration Request 14-34 (Cls. Ex. Annex-9).

individually considered HOTEL TLD's Application in order to assess whether the CPE Panel had violated any established policy or procedure in rendering the CPE Report.⁷⁹

49. Claimants' First Reconsideration Request challenged the substance of the CPE Report. Claimants argued, as they do in their IRP Request, that the CPE Panel incorrectly applied the CPE criteria in determining that HOTEL TLD's Application prevailed in CPE. However, as the BGC pointed out in its Determination, "the reconsideration process does not call for the BGC to perform a substantive review of CPE Reports,"⁸⁰ which would involve exactly the sort of comprehensive appellate review that the Board (and the community) determined it would not undertake. The BGC did, however, address each of Claimants' complaints with the CPE Panel's scoring of HOTEL TLD's Application, noting that in each case, Claimants' complaint was that the number of points awarded by the Panel was "wrong," not that the CPE Panel had violated any ICANN policy or procedure in scoring the Application.⁸¹

50. The BGC also examined each of Claimants' contentions regarding the process followed by the CPE Panel, including that: "(1) the standard applicants are not given enough information regarding the identity or qualifications of the Panelist to assess potential conflicts; (2) the materials considered by the Panel are not publicly posted; and (3) the Panel provided insufficient 'analysis and reasons' for its conclusions."⁸² The BGC correctly noted that the Guidebook process "does not provide for any of the benefits that the Requesters claim they did not receive during CPE of the Application," and that allowing late-asserted challenges to the Guidebook process would "undermine the stability of the New gTLD Program and ICANN's

⁷⁹ BGC Determination on Request 14-34 (Cls. Ex. Annex-11).

⁸⁰ *Id.* at 7.

⁸¹ *Id.* at 5-9.

⁸² *Id.* at 10-11.

accountability mechanisms.”⁸³ As discussed above, the evaluation procedures set forth in the Guidebook were developed as part of an extended, transparent process involving the reasoned judgment of ICANN’s Board and the Internet community. Nothing about those procedures violates ICANN’s Articles or Bylaws, and the Claimants’ time to challenge those procedures has long since passed.

51. Claimants do not identify any ICANN Article or Bylaws provision that the BGC allegedly violated in reviewing their First Reconsideration Request. Claimants simply object to the BGC’s adherence to the standard for Reconsideration Requests, which calls for the BGC to review only whether the actions of the third-party evaluators “contradict[ed] established ICANN policy(ies).”⁸⁴ The BGC plainly did not violate any Article or Bylaws provision in adhering to the Bylaws standard for Reconsideration Requests.

52. Claimants similarly have identified no Article or Bylaws provision violated by the ICANN Board in exercising its independent judgment not to intervene further with respect to the CPE Report. As the *Booking.com* IRP Panel found, “the fact that the ICANN Board enjoys [the] discretion [to individually consider an application for a New gTLD] and may choose to exercise it at any time does not mean that it is bound to exercise it, let alone at the time and in the manner demanded by [a claimant].”⁸⁵

53. It is not the role of the BGC (or, for that matter, this IRP Panel) to second-guess the substantive determinations of independent, third-party evaluators. The decision not to have ICANN (much less ICANN’s Board) perform substantive reviews of third party evaluators’

⁸³ *Id.* at 10.

⁸⁴ Bylaws, Art. IV, § 2.2(a) (Cls. Ex. RM-2). The Bylaws make reconsideration available only to challenge actions of ICANN’s staff or Board, but the BGC has determined that “the reconsideration process can properly be invoked for challenges to determinations rendered by panels formed by third party service providers, such as the EIU, where it can be stated that a Panel failed to follow the established policies or procedures in reaching its determination, or that staff failed to follow its procedures or policies in accepting that determination.” BGC Determination on Request 14-34 at 4 (Cls. Ex. Annex-11).

⁸⁵ *Booking.com* Final Determination ¶ 138 (Resp. Ex. 1).

reports reflects a considered decision of ICANN’s Board, made after significant public input and comment, that third party experts (and not ICANN) should be resolving these types of issues with respect to the hundreds of gTLD applications that were expected and the 1,930 applications that ICANN in fact received.

IV. CLAIMANTS’ CONTENTION THAT THE CPE PANEL ERRED IS IRRELEVANT, BUT IS IN ANY EVENT WITHOUT MERIT.

54. In evaluating HOTEL TLD’s Application, the CPE Panel applied the CPE criteria and found that the community as defined in the Application, the “global Hotel Community,” was clearly defined, had numerous entities dedicated to it, had documented evidence of community activities, and was active prior to September 2007.⁸⁶ The CPE Panel further found that that community was of considerable size and that its pursuits were of a “lasting, non-transient nature.”⁸⁷ The CPE Panel also evaluated the nexus between the applied-for string, .HOTEL, and the community the Application is meant to serve, and found that “the string both “identify[d] the name of the community as defined in the application” and “h[ad] no other significant meaning beyond identifying [that] community.”⁸⁸ Next, the CPE Panel determined that the Application included the required registration policies—restricting registrations in .HOTEL to community members and “includ[ing] rules for content and use for registrants that are consistent with the articulated community-based purpose” of the gTLD—as well as the required enforcement and appeals mechanisms.⁸⁹ Finally, the CPE panel determined that the Application had documented support from recognized community institutions, and opposition only from groups of “negligible size” or that did not have an “association with the applied for string.”⁹⁰ The CPE Panel therefore

⁸⁶ CPE Report at 1-3 (Cls. Ex. Annex-8).

⁸⁷ *Id.* at 3.

⁸⁸ *Id.* at 3-4.

⁸⁹ *Id.* at 4-5.

⁹⁰ *Id.* at 5-6.

awarded the Application 15 out of 16 possible points, concluding that the Application “met the requirements specified in the [] Guidebook” for community priority.⁹¹

55. Claimants disagree with those findings, and their IRP Request seeks to challenge the merits of the CPE Report. However, there was no Board action with respect to the CPE Report, and the Claimants’ disagreement with that report is not a basis for independent review. Moreover, Claimants’ only evidence that the CPE Panel in fact erred is the bare allegation that because certain other, completely separate, applications for entirely different strings did not prevail in CPE⁹² then .HOTEL TLD’s Application also should not have prevailed. Claimants’ argument is baseless. The outcome of those completely unrelated CPEs have no bearing on the outcome of the CPE regarding .HOTEL TLD’s Application.

56. Furthermore, Claimants’ argument relies on inaccurate characterizations of the CPE Panel’s Report. For example, Claimants argue that the CPE did not “take[] up” the requirement, set out in the CPE criteria, that a community be “represented by at least one entity that encompasses the entire community as defined by the applicant.”⁹³ In fact, the CPE Panel found that there were “several entities [] mainly dedicated to the community” as defined by .HOTEL TLD, including the International Hotel and Restaurant Association, Hospitality Europe, the American Hotel & Lodging Association, and the China Hotel Association.⁹⁴ Similarly, Claimants argue that the CPE Panel incorrectly concluded that .HOTEL TLD’s Application included an appeals mechanism if a registration is denied. In fact, as noted by the CPE Panel, the Application does include such an appeals mechanism—a registrant has the “right

⁹¹ *Id.* at 1.

⁹² IRP Request ¶¶ 49-52.

⁹³ *Id.* ¶ 51.

⁹⁴ CPE Report at 2 (Cls. Ex. Annex-8).

to request a review of [a] denial [of the registrant's right to hold a domain name on .HOTEL].”⁹⁵

57. As described in detail in the BGC's denial of the Requesters' First Reconsideration Request, the CPE Panel did not deviate from any of the required CPE criteria in evaluating .HOTEL TLD's Application.⁹⁶ Claimants' opinion that there is not sufficient awareness and self-recognition in the community defined in .HOTEL TLD's Application does not mean that the CPE Panel erred. And, contrary to what Claimants state, while the majority of applications have not prevailed in CPE, some in fact have, including European Broadcasting Union's application for .RADIO, which seeks to represent the radio industry.⁹⁷

V. THE BGC PROPERLY DENIED CLAIMANTS' SECOND RECONSIDERATION REQUEST

58. Finally, Claimants argue that the BGC violated ICANN's Articles and Bylaws in denying Claimants' Second Reconsideration Request, which sought reconsideration of the ICANN staff's determination, pursuant to the DIDP, that certain documents related to the CPE Report were not appropriate for publication.⁹⁸ Again Claimants fail to identify any Article or Bylaws provision that the BGC violated in denying the Second Reconsideration Request.

59. The BGC's determination on the Second Reconsideration Request addressed each of Claimants' arguments and concluded that ICANN staff had followed the DIDP in determining that certain documents related to the CPE Report were subject to Nondisclosure Conditions, and that the public interest in disclosing those documents did not outweigh the harm that might be caused by such disclosure.⁹⁹

60. ICANN considers the principle of transparency to be a fundamental safeguard in

⁹⁵ .HOTEL TLD Application § 20(e) (Cls. Ex. Annex-7); *see also* CPE Report at 5 (Cls. Ex. Annex-8).

⁹⁶ BGC Determination on Request 14-34 at 5-9 (Cls. Ex. Annex-11).

⁹⁷ CPE Report on .RADIO (Resp. Ex. 5).

⁹⁸ IRP Request ¶ 65.

⁹⁹ BGC Determination on Request 14-39 at 7-11 (Cls. Ex. Annex-14).

assuring that its bottom-up, multistakeholder operating model remains effective and that outcomes of its decision making are in the public benefit and are derived in a manner accountable to all stakeholders. As the BGC noted in its determination, the DIDP is not a litigation tool designed to “make pieces of information available to specific interested parties.”¹⁰⁰ Rather, it is “intended to ensure that information contained in documents concerning ICANN’s operational activities, and within ICANN’s possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality.”¹⁰¹

61. Not every document in ICANN’s possession is properly disclosed to the wider public. As discussed in the DIDP Response, Claimants’ DIDP Request sought documents containing confidential business information and documents, the public disclosure of which could compromise the integrity of ICANN and/or the EIU’s deliberative process.¹⁰² The BGC correctly determined that ICANN staff followed the DIDP in weighing the public interest in the disclosure of those documents and ultimately determining that the documents were not properly made public; no breach of any obligation under ICANN’s Articles or Bylaws occurred.

VI. RESPONSE TO THE CLAIMANTS’ REQUESTED RELIEF.

62. Claimants’ IRP Request should be denied in its entirety, including its request for relief. Claimants request that this IRP Panel issue a declaration that “ICANN must reject the determination that [HOTEL TLD’s] application for .hotel be granted community priority.”¹⁰³ An IRP Panel, however, is explicitly 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, if requested, that the Board stay any action or decision or take any interim action

¹⁰⁰ *Id.* at 11.

¹⁰¹ *Id.* (quoting the Documentary Information Disclosure Policy).

¹⁰² DIDP Response at 1-3 (Cls. Ex. Annex-12).

¹⁰³ IRP Request at 25.

until such time as the Board reviews and acts upon the opinion of the IRP Panel.¹⁰⁴ Even if there were a basis for some kind of relief here (which there is not), neither this Panel nor any IRP panel has the authority to award affirmative relief.¹⁰⁵

CONCLUSION

63. The thrust of Claimants' IRP filing is that the EIU wrongly granted community priority status to one of Claimants' competitors. The EIU's substantive decision, however, did not involve – and was never intended to involve – any ICANN Board conduct. As such, it is not subject to independent review. The fact that the Claimants disagree with the CPE Panel's Report does not properly give rise to an IRP because the ICANN Board does not perform substantive reviews of such reports, and ICANN's Articles and Bylaws do not require it to do so. In addition, Claimants' belated challenge to the CPE process set forth in the Guidebook is both time-barred and unsupported.

64. Further, ICANN's conduct with respect to its evaluation of both of the Claimants' Reconsideration Requests was fully consistent with ICANN's Articles and Bylaws—Claimants provide no argument otherwise. For these reasons, ICANN urges the Panel to declare that ICANN's Board acted consistently with ICANN's Articles and Bylaws with respect to the issues raised in Claimants' IRP Request.

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¹⁰⁴ Bylaws, Art. IV, §§ 3.4, 3.11(c-d) (Cls. Ex. RM-2).

¹⁰⁵ Indeed, the IRP Panel in the first ever IRP found that “[t]he IRP cannot ‘order’ interim measures but do no more than ‘recommend’ them, and this until the Board ‘reviews’ and ‘acts upon the opinion’ of the IRP.” See Advisory Declaration of IRP Panel, *ICM Registry, LLC v. ICANN*, ICDR Case No. 50 117 T 00224 08, ¶ 133, available at <https://www.icann.org/en/system/files/files/-panel-declaration-19feb10-en.pdf>.

Respectfully submitted,

JONES DAY

Dated: April 17, 2015

By: Jeffrey A. LeVee /RLZ
Jeffrey A. LeVee
Counsel for Respondent ICANN

Resp. Ex. 28

Corn Lake, LLC (“Applicant”)

-v-

Internet Corporation for Assigned Names and Numbers (“ICANN”)

PROCEDURAL ORDER NO. 2

Production Ruling

IRP Panel:

Mark Morril

Michael Ostrove

Wendy Miles QC (Chair)

17 November 2015

1. In accordance with Procedural Order No. 1, document production has proceeded as follows:
 - a. On 6 November 2015 the Claimant submitted its Requests to Produce Further Documents (the “**Requests to Produce**”);
 - b. on Tuesday 10 November the Respondent responded with objections to the Request to Produce (the “**Production Dispute**”); and
 - c. on Thursday 12 November 2015 Claimant referred a dispute arising out of production.

In addition, the Respondent sent a further letter to the Panel dated 17 November 2015.

2. Procedural Order requires the Panel to rule on any further production of documents by Tuesday 17 November 2015 (“**Production Ruling**”).
3. The Production Ruling below is made taking into account all of the aforementioned submissions by the Parties. (A summary of the Parties’ submissions, and the Panel’s rulings, is attached at **Annex A.**)
4. The Claimant has made five separate Requests to Produce. As to three of the Requests, the Respondent states that it has determined preliminarily that no responsive, non-privileged documents exist. Respondent has agreed to produce responsive, non-privileged documents in response to each of the requests by the production deadline of December 4, 2015.
5. The Respondent nevertheless objects to all five Requests on the ground and to the extent that they seek the production of documents that are protected from disclosure by: (a) the attorney-client privilege; (b) the attorney work product doctrine; and/or (c) any other applicable privilege or doctrine.
6. The Panel orders the Respondent, in accordance with its agreement, to produce all non-privileged documents responsive to Requests No 1 to 5, inclusive, which are not otherwise public or in the Claimant’s custody, possession or control, by 4 December 2015.

7. In order to facilitate the Respondent's identification and production of responsive, non-privileged documents, the Panel further orders the Parties to meet, confer, and strive to identify in good faith such further production they can agree to make, or to forego. The Parties are further ordered to inform the Panel of the outcome within 10 days.
8. No documents are to be withheld on the basis of confidentiality. Any confidential documents are to be sent to the Panel for review of confidentiality and, if necessary, appropriate protection measures will be put in place.
9. At this stage, no order is made for production of any privilege log. However, and for the avoidance of doubt, the Panel notes for the purpose of ICANN's identification of production documents, ICANN is reminded that the mere sending of a communication to or from an internal ICANN attorney does not render that communication privileged. The communication also must be made to facilitate the rendition of professional legal services to the client; therefore, the sending or receiving ICANN attorney must be functioning in the capacity of a lawyer (as opposed to Board Member or business advisor, for example) at the relevant time. Further, the mere fact that an in-house ICANN attorney is copied on an e-mail, including as one of many addressees, is insufficient by itself to establish the attorney-client privilege.
10. The Panel notes its power, under ICDR Rules Article 20(7), to allocate costs and draw adverse inferences. In appropriate circumstances, these powers are available to address unreasonable requests for disclosure as well as unreasonable objections or failures to fully perform reasonable requests for disclosure. At this stage, no orders are made pursuant to these powers.

Signed:



Wendy Miles QC
On behalf of the Panel

Date: 17 November 2015

ANNEX A

No.	Document(s) requested	Reasons for request	Objections to request	Response to objections	Panel's decision
1.	All communications among, by or to the Board or ICANN staff in connection with Reconsideration Request 14-3 by Corn Lake, LLC.	ICDR Rules Art. 21: "The tribunal may, upon application, require a party to make available to another party documents in that party's possession not otherwise available to the party seeking the documents, that are reasonably believed to exist and to be relevant and material to the outcome of the case."	<p>ICANN objects to Request No. 1 because it seeks documents that are neither relevant nor likely to lead to the discovery of admissible evidence, especially insofar as Corn Lake's IRP Request does not challenge ICANN's response to Reconsideration Request 14-3. Moreover, ICANN objects on the ground and to the extent that Request No. 1 seeks the production of documents that are protected from disclosure by: (a) the attorney-client privilege; (b) the attorney work product doctrine; and/or (c) any other applicable privilege or doctrine. ICANN also objects to Request No. 1 because it is vague and ambiguous with respect to the phrase "in connection with." ICANN is construing Request No. 1 as seeking documents only concerning Reconsideration Request 14-3 itself, not all documents related to any matter referenced therein.</p> <p>Notwithstanding the above, ICANN has determined preliminarily that no responsive, non-privileged documents exist with respect to Request No. 1. ICANN will confirm that this is the case, or produce responsive, non-privileged documents by the production deadline of December 4, 2015.</p>	<p>Corn Lake carefully targeted its requests to obtain only those documents specific to its application for the .CHARITY gTLD. As such, we do not view ICANN's stated objections to the relevance and breadth of the requests as well taken.</p> <p>Corn Lake does not seek documents disclosed publicly, as on the ICANN website, but rather those not otherwise available. Its requests thus fall well within the scope of the ICDR Rules.</p> <p>Our primary issue lies with the extent to which ICANN might withhold responsive documents. For that reason, we believe a privilege log appropriate to enable Corn Lake – and the Panel, if requested – to assess the propriety of any claim of privilege ICANN might make. Otherwise, neither Corn Lake nor the Tribunal has any means of making such an evaluation, or of determining the extent of documents that ICANN may withhold. The notion that</p>	ICANN is ordered to produce all non-privileged documents responsive to Request No 1, which are not otherwise public or in the Claimant's custody, possession or control, by 4 December 2015.

No.	Document(s) requested	Reasons for request	Objections to request	Response to objections	Panel's decision
				<p>ICANN involves attorneys in every area covered by the document requests – such that creating a log would present a “massive burden” – seems overblown, particularly given the focus of the requests solely on matters having to do with Corn Lake’s .CHARITY application.</p>	
2.	<p>All documents containing information considered by the Board or ICANN staff in connection with Reconsideration Request 14-3, other than those accessible at https://www.icann.org/resources/pages/14-3-2014-01-30-en.</p>	As above.	<p>ICANN objects to Request No. 2 because it likewise seeks documents that are neither relevant nor likely to lead to the discovery of admissible evidence, especially insofar as Corn Lake’s IRP Request does not challenge ICANN’s response to Reconsideration Request 14-3. Moreover, ICANN objects on the ground and to the extent Request No. 2 seeks the production of documents that are protected from disclosure by: (a) the attorney-client privilege; (b) the attorney work product doctrine; and/or (c) any other applicable privilege or doctrine. ICANN also objects to Request No. 2 because it is vague and ambiguous with respect to the phrase “in connection with.” ICANN is construing Request No. 2 as seeking documents only concerning Reconsideration Request 14-3 itself, not all documents related to any matter referenced therein.</p> <p>ICANN has determined preliminarily that no responsive, non-privileged documents exist with respect to Request No. 2. ICANN will</p>	As above.	<p>ICANN is ordered to produce all non-privileged documents responsive to Request No 2, which are not otherwise public or in the Claimant’s custody, possession or control, by 4 December 2015.</p>

No.	Document(s) requested	Reasons for request	Objections to request	Response to objections	Panel's decision
			confirm that this is the case, or produce responsive, non-privileged documents by the production deadline of December 4, 2015.		
3.	All communications among, by or to the Board or ICANN staff regarding the applicability to a .CHARITY gTLD of "Category 1 Safeguards as Public Interest Commitments in Specification 11 of the New gTLD Registry Agreement," as appears in Attachment 5, Annex A of Corn Lake's Reconsideration Request No. 14-3.	As above.	<p>ICANN objects to Request No. 3 on the ground and to the extent it seeks the production of documents that are protected from disclosure by: (a) the attorney-client privilege; (b) the attorney work product doctrine; and/or (c) any other applicable privilege or doctrine. ICANN also objects to Request No. 3 because it is vague and ambiguous with respect to the phrase "as appears in[.]"</p> <p>ICANN has determined preliminarily that no responsive, non-privileged documents exist with respect to Request No. 3. ICANN will confirm this is the case, or produce responsive, non-privileged documents by the production deadline of December 4, 2015.</p>	As above.	ICANN is ordered to produce all non-privileged documents responsive to Request No 3, which are not otherwise public or in the Claimant's custody, possession or control, by 4 December 2015.
4.	All communications between ICANN and the Independent Objector related to .CHARITY.	As above.	<p>ICANN objects to Request No. 4 on the ground and to the extent it seeks the production of documents that are protected from disclosure by: (a) the attorney-client privilege; (b) the attorney work product doctrine; and/or (c) any other applicable privilege or doctrine.</p> <p>ICANN will produce non-privileged documents responsive to Request No. 4.</p>	As above.	ICANN is ordered to produce all non-privileged documents responsive to Request No 4, which are not otherwise public or in the Claimant's custody, possession or control, by 4 December 2015.

No.	Document(s) requested	Reasons for request	Objections to request	Response to objections	Panel's decision
5.	<p>All communications between ICANN, including the Board or its staff, on the one hand, and the ICC, Tim Portwood or either of them, on the other hand, concerning the community objections against any one or more of the following: (a) Application ID 1-961-6109 by Excellent First Limited for .慈善 (Charity IDN); (b) Application ID 1-1241-87032 by Spring Registry Limited for .CHARITY; or (c) Application ID 1-1384-49318 by Corn Lake LLC for .CHARITY.</p>	As above.	<p>ICANN objects to Request No. 5 on the ground and to the extent it seeks the production of documents that are protected from disclosure by: (a) the attorney-client privilege; (b) the attorney work product doctrine; and/or (c) any other applicable privilege or doctrine. ICANN will produce non-privileged documents responsive to Request No. 5.</p> <p>Further with respect to Request No. 5, you propounded a request for documents that was substantively similar in <i>Donuts, Inc. v. ICANN ("Donuts")</i>, seeking communications between the ICC and ICANN related to the objection determinations you challenged in that matter. Among other documents, ICANN produced to you weekly emails sent from the ICC to ICANN that attached spreadsheets detailing the administrative progress for each objection determination. You later criticized ICANN for producing these documents, as they presumably did not advance your position. ICANN is proceeding under the assumption that you do not want to receive the same types of documents in this matter redacted to show only information relevant to .CHARITY (whereas the documents produced in <i>Donuts</i> contained unredacted information related only to the strings at issue there) unless you promptly inform us otherwise.</p>	As above.	<p>ICANN is ordered to produce all non-privileged documents responsive to Request No 5, which are not otherwise public or in the Claimant's custody, possession or control, by 4 December 2015.</p>

Resp. Ex. 29

INDEPENDENT REVIEW PROCESS
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

ICDR Case No. 01-14-0001-5004

In the matter of an Independent Review

DOT REGISTRY, LLC,

Claimant

And

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Respondent

PROCEDURAL ORDER NO. 3

Independent Review Panel:

May 4, 2015

The Honorable Charles N. Brower

Mark Kantor

M. Scott Donahey, Chair

1. Subject to the execution of the Confidentiality and Non-Disclosure Undertaking described in Paragraph 8 below and set out in Annex A, attached hereto, no later than May 18, 2015, the Internet Corporation for Assigned Names and Numbers ("ICANN") shall produce to the Panel and Dot Registry, LLC ("Dot Registry") all documents responsive to the Panel's directive as set out in Section 2 of Amended Procedural Order No. 2. The documents produced to Dot Registry may be redacted only as to exclude pricing information or information pertaining to the geographic names review, and ICANN shall label the redacted information accordingly (e.g., "confidential pricing information redacted"). The documents that ICANN produces to the Panel shall be unredacted and shall indicate the portions of the documents that have been redacted in the production made to Dot Registry and the reasons given for such redactions.

2. The Panel notes that the Panel sought *inter alia* all non-privileged communications and other documents within ICANN's possession, custody or control referring or describing:
 - (a) The engagement by ICANN of the EIU to perform Community Priority Evaluations. That request covers internal ICANN documents and communications, not just communications with the EIU, referring to or describing the subject of the Panel's request (the engagement to perform Community Priority Evaluations).
 - (b) The work done and to be done by the EIU with respect to the Determination of the ICANN Board of Governance Committee on Dot Registry's Reconsideration Request. That request again covers internal ICANN documents and communications, not solely communications with EIU, referring to or describing the subject of the Panel's request (the work done and to be done by the EIU with respect to the Determination), as well as the work-product itself in its various draft and final iterations.
 - (c) Consideration by ICANN of the work performed by the EIU in connection with Dot Registry's applications. That request again covers internal ICANN documents and communications, not solely communications with the EIU, referring to or describing the subject of the Panel's request (consideration by ICANN of the work performed by the EIU).

- (d) Acts done and decisions taken by ICANN with respect to the work performed by the EIU in connection with Dot Registry's applications. That request again covers internal ICANN documents and communications, not solely communications with the EIU, referring to or describing the subject of the Panel's request (both acts done and decisions taken by ICANN with respect to the EIU work.).

The Panel notes that in Section 2 of its Amended Procedural Order No. 2 material provided by ICANN to the Panel, but not yet to Dot Registry, appears not to include, among other matters, internal ICANN documents and communications referring to or describing the above subject matters that the Panel would have expected to be created in the ordinary course of ICANN in connection with these matters. It may be that the Panel was less than clear in its requests. The Panel requests that ICANN consider again whether the production was fully responsive to the foregoing requests.

3. The production shall include names of EIU personnel involved in the work contemplated and the work performed by the EIU in connection with Dot Registry's applications for .INC, .LLC, and/or .LLP with respect to Dot Registry's Reconsideration Requests Nos. 14-30 (.LLC), 14-32 (.INC), and 14-33 (.LLP), dated July 24, 2014, in that such information may be relevant to the requirements of Sections 2.4.2, 2.4.3, 2.4.3.1, and 2.4.3.2 of Module 2 of the Applicant Guidebook. The Panel expects strict compliance by Dot Registry and its counsel with Paragraph 8 of this Order and the Confidentiality and Non-Disclosure Undertaking procedure set forth therein and in Annex 1 attached hereto.
4. Not later than June 8, 2015, Dot Registry shall be entitled to make an additional written submission, to which shall be appended the witness statements, expert reports and other relevant and material evidence on which Dot Registry relies. Without limiting such matter as Dot Registry may choose to address therein, that written submission shall (a) identify with specificity the material disputed matters of fact, if any, at issue in this proceeding, (b) identify with specificity its allegations under ICANN Bylaws Art. IV, Sections 3.1 and 3.2, if any, that ICANN has failed to comply with its obligations under paragraph 4 of the ICANN Articles of Incorporation, and (c) discuss the standard to be applied by this Panel in resolving any such allegations to the extent the allegation does not fall within the scope of the standards of review mentioned in ICANN Bylaws Art. IV, Section 4 or Supplementary Procedures Paragraph 8.
5. Not later than June 29, 2015, ICANN shall be entitled to make an additional written submission, to which shall be appended the witness statements, expert

reports and other relevant and material evidence on which ICANN relies, replying to Dot Registry's additional submission referred to in paragraph 3, above. Without limiting such matters as ICANN may choose to address therein, that written submission shall (a) identify with specificity the material disputed matters of fact, if any, at issue in this proceeding, (b) address any specific allegations made by Dot Registry under ICANN Bylaws Art. IV, Sections 3.1 and 3.2, if any, that ICANN has failed to comply with its obligations under Paragraph 4 of the ICANN Articles of Incorporation, and (c) discuss the standard to be applied by this Panel in resolving any such allegation by Dot Registry to the extent such allegation does not fall within the scope of the standards of review mentioned in ICANN Bylaws Art. IV, Section 4 or Supplementary Procedures Paragraph 8.

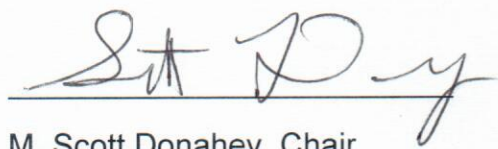
6. The Panel shall advise the parties (a) promptly after receipt of the documents referred to in Paragraphs 1, 2, and 3, above, as to page limits, if any, for the written submissions referred to in Paragraphs 4 and 5, above, and (b) promptly after receipt of ICANN's written submission referred to in Paragraph 5, above, as to whether the Panel would find an additional round of written submissions useful.
7. The Panel defers ruling on Dot Registry's request for authorization to make document production requests and Dot Registry's request for an in-person hearing until after completion of the steps specified in Paragraphs 1 through 5, above and of any further step ordered by the Panel as provided in Paragraph 6(b), above.
8. CONFIDENTIALITY
 - a. Documents exchanged by the parties or produced to the Panel at the Panel's directive which contain confidential information:
 - i. May not be used for any purpose other than participating in ICDR Case No. 01-14-0001-5004, and;
 - ii. May not be referenced in any, and any information contained therein must be redacted from any, written submissions prior to public posting.
 - b. All counsel, paralegals, and employees engaged by the law firm representing a party who is the recipient of confidential information as set out in subparagraph a, above, and who as part of their work handle or otherwise work with such confidential information, and the principals of the party who is

the recipient of such confidential information shall each execute a Confidentiality and Non-Disclosure Undertaking in the form attached hereto as Annex 1.

9. The parties are directed to meet and confer and attempt to agree on the meaning of the term "local law," as contained in Article 4 of ICANN's Articles of Incorporation and to advise the Panel of the nature of any such agreement. If by May 15, 2015, the parties have been unable to agree on the meaning of "local law," then, no later than May 20, 2015, each party shall submit to the Panel a letter brief of no more than five pages presenting its position as to the meaning of "local law" and the authorities therefor.

10. The parties are directed to meet and confer and attempt to agree that in circumstances where a provision of the ICANN By-Laws may be found to be inconsistent with a provision of the ICANN Articles of Incorporation, whether the provision of the ICANN By-Laws or that of the ICANN Articles of Incorporation is to prevail, and to advise the Panel of the nature of any such agreement. If by May 15, 2015, the parties have been unable to agree on which provision is to prevail, then, no later than May 20, 2015, each party shall submit to the Panel a letter brief of no more than three pages presenting its position as to the provision that should prevail and the authorities therefor.

On behalf of the Panel

A handwritten signature in black ink, appearing to read "M. Scott Donahey", written over a horizontal line.

M. Scott Donahey, Chair

ANNEX 1

CONFIDENTIALITY AND NON-DISCLOSURE UNDERTAKING

This Confidentiality and Non-Disclosure Undertaking is given to the Independent Review Panel in the matter of an Independent Review Proceeding between Dot Registry, LLC and the Internet Corporation for Assigned Names and Numbers, ICDR Case No. 01-14-0001-5004. I acknowledge that as part of my work on or participation in this proceeding I will be given access to information that is of a personal, confidential, and/or proprietary nature which has been designated as "CONFIDENTIAL."

I therefore agree:

1. To hold all CONFIDENTIAL information in trust and strict confidence and agree that shall be used only for the purposes of this IRP Proceeding and shall not be used for any other purpose, or disclosed to any third party.
2. To keep any CONFIDENTIAL information in my control or possession in a physically secure location to which only I and other persons who have signed a Confidentiality and Non-Disclosure Undertaking have access.
3. To take all necessary steps to keep such CONFIDENTIAL information secure and to protect such CONFIDENTIAL information from unauthorized use, reproduction or disclosure.
4. To maintain the absolute confidentiality of personal, confidential and proprietary information in recognition of the privacy and proprietary rights of others at all times, and in both professional and personal situations.
5. To comply with all privacy laws and regulations which apply to the collection, use, and disclosure of personal information.
6. At the conclusion of the IRP Proceedings or upon order, to return all confidential information, including code, written notes, photographs, sketches, memoranda, or notes taken in any format to whomever gave me access to such CONFIDENTIAL information, who in turn will see that it is returned to the party who provided such information.
7. Not to disclose CONFIDENTIAL information to any employee, consultant, or third party, unless he or she is authorized to, has agreed to, and has executed this Confidentiality and Non-Disclosure Undertaking and has been approved by the IRP Panel in its official capacity to possess such CONFIDENTIAL information.

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I understand that this Confidentiality and Non-Disclosure Undertaking survives the termination of ICDR Case No. 01-14-0001-5004.

The laws of the State of California shall govern this Agreement and its validity, construction and effect.

I fully understand and accept the responsibilities set out above relating to CONFIDENTIAL information.

Name: _____

Email Address: _____

Signature: _____ Date: _____

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Resp. Ex. 30

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

Between:)	
)	
Vistaprint Limited)	
)	
<i>Claimant</i>)	
)	
v.)	ICDR Case No. 01-14-0000-6505
)	
INTERNET CORPORATION FOR)	
ASSIGNED NAMES AND NUMBERS)	
)	
<i>Respondent</i>)	
_____)	

FINAL DECLARATION OF THE INDEPENDENT REVIEW PANEL

IRP Panel:

Geert Glas
Siegfried H. Elsing
Christopher S. Gibson (Chair)

I. Introduction

1. This Final Declaration (“Declaration”) is issued in this Independent Review Process (“IRP”) pursuant to Article IV, §3 of the Bylaws of the Internet Corporation for Assigned Names and Numbers (“Bylaws”; “ICANN”). In accordance with the Bylaws, the conduct of this IPR is governed by the International Centre for Dispute Resolution’s (“ICDR”) International Dispute Resolution Procedures, amended and effective June 1, 2014 (“ICDR Rules”), as supplemented by the Supplementary Procedures for Internet Corporation for Assigned Names and Numbers Independent Review Process, dated December 21, 2011 (“Supplementary Procedures”).
2. Claimant, Vistaprint Limited (“Vistaprint”), is a limited company established under the laws of Bermuda. Vistaprint describes itself as “an Intellectual Property holding company of the publicly traded company, Vistaprint NV, a large online supplier of printed and promotional material as well as marketing services to micro businesses and consumers. It offers business and consumer marketing and identity products and services worldwide.”¹
3. Respondent, ICANN, is a California not-for-profit public benefit corporation. As stated in its Bylaws, ICANN’s mission “is to coordinate, at the overall level, the global Internet’s system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet’s unique identifier systems.”² In its online Glossary, ICANN describes itself as “an internationally organized, non-profit corporation that has responsibility for Internet Protocol (IP) address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) Top-Level Domain name system management, and root server system management functions.”³
4. As part of this mission, ICANN’s responsibilities include introducing new top-level domains (“TLDs”) to promote consumer choice and competition, while maintaining the stability and security of the domain name system (“DNS”).⁴ ICANN has gradually expanded the DNS from the original six generic top-level domains (“gTLDs”)⁵ to include 22 gTLDs and over 250 country-code TLDs.⁶ However, in June 2008, in a significant step ICANN’s Board of Directors (“Board”) adopted recommendations developed by one of its policy development bodies, the Generic Names Supporting Organization (“GNSO”), for

¹ Request for Independent Review Process by Vistaprint Limited dated June 11, 2014 (“Request”), ¶ 12.

² ICANN’s Response to Claimant Vistaprint Limited’s Request for Independent Review Process dated July 21, 2014 (“Response”), ¶ 13; Bylaws, Art. I, § 1.

³ Glossary of commonly used ICANN Terms, at <https://www.icann.org/resources/pages/glossary-2014-02-03-en#i> (last accessed on Sept. 15, 2015).

⁴ Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers (“Affirmation of Commitments”), Article 9.3 (Sept. 30, 2009), available at <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en> (last accessed on Sept. 15, 2015).

⁵ The original six gTLDs consisted of .com; .edu; .gov; .mil; .net; and .org.

⁶ Request, ¶ 14.

introducing additional new gTLDs.⁷ Following further work, ICANN's Board in June 2011 approved the "New gTLD Program" and a corresponding set of guidelines for implementing the Program – the gTLD Applicant Guidebook ("Guidebook").⁸ ICANN states that "[t]he New gTLD Program constitutes by far ICANN's most ambitious expansion of the Internet's naming system."⁹ The Guidebook is a foundational document providing the terms and conditions for new gTLD applicants, as well as step-by-step instructions and setting out the basis for ICANN's evaluation of these gTLD applications.¹⁰ As described below, it also provides dispute resolution processes for objections relating to new gTLD applications, including the String Confusion Objection procedure ("String Confusion Objection" or "SCO").¹¹ The window for submitting new gTLD applications opened on January 12, 2012 and closed on May 30, 2012, with ICANN receiving 1930 new gTLD applications.¹² The final version of the Guidebook was made available on June 4, 2012.¹³

5. This dispute concerns alleged conduct by ICANN's Board in relation to Vistaprint's two applications for a new gTLD string, ".WEBS", which were submitted to ICANN under the New gTLD Program. Vistaprint contends that ICANN's Board, through its acts or omissions in relation to Vistaprint's applications, acted in a manner inconsistent with applicable policies, procedures and rules as set out in ICANN's Articles of Incorporation ("Articles") and Bylaws, both of which should be interpreted in light of the Affirmation of Commitments between ICANN and the United States Department of Commerce ("Affirmation of Commitments").¹⁴ Vistaprint also states that because ICANN's Bylaws require ICANN to apply established policies neutrally and fairly, the Panel must consider other ICANN policies relevant to the dispute, in particular, the policies in Module 3 of the Guidebook regarding ICANN's SCO procedures, which Vistaprint claims were violated.¹⁵
6. Vistaprint requests that the IRP Panel provide the following relief:
 - Find that ICANN breached its Articles, Bylaws, and the Guidebook;
 - Require that ICANN reject the determination of the Third Expert in the String

⁷ ICANN Board Resolution 2008.06.26.02, at <http://www.icann.org/en/groups/board/documents/resolutions-26jun08-en.htm> (last accessed on Sept. 11, 2015).

⁸ ICANN Board Resolution 2011.06.20.01, at <http://www.icann.org/en/groups/board/documents/resolutions-20jun11-en.htm> (last accessed on Sept. 11, 2015). ICANN states that the "Program's goals include enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs." Response, ¶ 16. The Guidebook is available at <http://newgtlds.icann.org/en/applicants/agb> (last accessed on Sept. 13, 2015).

⁹ Response, ¶ 16.

¹⁰ Response, ¶ 16.

¹¹ The Guidebook is organized into Modules. Module 3 (Objection Procedures) is of primary relevance to this IRP case.

¹² Response, ¶ 5; New gTLD Update (May 30, 2012) on the close of the TLD Application system, at <http://newgtlds.icann.org/en/announcements-and-media/announcement-3-30may12-en> (last accessed on Sept. 11, 2015).

¹³ gTLD Applicant Guidebook, Version 2012-06-04.

¹⁴ Affirmation of Commitments.

¹⁵ Request, ¶ 58; Vistaprint's First Additional Submission, ¶ 34.

Confusion Objection proceedings involving Vistaprint (“*Vistaprint SCO*”)¹⁶, which found that the two proposed gTLD strings – .WEBS and .WEB – are confusingly similar, disregard the resulting “Contention Set”, and allow Vistaprint’s applications for .WEBS to proceed on their own merits;

- In the alternative, require that ICANN reject the *Vistaprint SCO* determination and organize a new independent and impartial SCO procedure, according to which a three-member panel re-evaluates the Expert Determination in the *Vistaprint SCO* taking into account (i) the ICANN Board’s resolutions on singular and plural gTLDs¹⁷, as well as the Board’s resolutions on the DERCars SCO Determination, the United TLD Determination, and the Onlineshopping SCO Determination¹⁸, and (ii) ICANN’s decisions to delegate the .CAR and .CARS gTLDs, the .AUTO and .AUTOS gTLDs, the .ACCOUNTANT and ACCOUNTANTS gTLDs, the .FAN and .FANS gTLDs, the .GIFT and .GIFTS gTLDs, the .LOAN and .LOANS gTLDs, the .NEW and .NEWS gTLDs and the .WORK and .WORKS gTLDs;
 - Award Vistaprint its costs in this proceeding; and
 - Award such other relief as the Panel may find appropriate or Vistaprint may request.
7. ICANN, on the other hand, contends that it followed its policies and processes at every turn in regards to Vistaprint’s .WEBS gTLD applications, which is all that it is required to do. ICANN states its conduct with respect to Vistaprint’s applications was fully consistent with ICANN’s Articles and Bylaws, and it also followed the procedures in the Guidebook. ICANN stresses that Vistaprint’s IRP Request should be denied.

II. Factual and Procedural Background

8. This section summarizes basic factual and procedural background in this case, while leaving additional treatment of the facts, arguments and analysis to be addressed in sections III (ICANN’s Articles, Bylaws, and Affirmation of Commitments), IV (Summary of Parties’ Contentions) and V (Analysis and Findings).

A. Vistaprint’s Application for .WEBS and the String Confusion Objection

9. Vistaprint’s submitted two applications for the .WEBS gTLD string, one a standard application and the other a community-based application.¹⁹ Vistaprint states that it applied to operate the .WEBS gTLD with a view to reinforcing the reputation of its website

¹⁶ Request, Annex 24 (Expert Determination in the SCO case *Web.com Group, Inc. v. Vistaprint Limited*, ICDR Consolidated Case Nos. 50 504 T 00221 13 and 50 504 T 00246 13 (Jan. 24, 2014) (“*Vistaprint SCO*”).

¹⁷ ICANN Board Resolution 2013.06.25.NG07.

¹⁸ ICANN Board Resolution 2014.10.12.NG02.

¹⁹ Request, Annex 1 (Application IDs: 1-1033-22687 and 1-1033-73917). A community-based gTLD is a gTLD that is operated for the benefit of a clearly delineated community. An applicant designating its application as community-based must be prepared to substantiate its status as representative of the community it names in the application. A standard application is one that has not been designated as community-based. Response, ¶ 22 n. 22; *see also* Glossary of commonly used terms in the Guidebook, at <http://newgtlds.icann.org/en/applicants/glossary> (last accessed on Sept. 13, 2015).

creation tools and hosting services, known under the identifier “Webs”, and to represent the “Webs” community.²⁰ The .WEBS gTLD would identify Vistaprint as the Registry Operator, and the products and services under the .WEBS gTLD would be offered by and for the Webs community.²¹

10. Seven other applicants applied for the .WEB gTLD string.²² Solely from the perspective of spelling, Vistaprint’s proposed .WEBS string differs by the addition of the letter “s” from the .WEB string chosen by these other applicants. On March 13, 2013, one of these applicants, Web.com Group, Inc. (the “Objector”), filed two identical String Confusion Objections as permitted under the Guidebook against Vistaprint’s two applications.²³ The Objector was the only .WEB applicant to file a SCO against Vistaprint’s applications. The Objector argued that the .WEBS and .WEB strings were confusingly similar from a visual, aural and conceptual perspective.²⁴ Vistaprint claims that the Objector’s “sole motive in filing the objection was to prevent a potential competitor from entering the gTLD market.”²⁵

11. As noted above, Module 3 of the Guidebook is relevant to this IRP because it provides the objection procedures for new gTLD applications. Module 3 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.”²⁶ The module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination. The Module states that

“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.”²⁷

12. Module 3, § 3.2 (Public Objection and Dispute Resolution Process) provides that

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.

13. A formal objection may be filed on any one of four grounds, of which the SCO procedure is relevant to this case:

String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD

²⁰ Request, ¶ 5.

²¹ Request, ¶ 17. Vistaprint states that the Webs community is predominantly comprised of non-US clients (54% non-US, 46% US).

²² Request, ¶ 5.

²³ Request, ¶ 32.

²⁴ Request, ¶ 32.

²⁵ Request, ¶ 80.

²⁶ Guidebook, Module 3, p. 3-2. Module 3 also contains an attachment, the New gTLD Dispute Resolution Procedure (“New gTLD Objections Procedure”), which sets out the procedural rules for String Confusion Objections.

²⁷ Guidebook, Module 3, p. 3-2.

or to another applied-for gTLD string in the same round of applications.²⁸

14. According to the Guidebook, the ICDR agreed to serve as the dispute resolution service provider (“DRSP”) to hear String Confusion Objections.²⁹ On May 6, 2013, the ICDR consolidated the handling of the two SCOs filed by the Objector against Vistaprint’s two .WEBS applications.³⁰
15. Section 3.5 (Dispute Resolution Principles) of the Guidebook provides that the “objector bears the burden of proof in each case”³¹ and sets out the relevant evaluation criteria to be applied to SCOs:

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.
16. On May 23, 2013, Vistaprint filed its responses to the Objector’s String Confusion Objections.
17. On June 28, 2013, the ICDR appointed Steve Y. Koh as the expert to consider the Objections (the “First Expert”). In this IRP Vistaprint objects that this appointment was untimely.³²
18. On 19 July 2013, the Objector submitted an unsolicited supplemental filing replying to Vistaprint’s response, to which Vistaprint objected.³³ Vistaprint claims that the supplemental submission should not have been accepted by the First Expert as it did not comply the New gTLD Objections Procedure.³⁴ The First Expert accepted the Objector’s submission and permitted Vistaprint to submit a sur-reply, which Vistaprint claims was subject to unfair conditions imposed by the First Expert.³⁵ Vistaprint filed its sur-reply on

²⁸ Guidebook, § 3.2.1.

²⁹ Guidebook, § 3.2.3.

³⁰ Request, ¶ 23, n. 24. The ICDR consolidated the handling of cases nos. 50 504 T 00221 13 and 50 504 T 00246 13. The Guidebook provides in § 3.4.2 that “[o]nce the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections.”

³¹ Guidebook, § 3.5. This standard is repeated in Article 20 of the Objection Procedure, which provides that “[t]he Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.”

³² Request, ¶ 33.

³³ Response, ¶ 26.

³⁴ Request, ¶ 42. Article 17 provides that “[t]he Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response.” Article 18 states that “[i]n order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.”

³⁵ Vistaprint states that “this surreply was not to exceed 5 pages and was to be submitted within 29 days. This page limit and deadline are in stark contrast with the 58 day period taken by [the Objector] to submit a 6-page

August 29, 2013.

19. On September 18, 2013 the ICDR informed the parties that the expert determination for the SCO case would be issued on or about October 4, 2013.³⁶ Vistaprint claims that this extension imposed an unjustified delay beyond the 45-day deadline for rendering a determination.³⁷
20. On October 1, 2013, the ICDR removed the First Expert due to a conflict that arose. On October 14, 2013, the ICDR appointed Bruce W. Belding as the new expert (the “Second Expert”).³⁸ Vistaprint claims that the New gTLD Objections Procedure was violated when the First Expert did not maintain his independence and impartiality and the ICDR failed to react to Vistaprint’s concerns in this regard.³⁹
21. On October 24, 2013, the Objector challenged the appointment of the Second Expert, to which Vistaprint responded on October 30, 2013. The challenge was based on the fact that the Second Expert had served as the expert in an unrelated prior string confusion objection, which Vistaprint maintained was not a reason for doubting the impartiality or independence of the Second Expert or accepting the challenge his appointment.⁴⁰ On November 4, 2013, the ICDR removed the Second Expert in response to the Objector’s challenge.⁴¹ On November 5, 2013, Vistaprint requested that the ICDR reconsider its decision to accept the challenge to the appointment of the Second Expert. On November 8, 2013, the ICDR denied this request.⁴² Vistaprint claims that the unfounded acceptance of the challenge to the Second Expert was a violation of the New gTLD Objections Procedure and the ICDR’s rules. The challenge was either unfounded and the ICDR should have rejected it, or it was founded, which would mean that the ICDR appointed the Second Expert knowing that justifiable doubts existed as to the Expert’s impartiality and independence.⁴³
22. On November 20, 2013, the ICDR appointed Professor Ilhyung Lee to serve as the expert (the “Third Expert”) to consider the Objector’s string confusion objection. No party objected to the appointment of Professor Lee.⁴⁴

reply with no less than 25 additional annexes. Vistaprint considers that the principle of equality of arms was not respected by this decision.” Request, ¶ 42.

³⁶ Request, Annex 14.

³⁷ Request, ¶ 33; *see* New Objections Procedure, Art. 21(a).

³⁸ Response, ¶ 27; Request, Annexes 15 and 16.

³⁹ Request, ¶¶ 36 and 43. New Objections Procedure, Art. 13(c).

⁴⁰ Request, ¶ 37.

⁴¹ Response, ¶ 28; Request, ¶ 39, Annex 19.

⁴² Request, ¶ 39, Annex 21.

⁴³ Request, ¶¶ 37-40. Vistaprint states that the Objector’s challenge was “based solely on the fact that Mr. Belding had served as the Panel in an unrelated string confusion objection” administered by ICDR. Request, ¶ 37. ICDR “was necessarily aware” that Mr. Belding had served as the Panel in the string confusion objection proceedings. “If [ICDR] was of the opinion that the fact that Mr. Belding served as the Panel in previous proceedings could give rise to justifiable doubts as to the impartiality and independence of the Panel, it should never have appointed him in the case between Web.com and Vistaprint.”

⁴⁴ Response, ¶ 28; Request, ¶ 39, Annex 22.

23. On 24 January 2014, the Third Expert issued its determination in favor of the Objector, deciding that the String Confusion Objection should be sustained.⁴⁵ The Expert concluded that

*“the <.webs> string so nearly resembles <.web> – visually, aurally and in meaning – that it is likely to cause confusion. A contrary conclusion, the Panel is simply unable to reach.”*⁴⁶

24. Moreover, the Expert found that

*“given the similarity of <.webs> and <.web>..., it is probable, and not merely possible, that confusion will arise in the mind of the average, reasonable Internet user. This is not a case of ‘mere association’.”*⁴⁷

25. Vistaprint claims that the Third Expert failed to comply with ICANN’s policies by (i) unjustifiably accepting additional submissions without making an independent assessment, (ii) making an incorrect application of the burden of proof, and (iii) making an incorrect application of the substantive standard set by ICANN for String Confusion Objections.⁴⁸ In particular, Vistaprint claims that ICANN has set a high standard for a finding of confusing similarity between two gTLD strings, and the Third Expert’s determination did not apply this standard and was arbitrary and baseless.⁴⁹

26. Vistaprint concludes that “[i]n sum, the cursory nature of the Decision and the arbitrary and selective discussion of the parties’ arguments by the [Third Expert] show a lack of either independence and impartiality or appropriate qualification.”⁵⁰ Vistaprint further states that it took 216 days for the Third Expert to render a decision in a procedure that should have taken a maximum of 45 days.⁵¹

27. The Guidebook § 3.4.6 provides that:

*The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.*⁵²

28. Vistaprint objects that ICANN simply accepted the Third Expert’s ruling on the String Confusion Objection, without performing any analysis as to whether the ICDR and the Third Expert complied with ICANN’s policies and fundamental principles, and without

⁴⁵ Request, ¶ 39, Annex 24 (Expert Determination, *Web.com Group, Inc. v. Vistaprint Limited*, ICDR Case Nos. 50 504 221 13 and 50 504 246 13 (Consolidated) (Jan. 24, 2014)).

⁴⁶ Request, Annex 24, p. 10.

⁴⁷ Request, Annex 24, p. 11.

⁴⁸ Request, ¶¶ 44-49.

⁴⁹ Vistaprint’s First Additional Submission, ¶¶ 1-2.

⁵⁰ Request, ¶ 49.

⁵¹ Request, ¶ 41; see New gTLD Objections Procedure, Art. 21(a).

⁵² Guidebook, § 3.4.6. The New gTLD Objections Procedure further provides in Article 2(d) that:

The ‘Expert Determination’ is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).

giving any rationale for doing so.⁵³

29. Vistaprint contends that ICANN’s Board remains its ultimate decision-making body and that the Board should have intervened and “cannot blindly accept advice by third parties or expert determinations.”⁵⁴ In this respect, Vistaprint highlights the Guidebook, which provides in Module 5 (Transition to Delegation) § 1 that:

ICANN’s Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result ... the use of an ICANN accountability mechanism.⁵⁵

[Underlining added]

30. As a result of the Third Expert sustaining the Objector’s SCO, Vistaprint’s application was placed in a “Contention Set”. The Guidebook in § 3.2.2.1 explains this result:

*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.*⁵⁶

B. Request for Reconsideration and Cooperative Engagement Process

31. On February 6, 2014 Vistaprint filed a Request for Reconsideration (“Request for Reconsideration” or “RFR”).⁵⁷ According to ICANN’s Bylaws, a RFR is an accountability mechanism which involves a review conducted by the Board Governance Committee (“BGC”), a sub-committee designated by ICANN’s Board to review and consider Reconsideration Requests.⁵⁸ A RFR can be submitted by a person or entity that has been “adversely affected” by one or more staff actions or inactions that contradict established ICANN policies.⁵⁹
32. Article IV, §2.15 of ICANN’s Bylaws sets forth the BGC’s authority and powers for handling Reconsideration Requests. The BGC, at its own option, may make a final determination on the RFR or it may make a recommendation to ICANN’s Board for

⁵³ Request, ¶ 50.

⁵⁴ Vistaprint’s First Additional Submission, ¶¶ 29-30.

⁵⁵ Guidebook, § 5.1.

⁵⁶ Guidebook, § 3.2.2.1. Module 4 (String Contention Procedures) provides that “Contention sets are groups of applications containing identical or similar applied-for gTLD strings.” Guidebook, § 4.1.1. Parties that are identified as being in contention are encouraged to reach settlement among. Guidebook, § 4.1.3. It is expected that most cases of contention will be resolved through voluntary agreement among the involved applicants or by the community priority evaluation mechanism. Conducting an auction is a tie-breaker mechanism of last resort for resolving string contention, if the contention has not been resolved by other means. Guidebook, § 4.3.

⁵⁷ Request, Annex 25.

⁵⁸ Response, ¶ 29; Bylaws, Art. IV, § 2.

⁵⁹ Bylaws, Art. IV, § 2.2.a.

consideration and action:

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.

33. ICANN has determined that the reconsideration process can be invoked for challenges to expert determinations rendered by panels formed by third party dispute resolution service providers, such as the ICDR, where it can be stated that the panel failed to follow the established policies or processes in reaching the expert determination, or that staff failed to follow its policies or processes in accepting that determination.⁶⁰
34. In its RFR, Vistaprint asked ICANN to reject the Third Expert's decision and to instruct a new expert panel to issue a new decision "that applies the standards defined by ICANN."⁶¹ Vistaprint sought reconsideration of the "various actions and inactions of ICANN staff related to the Expert Determination," claiming that "the decision fails to follow ICANN process for determining string confusion in many aspects."⁶² In particular, Vistaprint asserted that the ICDR and the Third Expert violated the applicable New gTLD Objection Procedures concerning:
 - (i) the timely appointment of an expert panel;
 - (ii) the acceptance of additional written submissions;
 - (iii) the timely issuance of an expert determination;
 - (iv) an expert's duty to remain impartial and independent;
 - (v) challenges to experts;
 - (vi) the Objector's burden of proof; and
 - (vii) the standards governing the evaluation of a String Confusion Objection.
35. Vistaprint also argued that the decision was unfair, and accepting it creates disparate treatment without justified cause.⁶³
36. The Bylaws provide in Article IV, § 2.3, that the BGC "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

⁶⁰ See BGC Recommendation on Reconsideration Request 14-5 dated February 27, 2014 ("BGC Determination"), at p. 7, n. 7, Request, Annex 26, and available at <https://www.icann.org/en/system/files/files/determination-vistaprint-27feb14-en.pdf> (last accessed on Sept. 14, 2015).

⁶¹ Request, ¶ 51; Annex 25, p.7.

⁶² Request, Annex 25, p.2.

⁶³ Request, Annex 25, p.6.

reference to the Board of Directors; and
g. make a recommendation to the Board of Directors on the merits of the request, as necessary.

37. On February 27, 2014 the BGC issued its detailed Recommendation on Reconsideration Request, in which it denied Vistaprint’s reconsideration request finding “no indication that the ICDR or the [Third Expert] violated any policy or process in reaching the Determination.”⁶⁴ The BGC concluded that:

*With respect to each claim asserted by the Requester concerning the ICDR’s alleged violations of applicable ICDR procedures concerning experts, there is no evidence that the ICDR deviated from the standards set forth in the Applicant Guidebook, the New gTLD Dispute Resolution Procedure, or the ICDR’s Supplementary Procedures for String Confusion Objections (Rules). The Requester has likewise failed to demonstrate that the Panel applied the wrong standard in contravention of established policy or procedure. Therefore, the BGC concludes that Request 14-5 be denied.*⁶⁵

38. The BGC explained what it considered to be the scope of its review:

*In the context of the New gTLD Program, the reconsideration process does not call for the BGC to perform a substantive review of expert determinations. Accordingly, the BGC is not to evaluate the Panel’s substantive conclusion that the Requester’s applications for .WEBS are confusingly similar to the Requester’s application for .WEB. Rather, the BGC’s review is limited to whether the Panel violated any established policy or process in reaching that Determination.*⁶⁶

39. The BGC also stated that its determination on Vistaprint’s RFR was final:

*In accordance with Article IV, Section 2.15 of the Bylaws, the BGC’s determination on Request 14-5 shall be final and does not require Board (or NGPC⁶⁷) consideration. The Bylaws provide that the BGC is authorized to make a final determination for all Reconsideration Requests brought regarding staff action or inaction and that the BGC’s determination on such matters is final. (Bylaws, Art. IV, § 2.15.) As discussed above, Request 14-5 seeks reconsideration of a staff action or inaction. After consideration of this Request, the BGC concludes that this determination is final and that no further consideration by the Board is warranted.*⁶⁸

40. On March 17, 2014, Vistaprint filed a request for a Cooperative Engagement Process

⁶⁴ BGC Determination, p. 18, Request, Annex 26.

⁶⁵ BGC Determination, p. 2, Request, Annex 26.

⁶⁶ BGC Determination, p. 7, Request, Annex 26.

⁶⁷ The “NGPC” refers to the New gTLD Program Committee, which is a sub-committee of the Board and “has all the powers of the Board.” See New gTLD Program Committee Charter | As Approved by the ICANN Board of Directors on 10 April 2012, at <https://www.icann.org/resources/pages/charter-2012-04-12-en> (last accessed Sept. 15, 2015).

⁶⁸ BGC Determination, p. 19, Request, Annex 26. As noted, the BGC concluded that its determination on Vistaprint’s RFR was final and made no recommendation to ICANN’s Board for consideration and action. Article IV, §2.17 of ICANN’s Bylaws sets out the scope of the Board’s authority for matters in which the BGC decides to make a recommendation to ICANN’s Board:

The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN’s website. The Board’s decision on the recommendation is final.

(“CEP”) with ICANN.⁶⁹ Vistaprint stated in its letter:

*Vistaprint is of the opinion that the Board of Governance Committee’s rejection of Reconsideration Request 14-5 is in violation of various provisions of ICANN’s Bylaws and Articles of Incorporation. In particular, Vistaprint considers this is in violation of Articles I, II(3), III and IV of the ICANN Bylaws as well as Article 4 of ICANN’s Articles of Incorporation. In addition, Vistaprint considers that ICANN has acted in violation of Articles 3, 7 and 9 of ICANN’s Affirmation of Commitment.*⁷⁰

41. The CEP did not lead to a resolution and Vistaprint thereafter commenced this IRP. In this regard, Module 6.6 of the Guidebook provides that an applicant for a new gTLD:

*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.*⁷¹

C. Procedures in this Case

42. On June 11, 2014, Vistaprint submitted its Request for Independent Review Process (“Request”) in respect of ICANN’s treatment of Vistaprint’s application for the .WEBS gTLD. On July 21, 2014, ICANN submitted its Response to Vistaprint’s Request (“Response”).
43. On January 13, 2015, the ICDR confirmed that there were no objections to the constitution of the present IRP Panel (“IRP Panel” or “Panel”). The Panel convened a telephonic preliminary hearing with the parties on January 26, 2015 to discuss background and organizational matters in the case. Having heard the parties, the Panel issued Procedural Order No. 1 permitting an additional round of submissions from the parties. The Panel received Vistaprint’s additional submission on March 2, 2015 (Vistaprint’s “First Additional Submission”) and ICANN’s response on April 2, 2015 (ICANN’s “First Additional Response”).
44. The Panel then received further email correspondence from the parties. In particular, Vistaprint requested that the case be suspended pending an upcoming meeting of ICANN’s Board of Directors, which Vistaprint contended would be addressing matters informative for this IRP. Vistaprint also requested that it be permitted to respond to arguments and information submitted by ICANN in ICANN’s First Additional Response. In particular, Vistaprint stated that ICANN had referenced the Final Declaration of March 3, 2015 in the IRP case involving *Booking.com v. ICANN* (the “*Booking.com Final Declaration*”).⁷² The *Booking.com Final Declaration* was issued one day after Vistaprint had submitted its First Additional Submission in this case. ICANN objected to Vistaprint’s requests, urging that there was no need for additional briefing and no justification for suspending the case.

⁶⁹ Request, Annex 27.

⁷⁰ Request, Annex 27.

⁷¹ Guidebook, § 6.6.

⁷² *Booking.com B.V. v. ICANN*, ICDR Case No. 50-2014-000247 (March 3, 2015) (“*Booking.com Final Declaration*”), at <https://www.icann.org/en/system/files/files/final-declaration-03mar15-en.pdf> (last accessed on Sept. 15, 2015)

45. On April 19, 2015, the Panel issued Procedural Order No. 2, which denied Vistaprint's request that the case be suspended and permitted Vistaprint and ICANN to submit another round of supplemental submissions. Procedural Order No. 2 also proposed two dates for a telephonic hearing with the parties on the substantive issues and the date of May 13, 2015 was subsequently selected. The Panel received Vistaprint's second additional submission on April 24, 2015 (Vistaprint's "Second Additional Submission") and ICANN's response to that submission on May 1, 2015 (ICANN's "Second Additional Response").
46. The Panel then received a letter from Vistaprint dated April 30, 2015 and ICANN's reply of the same date. In its letter, Vistaprint referred to two new developments that it stated were relevant for this IRP case: (i) the Third Declaration on the IRP Procedure, issued April 20, 2015, in the IRP involving *DotConnectAfrica Trust v. ICANN*⁷³, and (ii) the ICANN Board of Director's resolution of April 26, 2015 concerning the *Booking.com Final Declaration*. Vistaprint requested that more time be permitted to consider and respond to these new developments, while ICANN responded that the proceedings should not be delayed.
47. Following further communications with the parties, May 28, 2015 was confirmed as the date for a telephonic hearing to receive the parties' oral submissions on the substantive issues in this case. On that date, counsel for the parties were provided with the opportunity to make extensive oral submissions in connection with all of the facts and issues raised in this case and to answer questions from the Panel.⁷⁴
48. Following the May 28, 2015 hear, the Panel held deliberations to consider the issues in this IRP, with further deliberations taking place on subsequent dates. This Final Declaration was provided to the ICDR in draft form on October 5, 2015 for non-substantive comments on the text; it was returned to the Panel on October 8, 2015.

III. ICANN's Articles, Bylaws, and Affirmation of Commitments

49. Vistaprint states that the applicable law for these IRP proceedings is found in ICANN's Articles of Incorporation and Bylaws. Both Vistaprint and ICANN make numerous references to these instruments. This section sets out a number of the key provisions of

⁷³ Third Declaration on the IRP Procedure, *DotConnectAfrica Trust v. ICANN*, ICDR Case No. 50-2013-001083 (April 20, 2015) ("*DCA Third Declaration on IRP Procedure*"), at <https://www.icann.org/en/system/files/files/irp-procedure-declaration-20apr15-en.pdf> (last accessed on Sept. 15, 2015)

⁷⁴ The Panel conducted these IRP proceedings relying on email and telephonic communications, with no objections to this approach from either party and in view of ICANN's Bylaws, Article IV, § 3.12 ("*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.*").

the Articles and the Bylaws, as they are relied upon by the parties in this IRP.⁷⁵ Vistaprint also references the Affirmation of Commitments – relevant provisions of this document are also provided below.

A. Articles of Incorporation

50. Vistaprint refers to the Articles of Incorporation, highlighting Article IV’s references to “relevant principles of international law” and “open and transparent processes”. Article 4 of the Articles provides in relevant part:

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.

[Underlining added]

51. Vistaprint states that general principles of international law – and in particular the obligation of good faith – serve as a prism through which the various obligations imposed on ICANN under its Articles of Incorporation and Bylaws must be interpreted.⁷⁶ The general principle of good faith is one of the most basic principles governing the creation and performance of legal obligations, and rules involving transparency, fairness and non-discrimination arise from it.⁷⁷ Vistaprint also emphasizes that the principle of good faith includes an obligation to ensure procedural fairness by adhering to substantive and procedural rules, avoiding arbitrary action, and recognizing legitimate expectations.⁷⁸ The core elements of transparency include clarity of procedures, the publication and notification of guidelines and applicable rules, and the duty to provide reasons for actions taken.⁷⁹

B. Bylaws

a. Directives to ICANN and its Board

52. The Bylaws contain provisions that address the role, core values and accountability of ICANN and its Board.
53. Article IV, § 3.2 specifies the right of “any person materially affected” to seek independent review (through the IRP) of a Board action alleged to be a violation of the

⁷⁵ ICANN’s Articles are available at <https://www.icann.org/resources/pages/governance/articles-en> (last accessed on Sept. 15, 2015). ICANN’s Bylaws are available at <https://www.icann.org/resources/pages/governance/bylaws-en> (last accessed on Sept. 15, 2015).

⁷⁶ Request, ¶ 55. Vistaprint also states that “U.S. and California law, like almost all jurisdictions, recognize obligations to act in good faith and ensure procedural fairness. The requirement of procedural fairness has been an established part of the California common law since before the turn of the 19th century.” Request, ¶ 60, n.8.

⁷⁷ Request, ¶ 59.

⁷⁸ Request, ¶ 60.

⁷⁹ Request, ¶ 66.

Articles or Bylaws:

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.

54. Vistaprint has relied on certain of ICANN's core values set forth in Article I, § 2 (Core Values) of the Bylaws. The sub-sections underlined below are invoked by Vistaprint as they relate to principles of promoting competition and innovation (Article I § 2.2, 2.5 and 2.6); openness and transparency (Article I § 2.7); neutrality, fairness, integrity and non-discrimination (Article I § 2.8); and accountability (Article I § 2.10). Article I § 2 provides in full:

Section 2. Core Values

In performing its mission, the following core values should guide the decisions and actions of ICANN:

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

2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.

3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.

4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.

6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

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

*8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.*⁸⁰

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

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.

⁸⁰ Vistaprint states that “[t]his requirement is also found in applicable California law, which requires that decisions be made according to procedures that are ‘fair and applied uniformly’, and not in an ‘arbitrary and capricious manner.’” Request, ¶ 62, n.9.

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

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

[Underlining added]

55. Vistaprint refers to Article II, § 3 in support of its arguments that the Board failed to act fairly and without discrimination as it considered Vistaprint's two .WEBS applications and the outcome of the *Vistaprint SCO* case. Article II, § 3 provides:

Section 3 (Non-Discriminatory Treatment)

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

[Underlining added]

56. Vistaprint refers to Article III (Transparency), § 1 of the Bylaws in reference to the principle of transparency:

Section 1. PURPOSE

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

[Underlining added]

57. Vistaprint also refers Article IV (Accountability and Review), § 1 as it relates to ICANN's accountability and core values, providing in relevant part:

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.

[Underlining added]

b. Directives for the IRP Panel

58. ICANN's Bylaws also contain provisions that speak directly to the role and authority of the Panel in this IRP case. In particular, Article IV of the Bylaws creates the IRP as an accountability mechanism, along with two other mechanisms: (i) the RFR process, described above and on which Vistaprint relied, and (ii) an unrelated periodic review of

ICANN's structure and procedures.⁸¹

59. Article IV, § 1 of the Bylaws emphasizes that the IRP is a mechanism designed to ensure ICANN's accountability:

The provisions of this Article, creating processes for reconsideration and independent review of ICANN actions and periodic review of ICANN's structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article III and the Board and other selection mechanisms set forth throughout these Bylaws.

[Underlining added]

60. In this respect, the IRP Panel provides an independent review and accountability mechanism for ICANN and its Board. Vistaprint urges that IRP is the *only* method established by ICANN for holding itself accountable through independent third-party review of its decisions.⁸² The Bylaws in Article IV, § 3.1 provides:

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.

61. ICANN states in its Response that “[t]he IRP Panel is tasked with determining whether the Board’s actions are consistent with ICANN’s Articles and Bylaws.”⁸³ ICANN also maintains that while the IRP is intended to address challenges to conduct undertaken by ICANN’s Board, it is not available as a mechanism to challenge the actions or inactions of ICANN staff or third parties that may be involved with ICANN’s activities.⁸⁴

62. In line with ICANN’s statement, the Bylaws provide in Article IV, § 3.4, that:

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.⁸⁵

[Underlining added]

63. The Bylaws also include a standard of review in Article IV, § 3.4, providing that the Panel:

⁸¹ Note that Article V (Ombudsman) of the Bylaws also establishes the Office of Ombudsman to facilitate the fair, impartial, and timely resolution of problems and complaints for those matters where the procedures of the RFR or the IRP have not been invoked.

⁸² Request, ¶ 57.

⁸³ Response, ¶ 33.

⁸⁴ Response, ¶ 4.

⁸⁵ Bylaws, Art. IV, § 3.4. The reference to “actions” of ICANN’s Board should be read to refer to both “actions or inactions” of the Board. See Bylaws, Art. IV, § 3.11(c) (“The IRP Panel shall have the authority to:...(c) declare whether an *action or inaction* of the Board was inconsistent with the Articles of Incorporation or Bylaws”); see also Supplementary Procedures, which define “Independent Review” as referring

“to the procedure that takes place upon the filing of a request to review ICANN Board actions or inactions alleged to be inconsistent with ICANN's Bylaws or Articles of Incorporation.

“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?⁸⁶

64. The Bylaws in Article IV, § 3.11 set out the IRP Panel’s authority in terms of alternative actions that it may take once it has an IRP case before it:

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, 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.⁸⁷

65. Further, the Bylaws in Article IV, § 3.18 state that

“[t]he 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.”⁸⁸

[Underlining added]

66. The Bylaws address the steps to be taken after the Panel issues a determination in the IRP. Article IV, § 3.21⁸⁹ states that “declarations of the IRP Panel, and the Board’s subsequent action on those declarations, are final and have precedential value”:

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.

[Underlining added]

C. Affirmation of Commitments

67. Vistaprint claims that ICANN violated the ICANN’s Affirmation of Commitments, in particular Articles 3, 7 and 9. This Affirmation of Commitments is instructive, as it explains ICANN’s obligations in light of its role as regulator of the DNS. Article 3, 7 and 9 are set forth below in relevant part:

⁸⁶ Bylaws, Art. IV, § 3.4.

⁸⁷ Bylaws, Art. IV, § 3.11.

⁸⁸ Bylaws, Art. IV, § 3.18.

⁸⁹ This section was added by the amendments to the Bylaws on April 11, 2013.

3. This document affirms key commitments by DOC and ICANN, including commitments to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination.

* * * *

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

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

9.1 Ensuring accountability, transparency and the interests of global Internet users: ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by: (a) continually assessing and improving ICANN Board of Directors (Board) governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions; (b) assessing the role and effectiveness of the GAC and its interaction with the Board and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS; (c) continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development. ICANN will organize a review of its execution of the above commitments no less frequently than every three years, Each of the foregoing reviews shall consider the extent to which the assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for its decision-making, and acts in the public interest. Integral to the foregoing reviews will be assessments of the extent to which the Board and staff have implemented the recommendations arising out of the other commitment reviews enumerated below.

* * * *

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

{Underlining added}

IV. Summary of Parties' Contentions

68. This presentation of the parties' contentions is intended to provide a summary to aid in understanding this Final Declaration. It is not an exhaustive recitation of the entirety of the parties' allegations and arguments. Additional references to the parties' assertions are included in sections II (Factual and Procedural Background), III (ICANN's Articles, Bylaws and Affirmation of Commitments) and V (Analysis and Findings).
69. The IRP Panel has organized the parties' contentions into three categories, based on the areas of claim and dispute that have emerged through the exchange of three rounds of submissions between the parties and the Panel. The *first* section relates to the authority of the Panel, while the *second* and *third* sections address the allegations asserted by Vistaprint, which fall into two general areas of claim. In this regard, Vistaprint claims that the ICDR and Third Expert made numerous errors of procedure and substance during the String Confusion Objection proceedings, which resulted in Vistaprint being denied a fair hearing and due process. As a result of the flawed SCO proceedings, Vistaprint alleged that ICANN through its Board (and the BGC), in turn: (i) violated its Articles, Bylaws and the Guidebook (e.g., failed to act in good faith, fairly, non-arbitrarily, with accountability, due diligence, and independent judgment) by accepting the determination in the *Vistaprint SCO* and failing to redress and remedy the numerous alleged process and substantive errors in the SCO proceedings, and (ii) discriminated against Vistaprint, in violation of its Articles and Bylaws, by delaying Vistaprint's .WEBS gTLD applications and putting them into a Contention Set, while allowing other gTLD applications with equally serious string similarity concerns to proceed to delegation, or permitting still other applications that were subject to an adverse SCO determination to go through a separate additional review mechanism.
70. Thus, the three primary areas of contention between the parties are as follows:
- IRP Panel' Authority: The parties have focused on the authority of the IRP Panel, including the *standard of review* to be applied by the Panel, whether the Panel's IRP declaration is *binding* or *non-binding* on ICANN, and, on a very closely related point, whether the Panel has authority to award any *affirmative relief* (as compared to issuing only a declaration as to whether or not ICANN has acted in a manner that is consistent or not with its Articles and Bylaws).
 - SCO Proceedings Claim: Vistaprint claims ICANN's failed to comply with the obligations under its Articles and Bylaws by accepting the Third Expert's SCO determination and failing to provide a remedy or redress in response to numerous alleged errors of process and substance in the *Vistaprint SCO* proceedings. As noted above, Vistaprint claims there were process and substantive violations, which resulted in Vistaprint not being accorded a fair hearing and due process. Vistaprint states that because ICANN's Bylaws require ICANN to apply established policies neutrally and fairly, therefore, the Panel should also consider the policies in Module 3 of the

Guidebook concerning the String Confusion Objection procedures. Vistaprint objects to the policies themselves as well as their implementation through the ICDR and the Third Expert. Vistaprint claims that ICANN's Board, acting through the BGC or otherwise, should have acted to address these deficiencies and its choice not to intervene violated the Articles and Bylaws.

- Disparate Treatment Claim: Vistaprint claims ICANN discriminated against Vistaprint through ICANN's (and the BGC's) acceptance of the Third Expert's allegedly baseless and arbitrary determination in *Vistaprint SCO*, while allowing other gTLD applications with equally serious string similarity concerns to proceed to delegation, or permitting still other applications that were subject to an adverse SCO determination to go through a separate additional review mechanism.

A. Vistaprint's Position

a. IRP Panel's Authority

71. Standard of review: Vistaprint emphasizes that ICANN is accountable to the community for operating in a manner that is consistent with the Article and Bylaws, and with due regard for the core values set forth in Article I of the Bylaws. To achieve this required accountability, the IRP Panel is "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."⁹⁰ Vistaprint states that the IRP Panel's fulfillment of this core obligation is crucial to ICANN's commitment to accountability. The IRP is the only method established by ICANN for holding itself accountable through third-party review of its decisions.⁹¹
72. Vistaprint contends that ICANN is wrong in stating (in its Response⁹²) that a deferential standard of review applies in this case.⁹³ No such specification is made in ICANN's Bylaws or elsewhere, and a restrictive interpretation of the standard of review would be inappropriate. It would fail to ensure accountability on the part of ICANN and would be incompatible with ICANN's commitment to maintain and improve robust mechanisms for accountability, as required by Article 9.1 of ICANN's Affirmation of Commitments and ICANN's core values, which require ICANN to "remain accountable to the Internet community through mechanisms that enhance ICANN's effectiveness".⁹⁴
73. Vistaprint states further that the most recent version of ICANN's Bylaws, amended on

⁹⁰ Request, ¶ 55-56 (citing Bylaws, Art. IV, §§1 & 3.4).

⁹¹ Request, ¶ 57.

⁹² Response, ¶ 33.

⁹³ Vistaprint's First Additional Submission, ¶ 36.

⁹⁴ Vistaprint's First Additional Submission, ¶¶ 36-37; Request, ¶ 57.

April 11, 2013, require that the IRP Panel focus on whether ICANN's Board was free from conflicts of interest and exercised an appropriate level of due diligence and independent judgment in its decision making.⁹⁵ Vistaprint asserts, however, that these issues are mentioned by way of example only. The Bylaws do not restrict the IRP Panel's remit to these issues alone, as the Panel's fundamental task is to determine whether the Board has acted consistently with the Articles and Bylaws⁹⁶

74. IRP declaration binding or non-binding: Vistaprint contends that the outcome of this IRP is binding on ICANN and that any other outcome "would be incompatible with ICANN's obligation to maintain and improve robust mechanisms for accountability."⁹⁷
75. Vistaprint states that since ICANN's amendment of its Bylaws, IRP declarations have precedential value.⁹⁸ Vistaprint asserts the precedential value – and binding force – of IRP declarations was confirmed in a recent IRP panel declaration,⁹⁹ which itself has precedential value for this case. Vistaprint argues that any other outcome would effectively grant the ICANN Board arbitrary and unfettered discretion, something which was never intended and would be incompatible with ICANN's obligation to maintain and improve robust mechanisms for accountability.¹⁰⁰
76. Vistaprint contends that the IRP is not a mere "corporate accountability mechanism" aimed at ICANN's internal stakeholders.¹⁰¹ The IRP is open to any person materially affected by a decision or action of the Board¹⁰² and is specifically available to new gTLD applicants, as stated in the Guidebook, Module 6.4. Vistaprint claims that *internally*, towards its stakeholders, ICANN might be able to argue that its Board retains ultimate decision-making power, subject to its governing principles. *Externally*, however, the ICANN Board's discretionary power is limited, and ICANN and its Board must offer redress when its decisions or actions harm third parties.¹⁰³
77. Vistaprint argues further that the IRP has all the characteristics of an international arbitration.¹⁰⁴ The IRP is conducted pursuant to a set of independently developed

⁹⁵ Bylaws, Article IV, § 3.4.

⁹⁶ Vistaprint's First Additional submission, ¶ 35.

⁹⁷ Vistaprint's First Additional Submission, ¶ 37.

⁹⁸ Vistaprint's First Additional Submission, ¶ 37 (citing Bylaws, Art. IV § 3.21).

⁹⁹ See *DCA Third Declaration on IRP Procedure*, ¶ 131 (the panel ruled that "[b]ased on the foregoing and the language and content of the IRP Procedure, the Panel concludes that this Declaration and its future Declaration on the Merits of this case are binding on the Parties").

¹⁰⁰ Vistaprint's First Additional Submission, ¶ 37.

¹⁰¹ Vistaprint's Second Additional Submission, ¶ 29.

¹⁰² Bylaws, Article IV § 3.2 ("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.").

¹⁰³ Vistaprint's Second Additional Submission, ¶ 15.

¹⁰⁴ Vistaprint's Second Additional Submission, ¶ 27.

international arbitration rules: the ICDR Rules, as modified by the Supplementary Procedures. The IRP is administered by the ICDR, which is a provider of international arbitration services. The decision-maker is not ICANN, but a panel of neutral individuals selected by the parties in consultation with the ICDR, and appointed pursuant to the ICDR Rules.

78. Vistaprint provides further detailed argument in its Second Additional Submission that the IRP is binding in view of ICANN's Bylaws, the ICDR Rules and the Supplementary Procedures, and that any ambiguity on this issue should weigh against ICANN as the drafter and architect of the IRP:

31. As mentioned in Vistaprint's Reply, a previous IRP panel ruled that "[v]arious provisions of ICANN's Bylaws and the Supplementary Procedures support the conclusion that the [IRP] Panel's decisions, opinions and declarations are binding" and that "[t]here is certainly nothing in the Supplementary Rules that renders the decisions, opinions and declarations of the [IRP] Panel either advisory or non-binding" (RM 32, para 98).¹⁰⁵

32. Indeed, as per Article IV(3)(8) of the ICANN Bylaws, the ICANN Board has given its approval to the ICDR to establish a set of operating rules and procedures for the conduct of the IRP. The operating rules and procedures established by the ICDR are the ICDR Rules as referred to in the preamble of the Supplementary Procedures (RM 32, para. 101). The Supplementary Procedures supplement the ICDR Rules (Supplementary Procedures, Preamble and Section 2). The preamble of the ICDR Rules provides that "[a] dispute can be submitted to an arbitral tribunal for a final and binding decision". Article 30 of the ICDR Rules specifies that "[a]wards shall be made in writing by the arbitral tribunal and shall be final and binding on the parties". No provision in the Supplementary Procedures deviates from the rule that the Panel's decisions are binding. On the contrary, Section 1 of the Supplementary Procedures defines an IRP Declaration as a decision/opinion of the IRP Panel. Section 10 of the Supplementary Procedures requires that IRP Declarations i) are made in writing, and ii) specifically designate the prevailing party. Where a decision must specifically designate the prevailing party, it is inherently binding. Moreover the binding nature of IRP Declarations is further supported by the language and spirit of Section 6 of the Supplementary Procedures and Article IV(3)(11)(a) of the ICANN Bylaws. Pursuant to these provisions, 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 IRP Panel would not be considered advisory (RM 32, para. 107).

33. Finally, even if ICANN's Bylaws and Supplementary Procedures are ambiguous - quod non - on the question of whether or not an IRP Declaration is binding, this ambiguity would weigh against ICANN. The relationship between ICANN and Vistaprint is clearly an adhesive one. In such a situation, the rule of contra proferentem applies. As the drafter and architect of the IRP Procedure, it was possible for ICANN, and clearly within its power, to adopt a procedure that expressly and clearly announced that the decisions, opinions and declarations of IRP Panels were advisory only. ICANN did not adopt such a procedure (RM 32, paras. 108-109).

79. Finally, Vistaprint contends that ICANN conceived of the IRP as an alternative to dispute

¹⁰⁵ Citing *DCA Third Declaration on IRP Procedure*, ¶ 98.

resolution by the courts. To submit a new gTLD application, Vistaprint had to agree to terms and conditions including a waiver of its right to challenge ICANN's decisions on Vistaprint's applications in a court, provided that as an applicant, Vistaprint could use the accountability mechanisms set forth in ICANN's Bylaws. Vistaprint quotes the *DCA Third Declaration on Procedure*, in which the IRP panel stated:

*assuming that the foregoing waiver of any and all judicial remedies is valid and enforceable, the ultimate 'accountability' remedy for [Vistaprint] is the IRP.*¹⁰⁶

80. Authority to award affirmative relief: Vistaprint makes similar arguments in support of its claim that the IRP Panel has authority to grant affirmative relief. Vistaprint quotes the *Interim Declaration on Emergency Request for Interim Measures of Protection in Gulf Cooperation Council v. ICANN* (“GCC Interim IRP Declaration”),¹⁰⁷ where that panel stated that the right to an independent review is

a significant and meaningful one under the ICANN's Bylaws. This is so particularly in light of the importance of ICANN's global work in overseeing the DNS for the Internet and also the weight attached by ICANN itself to the principles of accountability and review which underpin the IRP process.

81. Accordingly, Vistaprint argues that the IRP Panel's authority is not limited to declare that ICANN breached its obligations under the Articles, Bylaws and the Guidebook. To offer effective redress to gTLD applicants, the Panel may indicate what action ICANN must take to cease violating these obligations. The point is all the stronger here, as ICANN conceived the IRP to be the sole independent dispute resolution mechanism available to new gTLD applicants.¹⁰⁸

b. SCO Proceedings Claim

82. Vistaprint states that this case relates to ICANN's handling of the determination in the *Vistaprint SCO* proceedings following String Confusion Objections to Vistaprint's .WEBS applications, but does not relate to the merits of that SCO determination.¹⁰⁹
83. Vistaprint's basic claim here is that given the errors of process and substance in those proceedings, Vistaprint was not given a fair opportunity to present its case. Vistaprint was deprived of procedural fairness and the opportunity to be heard by an independent panel applying the appropriate rules. Further, Vistaprint was not given any meaningful opportunity for remedy or redress once the decision was made, and in this way ICANN's Board allegedly violated its Articles and Bylaws.¹¹⁰

¹⁰⁶ *DCA Third Declaration on IRP Procedure*, ¶ 40.

¹⁰⁷ *Interim Declaration on Emergency Request for Interim Measures of Protection in Gulf Cooperation Council v. ICANN*, ICDR Case No. 01-14-0002-1065, ¶ 59 (February 12, 2015) (“GCC Interim IRP Declaration”).

¹⁰⁸ Vistaprint's Second Additional Submission, ¶ 24.

¹⁰⁹ Request, ¶ 4.

¹¹⁰ Request, ¶ 71.

84. Although Vistaprint challenged the SCO decision through ICANN’s Request for Reconsideration process, ICANN refused to reconsider the substance of the challenged decision, or to take any action to remedy the lack of due process. In doing so, Vistaprint claims ICANN failed to act in a fair and non-arbitrary manner, with good faith, accountability, due diligence and independent judgment, as required by ICANN’s Bylaws and Articles.¹¹¹ ICANN’s acceptance of the SCO determination and refusal to reverse this decision was an abdication of responsibility and contrary to the evaluation policies ICANN had established in the Guidebook.¹¹²
85. A number of Vistaprint’s contentions regarding the alleged violations of process and substance in SCO proceedings are described in part II.A above addressing Vistaprint’s .WEBS applications and the SCO proceedings. Vistaprint’s alleges as follows:
- (i) ICDR’s appointment of the First Expert was untimely, in violation of Article 13(a) of the New gTLD Objections Procedure¹¹³;
 - (ii) the First Expert (and Third Expert) improperly accepted and considered unsolicited supplemental filings, violating Articles 17 and 18 of the New gTLD Objections Procedure¹¹⁴;
 - (iii) ICDR violated Article 21 of the New gTLD Objections Procedure¹¹⁵ by failing to ensure the timely issuance of an expert determination in the SCO;
 - (iv) the First Expert failed to maintain independence and impartiality, in violation of Article 13(c) of the New gTLD Objections Procedure¹¹⁶;
 - (v) ICDR unjustifiably accepted a challenge to the Second Expert (or created the circumstances for such a challenge), in violation of Article 2 of the ICDR’s Supplementary Procedures for String Confusion Objections (Rules);
 - (vi) the Determination of the Third Expert was untimely, in violation of Article 21(a) of the New gTLD Objections Procedure;
 - (vii) the Third Expert incorrectly applied the Objector’s burden of proof, in violation of section 3.5 of the Guidebook and Article 20(c) of the New gTLD Objections Procedure, which place the burden of proof on the Objector; and

¹¹¹ Request, ¶ 71.

¹¹² Request, ¶ 8.

¹¹³ Article 13(a) of the Procedure provides: “The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.”

¹¹⁴ Request, ¶ 42. Article 17 provides that “[t]he Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response.” Article 18 states that “[i]n order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.”

¹¹⁵ Article 21(a) of the Procedure provides that “[t]he DSRP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel.”

¹¹⁶ Article 13(c) of the New gTLD Objections Procedure provides that “[a]ll Experts acting under this Procedure shall be impartial and independent of the parties.” Section 3.4.4 of the Guidebook provides that the ICDR will “follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.”

(viii) the Third Expert incorrectly applied ICANN’s substantive standard for evaluation of String Confusion Objections, as set out in Section 3.5.1 of the Guidebook, in particular the standards governing the evaluation of a string confusion objection.

86. Based on these alleged errors in process and substance, Vistaprint concludes in its Request:

49. In sum, the cursory nature of the Decision and the arbitrary and selective discussion of the parties’ arguments by the Panel show a lack of either independence and impartiality or appropriate qualification on the fact of the Panel. The former is contrary to Article 13 of the Procedure; the latter is contrary to the Applicant Guidebook, Module 3-16, which requires that a panel (ruling on a string confusion or other objection) must consist of “appropriately qualified experts appointed to each proceeding by the designated DRSP”.¹¹⁷

87. Vistaprint states that ICANN’s Board disregarded these accumulated infringements and turned a blind eye to the Third Expert’s lack of independence and impartiality. Vistaprint asserts that ICANN is not entitled to blindly accept expert determinations from SCO cases; it must verify whether or not, by accepting the expert determination and advice, it is acting consistent with its obligations under its Articles, Bylaws and Affirmation of Commitments.¹¹⁸ Vistaprint further claims ICANN would be in violation of these obligations if it were to accept an expert determination or advice in circumstances where the ICDR and/or the expert had failed to comply with the New gTLD Objections Procedure and/or the ICDR Rules for SCOs, or where a panel – even if it had been correctly appointed – had failed to correctly apply the standard set by ICANN.¹¹⁹

88. Vistaprint states that following ICANN’s decision to accept the *Vistaprint SCO* determination, Vistaprint filed its Reconsideration Request detailing how ICANN’s acceptance of the Third Expert’s determination was inconsistent with ICANN’s policy and obligations under its Articles, Bylaws and Affirmation of Commitments. Background on the RFR procedure is provided above in part II.B. Despite this, Vistaprint states that ICANN refused to reverse its decision.

89. The IRP Panel has summarized as follows Vistaprint’s SCO Proceedings Claim concerning ICANN’s alleged breaches of its obligations under the Articles, Bylaws and Affirmation of Commitments:

(1) ICANN failed to comply with its obligation under Article 4 of the Articles and IV § 3.4 of the Bylaws to act in good faith with due diligence and independent judgment by failing to provide due process to Vistaprint’s .WEBS applications.¹²⁰ Good faith encompasses the obligation to ensure procedural fairness and due process, including equal and fair treatment of the parties, fair notice, and a fair opportunity to present one’s case. These are more than just formalistic procedural requirements. The opportunity must be meaningful: the party must be given adequate notice of the relevant

¹¹⁷ Request, ¶ 49.

¹¹⁸ Request, ¶ 6.

¹¹⁹ Request, ¶ 6.

¹²⁰ Request, ¶¶ 69-71.

rules and be given a full and fair opportunity to present its case. And the mechanisms for redress must be both timely and effective.

Vistaprint claims that it was not given a fair opportunity to present its case; was deprived of procedural fairness and the opportunity to be heard by an independent panel applying the appropriate rules; and was not given any meaningful opportunity for remedy or redress once the SCO determination was made, even in the RFR procedure. Thus, ICANN's Board failed to act with due diligence and independent judgment, and to act in good faith as required by ICANN's Bylaws and Articles.

- (2) ICANN failed to comply with its obligation under Article I § 2.8 to neutrally, objectively and fairly apply documented policies as established in the Guidebook and Bylaws.¹²¹ Vistaprint argues that there is no probability of user confusion if both .WEBS and .WEB were delegated as gTLD strings. Vistaprint states expert evidence confirms that there is no risk that Internet users will be confused and the Third Expert could not have reasonably found that the average reasonable Internet user is likely to be confused between the two strings. As confirmed by the Objector,¹²² the average reasonable Internet user is used to distinguishing between words (and non-words) that are much more similar than the strings, .WEBS and .WEB. Since these strings cannot be perceived confusingly similar by the average reasonable Internet user, the *Vistaprint SCO* determination that they are confusingly similar is contradictory to ICANN's policy as established in the Guidebook.
- (3) ICANN failed to comply with its obligation to act fairly and with due diligence and independent judgment as called for under Article 4 of the Articles of Incorporation, Articles I § 2.8 and IV § 3.4 of the Bylaws by accepting the SCO determination made by the Third Expert, who was allegedly not independent and impartial.¹²³ Vistaprint claims that the Third Expert was not independent and impartial and/or is not appropriately qualified. However, Vistaprint claims this did not prevent ICANN from accepting the determination by the Third Expert, without even investigating the dependence and partiality of the Expert when serious concerns were raised to the ICANN Board in the RFR. This is a failure of ICANN to act with due diligence and independent judgment, and to act in good faith as required by ICANN's Bylaws and Articles.
- (4) ICANN failed to comply with its obligations under the Article 4 of the Articles, and Article I §§ 2.7 and 2.8 and Article III § 1 of the Bylaws (and Article 9.1 of the Affirmation of Commitments) to act fairly and transparently by failing to disclose/perform any efforts to optimize the service that the ICDR provides in the New gTLD Program.¹²⁴ Vistaprint contends that the BGC's determination on Vistaprint's RFR shows that the BGC made no investigation into Vistaprint's fundamental questions about the Panel's arbitrariness, lack of independence, partiality, inappropriate

¹²¹ Request, ¶ 72.

¹²² Request, Annex 10.

¹²³ Request, ¶ 73.

¹²⁴ Request, ¶¶ 52 and 77.

qualification. In addition, rather than identifying the nature of the conflict that forced the First Expert to step down, the BGC focused on developing hypotheses of reasons that could have led to this expert to stepping down. According to Vistaprint, this shows that the BGC did not exercise due diligence in making its determination and was looking for unsubstantiated reasons to reject Vistaprint's Reconsideration Request rather than making a fair determination.

In addition, as it is ICANN's responsibility to ensure that its policies and fundamental principles are respected by its third party vendors, ICANN had agreed with the ICDR that they were going to "communicate regularly with each other and seek to optimize the service that the ICDR provides as a DRSP in the New gTLD Program" and that ICANN was going to support the ICDR "to perform its duties...in a timely and efficient manner".¹²⁵ However, ICANN has failed to show that it sought in any way to optimize the ICDR's service vis-à-vis Vistaprint or that it performed any due diligence in addressing the concerns raised by Vistaprint. Instead, the BGC denied Vistaprint's RFR without conducting any investigation.

- (5) ICANN failed to comply with its obligation to remain accountable under Articles I § 2.10 and IV § 1 of the Bylaws (and Articles 3(a) and 9.1 of the Affirmation of Commitments) by failing to provide any remedy for its mistreatment of Vistaprint's gTLD applications.¹²⁶ Vistaprint claims that because of ICANN's unique history, role and responsibilities, its constituent documents require that it operate with complete accountability. In contrast to this obligation, throughout its treatment of Vistaprint's applications for .WEBS, ICANN has acted as if it and the ICDR are entitled to act with impunity. ICANN adopted the Third Expert's determination without examining whether it was made in accordance with ICANN's policy and fundamental principles under its Articles and Bylaws. When confronted with process violations, ICANN sought to escape its responsibilities by relying on unrealistic hypotheses rather than on facts that should have been verified. Additionally, ICANN has not created any general process for challenging the substance of SCO expert determinations, while acknowledging the need for such a process by taking steps to develop a review process mechanism for certain individual cases involving SCO objections.
- (6) ICANN failed to promote competition and innovation under Articles I § 2.2 (and Article 3(c) of the Affirmation of Commitments) by accepting the Third Expert's determination.¹²⁷ Vistaprint's argues that the Objector's sole motive in filing the SCO against Vistaprint was to prevent a potential competitor from entering the gTLD market. This motive is contrary to the purpose of ICANN's New gTLD Program. The Board's acceptance of the determination in the *Vistaprint SCO*, which was filed with an intent contrary to the interests of both competition and consumers, was contrary to ICANN's Bylaws.

c. Disparate Treatment Claim

¹²⁵ Request, ¶¶ 52.

¹²⁶ Request, ¶¶ 78-79.

¹²⁷ Request, ¶ 80.

90. Vistaprint claims that ICANN’s Board discriminated against Vistaprint through the Board’s (and the BGC’s) acceptance of the Third Expert’s allegedly baseless and arbitrary determination in the *Vistaprint SCO*, while allowing other gTLD applications with equally serious string similarity concerns to proceed to delegation, or permitting still other applications that were subject to an adverse SCO determination to go through a separate additional review mechanism.
91. Vistaprint states that the “IRP Panel’s mandate includes a review as to whether or not ICANN’s Board discriminates in its interventions on SCO expert determinations,” and contends that “[d]iscriminating between applicants in its interventions on SCO expert determinations is exactly what the Board has done with respect to Vistaprint’s applications.”¹²⁸
92. Vistaprint asserts that in contrast to the handling of other RFRs, the BGC did not give the full ICANN Board the opportunity to consider the *Vistaprint SCO* matter and did not provide detailed minutes of the meeting in which the BGC’s decision was taken.¹²⁹ Vistaprint states this is all the more striking as, in other matters related to handling of SCOs with no concerns about the impartiality and independence of the expert or the procedure, the Board considered potential paths forward to address perceived inconsistencies in expert determinations in the SCO process, including implementing a review mechanism. The Board also directed ICANN’s President and CEO, or his designee, to publish this proposed review mechanism for public comment.¹³⁰ Vistaprint emphasizes that ICANN’s Board took this decision the day before Vistaprint filed its Reconsideration Request regarding the *Vistaprint SCO*. However, this did not prevent the BGC from rejecting Vistaprint’s RFR without considering whether such a review mechanism might also be appropriate for dealing with the allegedly unfair and erroneous treatment of the SCO related to Vistaprint’s .WEBS applications.¹³¹
93. The core of Vistaprint’s discrimination and disparate treatment claims is stated in its First Additional Submission:

7. Other applicants have equally criticized SCO proceedings. In a letter to ICANN’s CEO, United TLD Holdco, Ltd. denounced the process flaws in the SCO proceedings involving the strings .com and .cam. DERCars, LCC filed an RfR, challenging the expert determination in the SCO proceedings relating to the strings .car and .cars. Amazon EU S.a.r.l. filed an RfR, challenging the expert determination in the SCO proceedings relating to the strings .shop and .通販 (which means ‘online shopping’ in Japanese). The ICANN Board took action in each of these matters.

- *With respect to the Expert Determination finding .cam confusingly similar to .com, the ICANN Board ordered that an appeals process be developed to address the “perceived inconsistent or otherwise unreasonable SCO Expert Determination”.*
- *With regard to the Expert Determination finding .cars confusingly similar to .car, the ICANN Board ordered its staff to propose a review mechanism. DERCars decided to withdraw its*

¹²⁸ Vistaprint’s Second Additional Submission, ¶ 20-21.

¹²⁹ Request, ¶ 52.

¹³⁰ Request, ¶ 52 (referencing NGPC Resolution 2014.02.05.NG02).

¹³¹ Request, ¶ 52.

application for .cars before the review mechanism was implemented. As a result, it was no longer necessary for the ICANN Board to further consider the proposed review process.

- With regard to the Expert Determination finding 通販 confusingly similar to .shop, the ICANN Board ordered that an appeals process be developed to address the “perceived inconsistent or otherwise unreasonable SCO Expert Determination”.

8. While the ICANN Board took action in the above-mentioned matters, it did not do so with respect to the .webs / .web determination. However, the .webs / .web determination was equally unreasonable, and at least equally serious substantive and procedural errors were made in these SCO proceedings. There is no reason for ICANN to treat the .webs / .web determination differently.

* * * *

12. When there are clear violations of the process and the outcome is highly objectionable (all as listed in detail in the request for IRP), the ICANN Board must intervene, as it has done with regard to other applications. The ICANN Board cannot justify why it intervenes in certain cases (.cars / .car, .cam / .com and 通販 / .shop), but refuses to do so in another case (.webs / .web). This is a clear violation of its Bylaws and Articles of Incorporation. The Panel in the current IRP has authority to order that ICANN must comply with its Bylaws and Articles of Incorporation and must disregard the expert determination in relation to Vistaprint’s .webs applications.¹³²

* * * *

31. When the ICANN Board individually considers an application, it must make sure that it does not treat applicants inequitably and that it does not discriminate among applicants. Article II, Section 3 of ICANN’s Bylaws provides that “ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition”. However, with regard to the SCO proceedings, the ICANN Board has done the exact opposite. It created the opportunity for some aggrieved applicants to participate in an appeals process, while denying others.

32. As explained above, there is no justification for this disparate treatment, and the ICANN Board has not given any substantial and reasonable cause that would justify this discrimination.

94. Vistaprint also contends that ICANN cannot justify the disparate treatment:

22. ICANN’s attempt to justify the disparate treatment of Vistaprint’s applications is without merit. ICANN argues that its Board only intervened with respect to specific expert determinations because there had been several expert determinations regarding the same strings that were seemingly inconsistent (fn. omitted). Vistaprint recognizes that the ICANN Board intervened to address “perceived inconsistent or otherwise unreasonable SCO Expert Determinations” (fn. omitted). However, ICANN fails to explain why the SCO Expert Determination on Vistaprint’s .webs applications was not just as unreasonable as the SCO Expert Determinations involving .cars/.car, .cam/.com and 通販 / .shop. Indeed, the determination concerning Vistaprint’s .webs applications expressly relies on the determination concerning .cars/.car, that was considered inconsistent or otherwise unreasonable by the ICANN Board that rejected the reasoning applied in the two other .cars/.car expert determinations (fn. omitted).

23. Therefore, Vistaprint requests the IRP Panel to exercise its control over the ICANN Board and to declare that ICANN discriminated Vistaprint’s applications.

95. Timing: Vistaprint contends that the objections it raises in this IRP concerning the Third Expert’s SCO determination and the Guidebook and its application are timely.¹³³ While

¹³² Vistaprint’s First Additional Submission, ¶ 12.

¹³³ Vistaprint’s Second Additional Submission, ¶¶ 8-12.

ICANN argues that the time for Vistaprint to object to the SCO procedures as established in the Guidebook has long passed,¹³⁴ Vistaprint responds that the opportunity to challenge the erroneous application of the Guidebook in violation of ICANN's fundamental principles only arose when the flaws in ICANN's implementation of the Guidebook became apparent. At the time of the adoption of the Guidebook, Vistaprint was effectively barred from challenging it by the fact that it could not – at that time – show any harm. Further, to raise an issue at that time would have required Vistaprint to reveal that it was contemplating making an application for a new gTLD string, which might have encouraged opportunistic applications by others seeking to extract monetary value from Vistaprint. Although the IRP panel in the *Booking.com v. ICANN* IRP raised similar timing concerns, it did not draw the distinction between the adoption of the general principles and their subsequent implementation.

B. ICANN's Position

a. IRP Panel's Authority

96. Standard of review: ICANN describes the IRP as a unique mechanism available under ICANN's Bylaws.¹³⁵ The IRP Panel is tasked with determining whether the Board's actions are consistent with ICANN's Articles and Bylaws. ICANN states that its Bylaws specifically identify a deferential standard of review that the IRP Panel must apply when evaluating the actions of the ICANN Board, and the rules are clear that the IRP Panel is neither asked to, nor allowed to, substitute its judgment for that of the Board.¹³⁶ In particular, ICANN cites to Article IV, § 3.4 of the Bylaws indicating the IRP Panel is to 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?
97. Further, ICANN states that the IRP addresses challenges to conduct undertaken by ICANN's Board of Directors; it is not a mechanism to challenge the actions or inactions of ICANN staff or third parties that may be involved with ICANN's activities.¹³⁷ The IRP is also not an appropriate forum to challenge the BGC's ruling on a Reconsideration Request in the absence of some violation by the BGC of ICANN's Articles or Bylaws.¹³⁸
98. IRP Declaration binding or non-binding: ICANN states that the IRP "is conducted pursuant to Article IV, section 3 of ICANN's Bylaws, which creates a non-binding method

¹³⁴ ICANN's First Additional Response, ¶¶ 28-29.

¹³⁵ Response, ¶ 32.

¹³⁶ Response, ¶ 33; ICANN's First Additional Response, ¶ 10.

¹³⁷ Response, ¶ 4.

¹³⁸ Response, ¶ 12.

of evaluating certain actions of ICANN's Board.¹³⁹ The Panel has one responsibility – to “declar[e] whether the Board has acted consistently with the provisions of [ICANN's] Articles of Incorporation and Bylaws.”¹⁴⁰ The IRP is not an arbitration process, but rather a means by which entities that participate in ICANN's processes can seek an independent review of decisions made by ICANN's Board.

99. ICANN states that the language of the IRP provisions set forth in Article IV, section 3 of the Bylaws, as well as the drafting history of the development of the IRP provisions, make clear that IRP panel declarations are not binding on ICANN:¹⁴¹ ICANN explains as follows in its First Additional Response:

35. First, the Bylaws charge an IRP panel 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 Board is then obligated to "review[]"¹⁴² and "consider" an IRP panel's declaration at the Board's next meeting "where feasible."¹⁴³ The direction to "review" and "consider" an IRP panel's declaration means that the Board has discretion as to whether it should adopt that declaration and whether it should take any action in response to that declaration; if the declaration were binding, there would be nothing to review or consider, only a binding order to implement.

100. ICANN contends that the IRP Panel's declaration is not binding because the Board is not permitted to outsource its decision-making authority.¹⁴⁴ However, the Board will, of course, give serious consideration to the IRP Panel's declaration and, “where feasible,” shall consider the IRP Panel's declaration at the Board's next meeting.¹⁴⁵

101. As to the drafting process, ICANN provides the following background in its First Additional Response:

36. Second, the lengthy drafting history of ICANN's independent review process confirms that IRP panel declarations are not binding. Specifically, the Draft Principles for Independent Review, drafted in 1999, state that "the ICANN Board should retain ultimate authority over ICANN's affairs – after all, it is the Board...that will be chosen by (and is directly accountable to) the membership and supporting organizations (fn. omitted). And when, in 2001, the Committee on ICANN Evolution and Reform (ERC) recommended the creation of an independent review process, it called for the creation of "a process to require non-binding arbitration by an international arbitration body to review any allegation that the Board has acted in conflict with ICANN's Bylaws" (fn. omitted). The individuals who actively participated in the process also agreed that the review process would not be binding. As one participant stated: IRP "decisions will be nonbinding, because the Board will retain final decision-making authority" (fn. omitted).

¹³⁹ Response, ¶ 2.

¹⁴⁰ Response, ¶ 2 (quoting Bylaws, Art. IV, § 3.4).

¹⁴¹ ICANN's First Additional Response, ¶ 34.

¹⁴² ICANN's First Additional Response, ¶ 35 (quoting Bylaws, Art. IV, § 3.11.d).

¹⁴³ ICANN's First Additional Response, ¶ 35 (quoting Bylaws, Art. IV, § 3.21).

¹⁴⁴ Response, ¶ 35.

¹⁴⁵ Response, ¶ 35 (quoting Bylaws, Art. IV, § 3.21).

37. In February 2010, the first IRP panel to issue a final declaration, the ICM IRP Panel, unanimously rejected the assertion that IRP panel declarations are binding¹⁴⁶ and recognized that an IRP panel's declaration "is not binding, but rather advisory in effect." Nothing has occurred since the issuance of the ICM IRP Panel's declaration that changes the fact that IRP panel declarations are not binding. To the contrary, in April 2013, following the ICM IRP, in order to clarify even further that IRPs are not binding, all references in the Bylaws to the term "arbitration" were removed as part of the Bylaws revisions. ICM had argued in the IRP that the use of the word "arbitration" in the portion of the Bylaws related to Independent Review indicated that IRPs were binding, and while the ICM IRP Panel rejected that argument, to avoid any lingering doubt, ICANN removed the word "arbitration" in conjunction with the amendments to the Bylaws.

38. The amendments to the Bylaws, which occurred following a community process on proposed IRP revisions, added, among other things, a sentence stating that "declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value" (fn. omitted). Vistaprint argues that this new language, which does not actually use the word "binding," nevertheless provides that IRP panel declarations are binding, trumping years of drafting history, the sworn testimony of those who participated in the drafting process, and the plain text of the Bylaws. This argument is meritless.

39. First, relying on the use of the terms "final" and "precedential" is unavailing – a declaration clearly can be both non-binding and also final and precedential:....

40. Second, the language Vistaprint references was added to ICANN's Bylaws to meet recommendations made by ICANN's Accountability Structures Expert Panel (ASEP). The ASEP was comprised of three world-renowned experts on issues of corporate governance, accountability, and international dispute resolution, and was charged with evaluating ICANN's accountability mechanisms, including the Independent Review process. The ASEP recommended, among other things, that an IRP should not be permitted to proceed on the same issues as presented in a prior IRP. The ASEP's recommendations in this regard were raised in light of the second IRP constituted under ICANN's Bylaws, where the claimant presented claims that would have required the IRP Panel to reevaluate the declaration of the IRP Panel in the ICM IRP. To prevent claimants from challenging Board action taken in direct response to a prior IRP panel declaration, the ASEP recommended that "[t]he declarations of the IRP, and ICANN's subsequent actions on those declarations, should have precedential value" (fn. omitted).

41. The ASEP's recommendations in this regard did not convert IRP panel declarations into binding decisions (fn. omitted). One of the important considerations underlying the ASEP's work was the fact that ICANN, while it operates internationally, is a California non-profit public benefit corporation subject to the statutory law of California as determined by United States courts. As Graham McDonald, one of the three ASEP experts, explained, because California law requires that the board "retain responsibility for decision-making," the Board has "final word" on "any recommendation that ... arises out of [an IRP]" (fn. omitted). The ASEP's recommendations were therefore premised on the understanding that the declaration of an IRP panel is not "binding" on the Board.

102. Authority to award affirmative relief: ICANN contends that any request that the IRP Panel grant affirmative relief goes beyond the Panel's authority.¹⁴⁷ The Panel does not have the authority to award affirmative relief or to require ICANN to undertake specific

¹⁴⁶ Declaration of IRP Panel, ICM Registry, LLC v. ICANN, ICDR Case No. 50 117 T 00224 08, ¶ 133 (Feb. 19, 2010) ("ICM Registry Final Declaration").

¹⁴⁷ Response, ¶ 78.

conduct. The Panel is limited to declaring whether an action or inaction of the Board was inconsistent with the Articles or Bylaws, and recommending 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 Panel.¹⁴⁸ ICANN adds that the IRP panel in *ICM Registry Declaration* found that

*“[t]he IRP cannot ‘order’ interim measures but do no more than ‘recommend’ them, and this until the Board ‘reviews’ and ‘acts upon the opinion’ of the IRP.”*¹⁴⁹

b. SCO Proceedings Claim

103. ICANN states that Vistaprint is using this IRP as a means to challenge the merits of the Third Expert’s determination in the *Vistaprint SCO*.¹⁵⁰ As ICANN states in its Response:

12. Ultimately, Vistaprint has initiated this IRP because Vistaprint disagrees with the Expert Panel’s Determination and the BGC’s finding on Vistaprint’s Reconsideration Request. ICANN understands Vistaprint’s disappointment, but IRPs are not a vehicle by which an Expert Panel’s determination may be challenged because neither the determination, nor ICANN accepting the determination, constitutes an ICANN Board action. Nor is an IRP the appropriate forum to challenge a BGC ruling on a Reconsideration Request in the absence of some violation by the BGC of ICANN’s Articles or Bylaws. Here, ICANN followed its policies and processes at every turn with respect to Vistaprint, which is all it is required to do.

104. ICANN states that the IRP Panel has one chief responsibility – to “determine whether the Board has acted consistently with the provisions of [ICANN’s] Articles of Incorporation and Bylaws.”¹⁵¹ With respect to Vistaprint’s claim that ICANN’s Board violated its Articles and Bylaws by “blindly accepting” the Third Expert’s SCO determination without reviewing its analysis or result, ICANN responds that there is no requirement for the Board to conduct such an analysis. “Accepting” or “reviewing” the Expert’s determination is not something the Board was tasked with doing or not doing. Per the Guidebook, the “findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.”¹⁵² The Guidebook further provides that “[i]n a 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).”¹⁵³ This step is a result not of any ICANN Board action, but a straightforward application of Guidebook provisions for SCO determinations.

105. ICANN states the Board thus took no action with respect to the Third Expert’s determination upon its initial issuance, because the Guidebook does not call for the Board to take any action and it is not required by any Article or Bylaw provision. Accordingly, it cannot be a violation of ICANN’s Articles or Bylaws for the Board to not conduct a

¹⁴⁸ ICANN’s First Additional Response, ¶ 33 (citing Bylaws, Art. IV, §§ 3.4 and 3.11(d)).

¹⁴⁹ *ICM Registry Final Declaration*, ¶ 133.

¹⁵⁰ Response, ¶ 12; ICANN’s First Additional submission, ¶ 4.

¹⁵¹ Response, ¶ 2 (citing Bylaws, Art. IV, § 3.4).

¹⁵² Response, ¶ 9 (citing Guidebook, § 3.4.6).

¹⁵³ Response, ¶ 9 (citing Guidebook, § 3.2.2.1).

substantive review of an expert's SCO determination. And as such, there is no Board action in this regard for the IRP Panel to review.

106. ICANN states that “the sole Board action that Vistaprint has identified in this case is the BGC’s rejection of Vistaprint’s Reconsideration Request. However, ICANN maintains that nothing about the BGC’s handling of the RFR violated ICANN’s Articles or Bylaws.”¹⁵⁴
107. In this regard, ICANN states that the BGC was not required, as Vistaprint contends, to refer Vistaprint’s Reconsideration Request to the entire ICANN Board.¹⁵⁵ The Bylaws provide that the BGC has the authority to “make a final determination of Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors.”¹⁵⁶ Because Vistaprint’s Reconsideration Request was a challenge to alleged staff action, the BGC was within its authority, and in compliance with the Bylaws, when it denied Vistaprint’s Reconsideration Request without making a referral to the full Board.
108. ICANN states that the BGC did what it was supposed to do in reviewing Vistaprint’s Reconsideration Request – it reviewed the Third Expert’s and ICANN staff’s compliance with policies and procedures, rather than the substance of the Third Expert’s SCO determination, and found no policy or process violations.¹⁵⁷ ICANN urges that Vistaprint seeks to use the IRP to challenge the substantive decision of the Third Expert in the *Vistaprint SCO*. However, this IRP may only be used to challenge ICANN Board actions on the grounds that they do not comply with the Articles or Bylaws, neither of which is present here.
109. ICANN nevertheless responds to Vistaprint’s allegations regarding errors of process and substance in the SCO proceedings, and contends that the BGC properly handled its review of the *Vistaprint SCO*. ICANN’s specific responses on these points are as follows:
 - (i) As to Vistaprint’s claim that the ICDR’s appointment of the First Expert was untimely, missing the deadline by 5 days, ICANN states that the BGC determined that Vistaprint failed to provide any evidence that it contemporaneously challenged the timeliness of the ICDR’s appointment of the First Expert, and that a Reconsideration Request was not the appropriate mechanism to raise the issue for the first time. In addition, the BGC concluded that Vistaprint had failed to show that it was “materially” and “adversely” affected by the brief delay in appointing the First Expert, rendering reconsideration inappropriate.
 - (ii) Regarding Vistaprint’s claim that the First Expert (and Third Expert) improperly accepted and considered unsolicited supplemental filings, violating Articles 17 and 18 of the New gTLD Objections Procedure, ICANN states that Article 17 provides the

¹⁵⁴ ICANN’s First Additional Submission, ¶ 4.

¹⁵⁵ Response, ¶ 43.

¹⁵⁶ Response, ¶ 44 (citing Bylaws, Art. IV, § 2.3(f)).

¹⁵⁷ Response, ¶ 11.

expert panel with the discretion to accept such a filing:¹⁵⁸ “The Panel *may decide* whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.”¹⁵⁹ Thus, as the BGC correctly found, it was not the BGC’s place to second-guess the First (or Third) Expert’s exercise of permitted discretion.

- (iii) As to Vistaprint’s claim that the ICDR violated Article 21 of the New gTLD Objections Procedure by failing to ensure the timely issuance of an expert SCO determination, ICANN contends that the BGC properly determined that Vistaprint’s claims in this regard did not support reconsideration for two reasons. First, on October 1, 2013, before the determination was supposed to be issued by the First Expert, the ICDR removed that expert. The BGC therefore could not evaluate whether the First Expert rendered an untimely determination in violation of the Procedure. Second, the BGC correctly noted that 45-day timeline applies to an expert’s submission of the determination “in draft form to the [ICDR’s] scrutiny as to form before it is signed” and the ICDR and the Expert are merely required to exercise “reasonable efforts” to issue a determination within 45 days of the constitution of the Panel.¹⁶⁰
- (iv) Regarding Vistaprint’s claim that the First Expert failed to maintain independence and impartiality, in violation of Article 13(c) of the New gTLD Objections Procedure, ICANN argues this claim is unsupported.¹⁶¹ As the BGC noted, Vistaprint provided no evidence demonstrating that the First Expert failed to follow the applicable ICDR procedures for independence and impartiality. Rather, all indications are that the First Expert and the ICDR complied with these rules as to this “new conflict,” which resulted in a removal of the First Expert. Further, Vistaprint presented no evidence of being materially and adversely affected by the First Expert’s removal, which is another justification for the BGC’s denial of the Reconsideration Request.
- (v) Vistaprint claimed that the ICDR unjustifiably accepted a challenge to the Second Expert (or created the circumstances for such a challenge), in violation of Article 2 of the ICDR’s Supplementary Procedures for String Confusion Objections.¹⁶² ICANN contends that the BGC properly determined that this claim did not support reconsideration. The ICDR Rules for SCOs make clear that the ICDR had the “sole discretion” to review and decide challenges to the appointment of expert panelists. While Vistaprint may disagree with the ICDR’s decision to accept the Objector’s challenge, it is not the BGC’s role to second guess the ICDR’s discretion, and it was

¹⁵⁸ Response, ¶ 50.

¹⁵⁹ New gTLD Objections Procedure, Art. 17.

¹⁶⁰ Response, ¶ 53, citing New gTLD Objections Procedure, Art. 21(a)-(b).

¹⁶¹ Response, ¶¶ 54-56.

¹⁶² Article 2, § 3 of the ICDR’s Supplementary Procedures for String Confusion Objections provides that:

Upon review of the challenge the DRSP in its sole discretion shall make the decision on the challenge and advise the parties of its decision.
[Underlining added]

not a violation of the Articles or Bylaws for the BGC to deny reconsideration on this ground.

- (vi) Vistaprint claimed that the determination of the Third Expert was untimely, in violation of Article 21(a) of the New gTLD Objections Procedure. ICANN claims that the BGC properly held that this claim did not support reconsideration.¹⁶³ On November 20, 2013, the ICDR appointed the Third Expert. Vistaprint claimed in its Reconsideration Request that pursuant to Article 21, the determination therefore “should have been rendered by January 4, 2014,” which was forty-five (45) days after the Panel was constituted. Because “it took this Panel until January 24, 2014 to render the Decision,” Vistaprint contended that the determination was untimely because it was twenty days late. ICANN states that, according to the Procedure, the Expert must exercise “reasonable efforts” to ensure that it submits its determination “in draft form to the DRSP’s scrutiny as to form before it is signed” within forty-five (45) days of the Expert Panel being constituted. As the BGC noted, there is no evidence that the Third Expert failed to comply with this Procedure, and reconsideration was therefore unwarranted on this ground.
- (vii) ICANN responded to Vistaprint’s claim that the Third Expert incorrectly applied the Objector’s burden of proof, in violation of section 3.5 of the Guidebook and Article 20(c) of the New gTLD Objections Procedure (which place the burden on the Objector). Vistaprint claimed that the Third Expert contravened ICANN’s process because the Expert did not give an analysis showing that the Objector had met the burden of proof.¹⁶⁴ ICANN states that the BGC found the Expert extensively detailed support for the conclusion that the .WEBS string so nearly resembles .WEB – visually, aurally and in meaning – that it is likely to cause confusion. The BGC noted that the Expert had adhered to the procedures and standards set forth in the Guidebook relevant to determining string confusion and reconsideration was not warranted on this basis.
- (viii) Finally, as to Vistaprint’s claim that the Third Expert incorrectly applied ICANN’s substantive standard for evaluation of String Confusion Objections (as set out in Section 3.5.1 of the Guidebook), ICANN contends the BGC properly found that reconsideration was not appropriate.¹⁶⁵ Vistaprint contended that the Expert failed to apply the appropriate high standard for assessing likelihood of confusion.¹⁶⁶ ICANN states that Section 3.5.1 of the Guidebook provides that

“[f]or 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.”

ICANN claims that disagreement as to whether this standard should have resulted in a finding in favor of Vistaprint does not mean that the Third Expert violated any policy or process in reaching his decision. Vistaprint also claimed that the Third

¹⁶³ Response, ¶¶ 61-62.

¹⁶⁴ Response, ¶¶ 63-64.

¹⁶⁵ Response, ¶¶ 65-68.

¹⁶⁶ Request, ¶ 47.

Expert “failed to apply the burden of proof and the standards imposed by ICANN” because the Expert questioned whether the co-existence between Vistaprint’s domain name, <webs.com>, and the Objector’s domain name, <web.com> for many years without evidence of actual confusion is relevant to his determination. ICANN states that, as the BGC noted, the relevant consideration for the Expert is whether the *applied-for gTLD string* is likely to result in string confusion, not whether there is confusion between second-level domain names. Vistaprint does not cite any provision of the Guidebook, the Procedure, or the Rules that have been contravened in this regard.

110. In sum, ICANN contends that the BGC did its job, which did not include evaluating the merits of Third Expert’s determination, and the BGC followed applicable policies and procedures in considering the RFR.¹⁶⁷

111. Regarding Vistaprint’s claims of ICANN’s breach of various Articles and Bylaws, ICANN responds as follows in its Response:

71. *First, Vistaprint contends that ICANN failed to comply with the general principle of “good faith.” But the only reason Vistaprint asserts ICANN failed to act in good faith is in “refus[ing] to reconsider the substance” of the Determination or to “act with independent judgment” (fn. omitted). The absence of an appeal mechanism by which Vistaprint might challenge the Determination does not form the basis for an IRP because there is nothing in ICANN’s Bylaws or Articles of Incorporation requiring ICANN to provide one.*

72. *Second, Vistaprint contends that ICANN failed to apply its policies in a neutral manner. Here, Vistaprint complains that other panels let other applications proceed without being placed into a contention set, even though they, in Vistaprint’s opinion, presented “at least equally serious string similarity concerns” as .WEBS/.WEB (fn. omitted). Vistaprint’s claims about ICDR’s treatment of other string similarity disputes cannot be resolved by IRP, as they are even further removed from Board conduct. Different outcomes by different expert panels related to different gTLDs are to be expected. Claiming that other applicants have not suffered adverse determinations does not convert the Expert Panel’s Determination into a “discriminatory ICANN Board act.”*

73. *Third, Vistaprint contends that the ICANN Board violated its obligation to act transparently for not investigating the “impartiality and independence” of the Expert Panel and thereby “did not seek to communicate with [ICDR] to optimize [its] service” (fn. omitted). Aside from the disconnect between the particular Bylaws provision invoked by Vistaprint requiring ICANN’s transparency, and the complaint that the ICDR did not act transparently, Vistaprint fails to identify any procedural deficiency in the ICDR’s actions regarding the removal of the First Expert, as set forth above. Moreover, Vistaprint cites no obligation in the Articles or Bylaws that the ICANN Board affirmatively investigate the impartiality of an Expert Panel, outside of the requirement that the ICDR follow its policies on conflicts, which the ICDR did.*

74. *Fourth, Vistaprint contends that ICANN “has not created any general process for challenging the substance of the so-called expert determination,” and thus has “brashly flouted” its obligation to remain accountable (fn. omitted). But again, Vistaprint does not identify any provision of the Articles or Bylaws that requires ICANN to provide such an appeals process.*

75. *Fifth, Vistaprint “concludes” that the ICANN Board neglected its duty to promote competition and innovation (fn. omitted) when it failed to overturn the Expert Panel’s Determination. Vistaprint claims that the Objector’s “motive in filing the objection was to prevent a potential competitor from entering*

¹⁶⁷ Response, ¶ 69.

the gTLD market” and therefore ICANN’s “acceptance” of the objection purportedly contravenes ICANN’s core value of promoting competition. But every objection to a gTLD application by an applicant for the same string seeks to hinder a competitor’s application. By Vistaprint’s logic, ICANN’s commitment to promoting competition requires that no objections ever be sustained and every applicant obtains the gTLD it requests. There is no provision in the Articles or Bylaws that require such an unworkable system.

76. All in all, Vistaprint’s attempt to frame its disappointment with the Expert Panel’s decision as the ICANN Board’s dereliction of duties does not withstand scrutiny.

c. Disparate Treatment Claim

112. ICANN states that Vistaprint objects to the Board’s exercise of its independent judgement in determining not to intervene further (beyond the review of the BGC) with respect to the Third Expert’s determination in the *Vistaprint SCO*, as the Board did with respect to expert determinations on String Confusion Objections regarding the strings (1) .COM/.CAM, (2) .CAR/.CARS, and (3) .SHOP/.通販 (online shopping in Japanese).¹⁶⁸
113. ICANN states that the Guidebook provides that in “exceptional circumstances,” such as when accountability mechanisms like RFR or IRP are invoked, “the Board might individually consider an application”¹⁶⁹ and that is precisely what occurred in Vistaprint’s case. Because Vistaprint sought reconsideration, the BGC considered Vistaprint’s Reconsideration Request and concluded that the ICDR and Third Expert had not violated any relevant policy or procedure in rendering the Expert’s determination.
114. ICANN states that the ICANN Board only intervened with respect to these other expert determinations because there had been several independent expert determinations regarding the same strings that were seemingly inconsistent with one another. That is not the case with respect to Vistaprint’s applications – no other expert determinations were issued regarding the similarity of .WEB and .WEBS.¹⁷⁰ “Unlike .WEB/.WEBS, the COM/.CAM, .CAR/.CARS, and .SHOP/.通販 strings were all the subject of several, seemingly inconsistent determinations on string confusion objections by different expert panels. So, for example, while one expert upheld a string confusion objection asserting that .CAM was confusingly similar to .COM, another expert overruled a separate string confusion objection asserting precisely the same thing.”¹⁷¹
115. Further, ICANN explains that

16. Given what were viewed by some as inconsistent determinations, the BGC requested that ICANN staff draft a report for the ICANN Board’s New gTLD Program Committee (“NGPC”), “setting out

¹⁶⁸ ICANN’s First Additional Submission, ¶ 14.

¹⁶⁹ ICANN’s First Additional Submission, ¶ 5 (citing Guidebook, § 5.1). ICANN quotes the *Booking.com Final Declaration*, where the IRP Panel stated in relation to § 5.1 “the fact that the ICANN Board enjoys such discretion [to individually consider an application for a New gTLD] and may choose to exercise it at any time does not mean that it is bound to exercise it, let alone at the time and in the manner demanded by *Booking.com*.”

¹⁷⁰ ICANN’s First Additional Submission, ¶ 5.

¹⁷¹ ICANN’s First Additional Submission, ¶ 15.

options for dealing...[with] differing outcomes of the String Confusion Objection Dispute Resolution process in similar disputes...."¹⁷² The NGPC subsequently considered potential approaches to addressing perceived inconsistent determinations on string confusion objections, including possibly implementing a new review mechanism.¹⁷³ ICANN staff initiated a public comment period regarding framework principles of a potential such review mechanism.¹⁷⁴ Ultimately, having considered the report drafted by ICANN staff, the public comments received, and the string confusion objection process set forth in the Guidebook, the NGPC determined that the inconsistent expert determinations regarding .COM/.CAM and .SHOP/.通販 were "not[] in the best interest of the New gTLD Program and the Internet community" and directed ICANN staff to establish a process whereby the ICDR would appoint a three-member panel to re-evaluate those expert determinations.¹⁷⁵

116. ICANN contends that Vistaprint has identified no Articles or Bylaws provision violated by the Board in exercising its independent judgment to intervene with respect to inconsistent determinations in certain SCO cases, but not with respect to the single expert SCO determination regarding .WEBS/.WEB. The Board was justified in exercising its discretion to intervene with respect to the inconsistent expert determinations regarding .COM/.CAM, .CAR/.CARS and .SHOP/.通販 - the Board acted to bring certainty to multiple and differing expert determinations on String Confusion Objections regarding the same strings.¹⁷⁶ That justification was not present with respect to the single *Vistaprint SCO* determination at issue here. Thus, ICANN contends Vistaprint was not treated differently than other similarly-situated gTLD applicants.

117. Timing: Finally, ICANN also states that the time for Vistaprint to challenge the Guidebook and its standards has past. The current version of the Guidebook was published on June 4, 2012 following an extensive review process, including public comment on multiple drafts.¹⁷⁷ Despite having ample opportunity, Vistaprint did not object to the Guidebook at the time it was implemented. If Vistaprint had concerns related to the issues it now raises, it should have pursued them at the time, not years later and only after receiving the determination in the *Vistaprint SCO*. ICANN quotes the *Booking.com Final Declaration*, where the IRP stated,

*"the time has long since passed for Booking.com or any other interested party to ask an IRP panel to review the actions of the ICANN Board in relation to the establishment of the string similarity review process, including Booking.com's claims that specific elements of the process and the Board decisions to implement those elements are inconsistent with ICANN's Articles and Bylaws. Any such claims, even if they had any merit, are long since time-barred by the 30-day limitation period set out in Article IV, Section 3(3) of the Bylaws."*¹⁷⁸

118. ICANN states that while the Guidebook process at issue in this case is different for the

¹⁷² See BGC Determination on Reconsideration Request 13-10, at 11.

¹⁷³ See Rationale for NGPC Resolution 2014.02.05.NG02, at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en> (last accessed Sept. 15, 2015).

¹⁷⁴ See <https://www.icann.org/public-comments/sco-rramework-principles-2014-02-11-en> (last accessed Sept. 15, 2015).

¹⁷⁵ ICANN's First Additional Submission, ¶ 16; see NGPC Resolution 2014.1 0.12.NG02, at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-1-0-12-en#2.b> (last accessed Sept. 15, 2015).

¹⁷⁶ ICANN's First Additional Submission, ¶ 18.

¹⁷⁷ ICANN's First Additional Response, ¶ 27.

¹⁷⁸ *Booking.com final Declaration*, ¶ 129.

process at issue in the *Booking.com IRP* – the SCO process rather than the string similarity review process – the Booking.com IRP panel's reasoning applies equally. ICANN argues that because both processes were developed years ago, as part of the development of the Guidebook, challenges to both are time-barred.¹⁷⁹

V. Analysis and Findings

a. IRP Panel's Authority

119. Standard of Review: The IRP Panel has benefited from the parties' submissions on this issue, noting their agreement as to the Panel's primary task: comparing contested actions (or inactions)¹⁸⁰ of ICANN's Board to its Articles and Bylaws and declaring whether the Board has acted consistently with them. Yet when considering this Panel's comparative task, the parties disagree as to the level of deference to be accorded by the Panel in assessing the Board's actions or inactions.

120. Vistaprint has sought independent review through this IRP, claiming that it has been "harmed" (i.e., its .WEBS application has not been allowed to proceed and has been placed in a Contention Set) by the Board's alleged violation of the Articles and Bylaws. In accordance with Article IV, § 3.2 of the Bylaws:

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.

121. As noted above, Article IV, § 1 of the Bylaws emphasizes that the IRP is an accountability mechanism:

The provisions of this Article, creating processes for reconsideration and independent review of ICANN actions and periodic review of ICANN's structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws.

122. The Bylaws in Article IV, § 3.4 detail the IRP Panel's charge and issues to be considered in a defined standard of review:

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*

¹⁷⁹ ICANN's First Additional Submission, ¶ 28.

¹⁸⁰ Bylaws, Art. IV, § 3.11(c) ("The IRP Panel shall have the authority to... (c) declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws" (underlining added)).

- c. *did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?*¹⁸¹

[Underlining added]

123. The Bylaws state the IRP Panel is “*charged*” with “*comparing*” contested actions of the Board to the Articles and Bylaws and “*declaring*” whether the Board has acted consistently with them. The Panel is to focus, in particular, on whether the Board acted without conflict of interest, exercised due diligence and care in having a reasonable amount of facts in front of it, and exercised independent judgment in taking a decision believed to be in the best interests of ICANN. In the IRP Panel’s view this more detailed listing of a defined standard cannot be read to remove from the Panel’s remit the fundamental task of comparing actions or inactions of the Board with the Articles and Bylaws and declaring whether the Board has acted consistently or not. Instead, the defined standard provides a list of questions that can be asked, but not to the exclusion of other potential questions that might arise in a particular case as the Panel goes about its comparative work. For example, the particular circumstances may raise questions whether the Board acted in a transparent or non-discriminatory manner. In this regard, the ICANN Board’s discretion is limited by the Articles and Bylaws, and it is against the provisions of these instruments that the Board’s conduct must be measured.
124. The Panel agrees with ICANN’s statement that the Panel is neither asked to, nor allowed to, substitute its judgment for that of the Board. However, this does not fundamentally alter the lens through which the Panel must view its comparative task. As Vistaprint has urged, the IRP is the only accountability mechanism by which ICANN holds itself accountable through *independent third-party review* of its actions or inactions. Nothing in the Bylaws specifies that the IRP Panel’s review must be founded on a deferential standard, as ICANN has asserted. Such a standard would undermine the Panel’s primary goal of ensuring accountability on the part of ICANN and its Board, and would be incompatible with ICANN’s commitment to maintain and improve robust mechanisms for accountability, as required by ICANN’s Affirmation of Commitments, Bylaws and core values.

¹⁸¹ The Supplementary Rules provide similarly in section 1 that the IRP is designed “to review ICANN Board actions or inactions alleged to be inconsistent with ICANN’s Bylaws or Articles of Incorporation” with the standard of review set forth in section 8:

8. Standard of Review

The IRP is subject to the following standard of review: (i) did the ICANN Board act without conflict of interest in taking its decision; (ii) did the ICANN Board exercise due diligence and care in having sufficient facts in front of them; (iii) did the ICANN Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

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.

125. The IRP Panel is aware that three other IRP panels have considered this issue of standard of review and degree of deference to be accorded, if any, when assessing the conduct of ICANN's Board. All of them have reached the same conclusion: the Board's conduct is to be reviewed and appraised by the IRP Panel using an objective and independent standard, without any presumption of correctness.¹⁸² As the IRP Panel reasoned in the *ICM Registry Final Declaration*:

*ICANN is no ordinary non-profit California corporation. The Government of the United States vested regulatory authority of vast dimension and pervasive global reach in ICANN. In "recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization" – including ICANN – ICANN is charged with "promoting the global public interest in the operational stability of the Internet..." ICANN "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..." Thus, while a California corporation, it is governed particularly by the terms of its Articles of Incorporation and Bylaws, as the law of California allows. Those Articles and Bylaws, which require ICANN to carry out its activities in conformity with relevant principles of international law, do not specify or imply that the International Review Process provided for shall (or shall not) accord deference to the decisions of the ICANN Board. The fact that the Board is empowered to exercise its judgment in the application of ICANN's sometimes competing core values does not necessarily import that that judgment must be treated deferentially by the IRP. In the view of the Panel, the judgments of the ICANN Board are to be reviewed and appraised by the Panel objectively, not deferentially. The business judgment rule of the law of California, applicable to directors of California corporations, profit and nonprofit, in the case of ICANN is to be treated as a default rule that might be called upon in the absence of relevant provisions of ICANN's Articles and Bylaws and of specific representations of ICANN...that bear on the propriety of its conduct. In the instant case, it is those Articles and Bylaws, and those representations, measured against the facts as the Panel finds them, which are determinative.*¹⁸³

126. The IRP Panel here agrees with this analysis. Moreover, Article IV, §3.21 of the Bylaws provides that "declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value" (underlining added). The IRP Panel recognizes that there is unanimity on the issue of degree of deference, as found by the three IRP panels that have previously considered it. The declarations of those panels have precedential value. The Panel considers that the question on this issue is now settled. Therefore, in this IRP the ICANN Board's conduct is to be reviewed and appraised by this Panel objectively and independently, without any presumption of correctness.
127. On a related point as to the scope of the IRP Panel's review, the Panel agrees with ICANN's point of emphasis that, because the Panel's review is limited to addressing challenges to conduct by ICANN's Board, the Panel is not tasked with reviewing the

¹⁸² *ICM Registry Final Declaration*, ¶ 136 ("the judgments of the ICANN Board are to be reviewed and appraised by the Panel objectively, not deferentially"); *Booking.com final Declaration*, ¶ 111 ("the IRP Panel is charged with 'objectively' determining whether or not the Board's actions are in fact consistent with the Articles, Bylaws and Guidebook, which the Panel understands as requiring that the Board's conduct be appraised independently, and without any presumption of correctness."); Final Declaration of the IRP Panel in *DotConnectAfrica Trust v. ICANN*, ICDR Case No. 50-2013-001083, ¶ 76 (July 9, 2015) ("*DCA Final Declaration*"), at <https://www.icann.org/en/system/files/files/final-declaration-2-redacted-09jul15-en.pdf> (last accessed on Sept. 15, 2015) ("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").

¹⁸³ *ICM Registry Final Declaration*, ¶ 136.

actions or decisions of ICANN staff or other third parties who may be involved in ICANN activities or provide services to ICANN (such as the ICDR or the experts in the *Vistaprint SCO*). With this in mind, and with the focus on the Board, the only *affirmative* action of the Board in relation to Vistaprint's .WEBS gTLD application was through the BGC, which denied Vistaprint's Reconsideration Request.¹⁸⁴ ICANN states that "the sole Board action that Vistaprint has identified in this case is the Board Governance Committee's ('BGC') rejection of Vistaprint's Reconsideration Request, which sought reconsideration of the Expert Determination."¹⁸⁵ It appears that ICANN's focus in this statement is on affirmative action taken by the BGC in rejecting Vistaprint's Reconsideration Request; however, this does not eliminate the IRP Panel's consideration of whether, in the circumstances, inaction (or omission) by the BGC or the full ICANN Board in relation to the issues raised by Vistaprint's application would be considered a potential violation of the Articles or Bylaws.

128. As discussed below, the Panel considers that a significant question in this IRP concerns one of "omission" – the ICANN Board, through the BGC or otherwise, did not provide relief to Vistaprint in the form of an additional review mechanism, as it did to certain other parties who were the subject of an adverse SCO determination.
129. IRP declaration binding or non-binding: As noted above, Vistaprint contends that the outcome of this IRP is binding on ICANN, and that any other result would be incompatible with ICANN's obligation to maintain and improve robust mechanisms for accountability. ICANN, on the other hand, contends that the IRP Panel's declaration is intended to be advisory and non-binding.
130. In analyzing this issue, the IRP Panel has carefully reviewed the three charter instruments that give the Panel its authority to act in this case: the Bylaws, the Supplementary Procedures, and the ICDR Rules. The Panel views that it is important to distinguish between (i) the findings of the Panel on the question of whether the ICANN Board's conduct is consistent (or not) with the Articles and Bylaws, and (ii) any consequent remedial measures to be considered as a result of those findings, at least insofar as those

¹⁸⁴ The BGC is a committee of the Board established pursuant to Article XII, § 1 of the Bylaws. Article IV, § 2.3 of the Bylaws provide for the delegation of the Board's authority to the BGC to consider Requests for Reconsideration and indicate that the BGC 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.

The BGC has discretion to decide whether to issue a final decision or make a recommendation to ICANN's Board. In this case, the BGC decided to make a final determination on Vistaprint's RFR.

¹⁸⁵ ICANN's First Additional Submission, ¶ 4. By contrast to the IRP Panel's focus on the Board's conduct, the BGC in its decision on Vistaprint's Reconsideration request considered the action or inaction of ICANN staff and third parties providing services to ICANN (i.e., the ICDR and SCO experts).

measures would direct the Board to take or not take any action or decision. The Panel considers that, as to the first point, the findings of the Panel on whether the Board has acted in a manner that is consistent (or not) with the Articles or Bylaws is akin to a finding of breach/liability by a court in a contested legal case. This determination by the Panel is “binding” in the sense that ICANN’s Board cannot overrule the Panel’s declaration on this point or later decide for itself that it disagrees with the Panel and that there was no inconsistency with (or violation of) the Articles and Bylaws. However, when it comes to the question of whether or not the IRP Panel can *require* that ICANN’s Board implement any form of redress based on a finding of violation, here, the Panel believes that it can only raise remedial measures to be considered by the Board in an advisory, non-binding manner. The Panel concludes that this distinction – between a “binding” declaration on the violation question and a “non-binding” declaration when it comes to recommending that the Board stay or take any action – is most consistent with the terms and spirit of the charter instruments upon which the Panel’s jurisdiction is based, and avoids conflating these two aspects of the Panel’s role.

131. The IRP Panel shares some of Vistaprint’s concerns about the efficacy of the IRP as an accountability mechanism if any affirmative relief that might be considered appropriate by the Panel is considered non-binding on ICANN’s Board (see discussion below); nevertheless, the Panel determines on the basis of the charter instruments, as well as the drafting history of those documents, that its declaration is binding only with respect to the finding of compliance or not with the Articles and Bylaws, and non-binding with respect to any measures that the Panel might recommend the Board take or refrain from taking. The Panel’s Declaration will have “precedential value” and will possibly be made publicly available on ICANN’s website.¹⁸⁶ Thus, the declaration of violation (or not), even without the ability to order binding relief vis-à-vis ICANN’s Board, will carry more weight than would be the case if the IRP was a confidential procedure with decisions that carried no precedential value.
132. To the extent that there is ambiguity on the nature of the IRP Panel’s declaration (which perhaps could have been avoided in the first place), it is because there is ambiguity and an apparent contradiction created by some of the key terms of the three charter instruments – the Bylaws, the Supplementary Procedures, and the ICDR Rules. In terms of a potential interpretive hierarchy for these documents – to the extent that such hierarchy is relevant – the Bylaws can be said to have created the IRP and its terms of reference: the IRP is established as an accountability mechanism pursuant to the Bylaws, Article IV, § 3 (Independent Review of Board Actions). Article IV, § 3.8 of the Bylaws, in turn, delegates to the “IRP Provider” the task of establishing rules and procedures that are supposed to be consistent with Article IV, § 3:

Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures,

¹⁸⁶ The Panel observes the final declarations in all previous IRPs that have gone to decision, as well as declarations concerning procedure and interim relief, have been posted on ICANN’s website. In this respect, Supplementary Procedures, Rule 10(c) provides that a “Declaration may be made public only with the consent of all parties or as required by law”. However, ICANN has also agreed in Rule 10(c) that subject to the redaction of confidential information or unforeseen circumstances, “ICANN will consent to publication of a Declaration if the other party so requests.”

which shall implement and be consistent with this Section 3.

[Underlining added]

133. Thus, the Supplementary Procedures and ICDR Rules were established pursuant to Article IV, § 3.8 of the Bylaws; however, the requirement of consistency as between the texts was imperfectly implemented, at least with respect to the ICDR Rules, as discussed below. As between the Supplementary Procedures and the ICDR Rules, the Supplementary Procedures will control, as provided in Supplementary Rule 2:

In the event there is any inconsistency between these Supplementary Procedures and the Rules, these Supplementary Procedures will govern.

134. The Bylaws in Article IV, § 3.4 provide that the Panel *shall* be charged with *comparing* contested actions of the Board to the Articles and Bylaws, and with “*declaring*” whether the Board has acted consistently with them. The IRP panel in the *ICM Registry Final Declaration* stressed that the IRP panel’s task is “to ‘declare’, not to ‘decide’ or to ‘determine’.”¹⁸⁷ However, the word “declare”, alone, does not conclusively answer the question of whether the IRP’s declaration (or any part of it) is binding or not. “To declare” means “*to announce or express something clearly and publicly, especially officially.*”¹⁸⁸ Declarations can and do serve as the predicate for binding or non-binding consequences in different contexts. For example, a declaratory relief action – in which a court resolves legal uncertainty by determining the rights of parties under a contract or statute without ordering anything be done or awarding damages – can have a binding result because it may later preclude a lawsuit by one of the parties to the declaratory lawsuit. Further, in a non-legal context, “declaring” a state of emergency in a particular state or country can have binding consequences. Thus, the word “declare,” in itself, does not answer the issue.

135. Moreover, nothing in the Bylaws, Supplementary Procedures or ICDR Rules suggests that the IRP Panel’s declaration is non-binding with respect to the Panel’s core task of deciding whether the Board did, or did not, comply the Articles or Bylaws. There is no provision that states the ICANN Board can reconsider this independent and important declaration. To the contrary, the ICDR Rules, which apply to the IRP proceedings, can be read to suggest that both the Panel’s finding of compliance (or not) by ICANN’s Board, and the Panel’s possible reference to any remedial measures, are binding on ICANN. As Vistaprint indicates, the preamble of the ICDR Rules provide that “[a] dispute can be submitted to an arbitral tribunal for a final and binding decision,” and Article 30(1) of those Rules specifies that “[a]wards shall be made in writing by the arbitral tribunal and shall be final and binding on the parties” (*emphasis added*).

136. However, these terms in the ICDR Rules arguably contradict specific provisions of the Bylaws and Supplementary Procedures, at least to the extent that they are read to cover any measures that the IRP Panel would direct the ICANN Board to take or not take. In this way, if there is a contradiction between the texts, the Bylaws and Supplemental rules would govern. However, focusing on the relief that the Panel is authorized to grant

¹⁸⁷ *ICM Registry Final Declaration*, ¶ 133.

¹⁸⁸ Cambridge English Online Dictionary (United States version).

provides a decisive clue as to the question of whether the IRP declaration, or any part of it, is binding or non-binding, and produces a faithful and harmonized reading of all the texts. While the Bylaws and Supplementary Procedures say nothing to limit the binding effect of the IRP Panel’s “liability” declaration, they both contain provisions that expressly indicate the Panel may only “recommend” that the Board stay or take any action or decision. In particular, the Bylaws in Article IV, § 3.11 sets out the IRP Panel’s authority in terms of alternative actions that it may take once it has an IRP case before it:

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, 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.

[Underlining added]¹⁸⁹

137. Article IV, § 3.11(a) provides that the Panel may summarily dismiss an IRP request in certain circumstances. A fair reading of this term is that an IRP panel’s dismissal of a case pursuant to § 3.11(a) would be a binding decision, both for the party who brought the IRP request and for ICANN. In other words, ICANN could not require that the IRP panel take-up the case again once it has been dismissed by the panel.¹⁹⁰ Further, the IRP panel can “request additional written submissions” from the parties (including the Board) or certain third parties. Here again, a fair reading of this term is that it is not subject to any review by ICANN Board before it can be implemented and is therefore binding on those who receive such a request.

138. By comparison, any form of relief whereby the IRP Panel *would direct the Board* to take, or refrain from taking, any action or decision, as specified in § 3.11(d), must be “recommend[ed]” to the Board, which then “reviews and acts upon the opinion of the IRP.”¹⁹¹ The Panel’s authority is thus limited (and in this sense non-binding) when it

¹⁸⁹ Bylaws, Art. IV, § 3.11.

¹⁹⁰ Supplementary Rule 6 provides similarly that:

An IRP Panel may summarily dismiss any request for Independent Review where the requestor has not demonstrated that it meets the standing requirements for initiating the Independent Review.

Summary dismissal of a request for Independent Review is also appropriate where a prior IRP on the same issue has concluded through Declaration.

An IRP Panel may also dismiss a querulous, frivolous or vexatious request for Independent Review.

¹⁹¹ Supplementary Rule 7 provides similarly (as regards interim measures of protection) 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. Where the IRP

comes to providing ICANN's Board with potential courses of action or inaction in view of Board's non-compliance with the Articles or Bylaws.¹⁹²

139. Several other provisions of the Bylaws and Supplementary Procedures can be fairly read to relate to decisions of the IRP panel that would be considered binding, even as to ICANN's Board. Article IV, § 3.18 provides “[t]he 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.” There is no mechanism for the Board to overrule the IRP panel's designation as to which party is the prevailing party. Article IV, § 3.20 provides “[t]he IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets.” A fair reading of this provision is that the IRP panel's decision concerning such questions of confidentiality would be binding on all parties (including ICANN) in the IRP procedure. Consolidating IRP requests and determining the timing for each IRP proceeding are also decisions of the panel that are binding and not subject to review. Finally, Supplemental Procedures, Rule 11, directs that “[t]he IRP Panel shall fix costs in its Declaration.” Here too, this decision of the IRP panel can be fairly read to be binding on the parties, including the Board.

140. Thus, the IRP Panel's authority to render binding or non-binding decisions, orders or relief can be considered in relation to four basic areas:

(i) summary dismissals by the IRP Panel (for different reasons as stated in the Bylaws and Supplementary Procedures) are final and binding on the parties. There is no mechanism for appeal of such dismissals and they have precedential value.

(ii) the designation of prevailing party, fixing costs for the IRP, and other orders in support of the IRP proceedings (e.g., timing of proceedings, confidentiality, requests for additional submissions, consolidation of IRP cases) are binding decisions of the IRP Panel, with no review by the Board or any other body.

(iii) the IRP Panel's declaration of whether or not the Board has acted consistently with the provisions of the Articles and Bylaws is final and binding, in the sense that there is no appeal on this point to ICANN's Board or any other body; it is a final determination and has precedential value.

(iv) any form of relief in which the IRP Panel would direct the Board to take, or refrain from taking, any action or decision is only a recommendation to the Board. In this sense,

Panel is not yet comprised, the Chair of the standing panel may provide a recommendation on the stay of any action or decision

¹⁹² The word “recommend” is also not free of ambiguity. For example, Article 47 of the ICSID Convention (concerning investor-State arbitration) provides in relevant part that “the Tribunal may, if it considers that the circumstances so require, *recommend* any provisional measures which should be taken to preserve the respective rights of either party” (emphasis added). The use of the word “recommend” in this context may refer to an order of the Tribunal that is intended to be binding on the parties. Nevertheless, in the context of the IRP, the Panel considers that use of the word “recommend” conveys that the Panel's direction of any action or inaction on the part of the Board is a non-binding reference.

such a recommendation is not binding on the Board. The Bylaws and Supplementary Procedures provide specific and detailed guidance in this key area – i.e., relief that would require the Board to take or refraining from taking any action or decision – where the IRP Panel’s decisions would not be binding on the Board, but would serve only as a recommendation to be reviewed and acted upon by the Board.

141. The other decisions of the IRP panel, as outlined above and including the declaration of whether or not the Board violated the Articles and Bylaws, would be binding, consistent with the Bylaws, Supplementary Procedures and ICDR Rule Article 30(1). This approach provides a reading that harmonizes the terms of the three charter instruments. It also provides interpretive context for Article IV, § 3.21 of the Bylaws, providing that “[w]here feasible, the Board shall consider the IRP Panel declaration at the Board’s next meeting.” The IRP panel in the *ICM Registry Final Declaration* stated that “[t]his relaxed temporal proviso to do no more than ‘consider’ the IRP declaration, and to do so at the next meeting of the Board ‘where feasible’, emphasizes that it is not binding.”¹⁹³ However, consistent with the analysis above, the IRP Panel here reads this statement in the *ICM Registry Final Declaration* to relate only to an IRP panel’s decision to “recommend” that the Board take, or refrain from taking, any action or decision. It does not relate to the other decisions or duties of the IRP panel, as explained above.
142. Vistaprint contends that the second sentence in Article IV, § 3.21 – providing “[t]he declarations of the IRP Panel, and the Board’s subsequent action on those declarations, are final and have precedential value” – which was added in April 2013 after the issuance of *ICM Registry Final Declaration*, was a change that supports the view that the IRP panel’s outcome, including any references to remedial relief, is binding. However, the Panel agrees with ICANN’s view that “a declaration clearly can be both non-binding and also final and precedential.”¹⁹⁴ Further, the preparatory work and drafting history for the relevant provisions of the Bylaws relating to the IRP procedure indicate the intention for a non-binding procedure with respect to the Panel’s authority to advise the Board to take, or refrain from taking, any action or decision. As summarized in ICANN’s contentions above, ICANN has submitted evidence that those who were initially involved in establishing the IRP considered that it should be an advisory, non-binding procedure *in relation to any policies that the Board might be requested to consider and implement by the IRP panel*.¹⁹⁵
143. Thus, the Bylaws and the Supplementary Procedures draw a line: when the measures that an IRP panel might consider as a result of its core task require that the Board take or refrain from taking any action or decision, the panel may only “recommend” this course of action. On the other hand, if the IRP panel decides that the Board had violated its Articles or Bylaws, or if the panel decides to dismiss the IRP request, designate a prevailing party,

¹⁹³ *ICM Registry Final Declaration*, ¶ 133.

¹⁹⁴ ICANN’s First Additional Submission, ¶ 39.

¹⁹⁵ ICANN’s First Additional Submission, ¶ 38, n 53 (Vint Cerf, the former Chair of ICANN’s Board, testified in the *ICM IRP* that the independent review panel “is an advisory panel. It makes recommendations to the board but the board has the ultimate responsibility *for deciding policy for ICANN*” (*italics added*)). *ICM v. ICANN*, Hearing Transcript, September 23, 2009, at 592:7-11).

set conditions for confidentiality, consolidate IRP requests, request additional written submissions or fix costs, a fair reading of the Bylaws, Supplementary Procedures and ICDR Rules relevant to these determinations would be that the IRP panel's decisions on these matters are binding on both parties, including ICANN.

144. Finally, in view of Article IV, § 3.21 providing that the declarations of IRP panels are final and *have precedential value*, the IRP Panel here recognizes that, in addition to the *ICM Registry Final Declaration*, two other IRP panels have considered the question of the IRP panel's authority. In the *Booking.com Final Declaration*, the IRP panel focused on the independent and objective standard of review to be applied to the panel's core task of assessing whether the Board's actions were consistent with the Articles, Bylaws and Guidebook.¹⁹⁶ However, the IRP panel in *Booking.com*, as ICANN acknowledges in its Second Additional Response, did not directly address whether an IRP panel may issue a binding declaration (although ICANN contends that the panel implicitly acknowledged that it cannot).¹⁹⁷
145. In the *DCA Final Declaration*, the IRP panel addressed directly the question of whether or not the panel's declaration was binding. The panel ruled that its declarations, both as to the procedure and the merits of the case, were binding. The IRP panel in that case raised some of the same concerns that Vistaprint has raised here¹⁹⁸:

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.

146. The IRP panel in the *DCA Final Declaration* also emphasized that, according to the terms of the Guidebook, applicants for a new gTLD string waive their right to resort to the courts

¹⁹⁶ *Booking.com Final Declaration*, ¶¶ 104-115.

¹⁹⁷ ICANN's Second Additional Response, ¶ 29.

¹⁹⁸ *DCA Final Declaration*, ¶ 23 (quoting *DCA Declaration on the IRP Procedure* (Aug. 14, 2014)).

and therefore the IRP serves as the ultimate accountability mechanism for them:¹⁹⁹

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.

147. The IRP Panel in this case considers that the IRP panel in the *DCA Final Declaration*, and Vistaprint, have made several forceful arguments in favor of why the outcome of the IRP should be considered binding, especially to ensure the efficacy of the IRP as an accountability mechanism. Vistaprint has also urged that the IRP, at least with respect to applicants for new gTLD strings, is not merely a corporate accountability mechanism aimed at *internal* stakeholders, but operates to assess ICANN's responsibilities in relation to *external* third parties. And the outcome of the IRP is binding on these third parties, even if it is not binding on ICANN and its Board. In similar circumstances, it would not be uncommon that individuals, companies or even governments, would agree to participate in dispute resolution processes with third parties that are binding, at least *inter partes*.
148. However, as explained above, the IRP Panel concludes that the distinction between a "binding" declaration on the violation/liability question (and certain other matters as discussed above), on the one hand, and a "non-binding" declaration when it comes to recommending that the Board take or refrain from taking any action or decision, on the other hand, is most faithful to the terms and spirit of the charter instruments upon which the Panel's jurisdiction is based. To the extent that there is any disagreement with this approach, it is for ICANN to consider additional steps to address any ambiguities that might remain concerning the authority of the IRP panel and the legal effect of the IRP declaration.
149. Authority to award affirmative relief: The IRP Panel's analysis on this issue is closely related to, and dependent upon, its analysis of the binding vs. non-binding issue

¹⁹⁹ *DCA Final Declaration*, ¶ 38 (quoting *DCA Third Declaration on IRP Procedure*).

immediately above. To the extent that the IRP Panel renders any form of relief whereby the Panel would direct the Board to take, or refrain from taking, any action or decision, that relief must be “recommend[ed]” to the Board, which then “reviews and acts upon the opinion of the IRP,” as specified in § 3.11(d) of the Bylaws. Relatedly, Supplementary Rule 7 provides 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.” Consequently, the IRP Panel finds that it does not have authority to render affirmative relief requiring ICANN’s Board to take, or refrain from taking, any action or decision.

b. SCO Proceedings Claim

150. The IRP Panel has carefully reviewed Vistaprint’s arguments concerning ICANN’s alleged violation of its Articles and Bylaws in relation to this *SCO Proceedings Claim*. However, as stated above, the IRP Panel does not review the actions or inactions of ICANN’s staff or any third parties, such as the ICDR or SCO experts, who provided services to ICANN. Instead, the IRP Panel’s focus is on ICANN’s Board and the BGC, which was delegated responsibility from the full Board to consider Vistaprint’s Request for Reconsideration.²⁰⁰
151. The core of Vistaprint *SCO Proceedings Claim* is that ICANN’s Board improperly disregarded accumulated errors made by the ICDR and the SCO experts (especially the Third Expert) during the *Vistaprint SCO* proceedings, and in this way ICANN violated Article IV of the Articles of Incorporation and certain provisions of the Bylaws, as well as the Guidebook.
152. Vistaprint contends that ICANN’s Board must verify whether or not, by accepting the SCO expert determination, it is acting consistent with its obligations under its Articles, Bylaws and Affirmation of Commitments,²⁰¹ and that ICANN would be in violation of these obligations if it were to blindly accept an expert determination in circumstances where the ICDR and/or the expert had failed to comply with the Guidebook and the New gTLD Objections Procedure and/or the ICDR Rules for SCOs, or where a panel had failed to correctly apply the standard set by ICANN.²⁰²
153. The IRP Panel disagrees with Vistaprint’s contention on this point. Although the Guidebook provides in § 5.1 that ICANN’s Board of Directors has ultimate responsibility for the New gTLD Program, there is no affirmative duty stated in the Articles, Bylaws or

²⁰⁰ Article IV, §2.15 of ICANN’s Bylaws provides that:

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.

²⁰¹ Request, ¶ 6.

²⁰² Request, ¶ 6.

Guidebook that the Board must to review the result in each and every SCO case. Instead, the Guidebook § 3.4.6 provides that:

*The findings of the [SCO] panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.*²⁰³

[Underlining added]

154. In the case of an adverse SCO determination, the applicant for a new gTLD string is not left without any recourse. Module 6.6 of the Guidebook provides that an 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*” (no emphasis added).²⁰⁴

155. The Reconsideration Request is an “accountability mechanism” that can be invoked by a gTLD applicant, as it was used by Vistaprint, to challenge the result in SCO proceedings. Article IV, § 2.2 of the Bylaws provides that:

Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction (“Reconsideration Request”) to the extent that he, she, or it have been adversely affected by:

- a. *one or more staff actions or inactions that contradict established ICANN policy(ies); or*
- b. *one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board’s consideration at the time of action or refusal to act; or*
- c. *one or more actions or inactions of the ICANN Board that are taken as a result of the Board’s reliance on false or inaccurate material information.*

156. In line with Article IV, § 2.2 of the Bylaws, Vistaprint submitted its Reconsideration Request to challenge actions of the ICDR and SCO experts, claiming their conduct contradicted ICANN policies. While Guidebook, § 5.1 permits ICANN’s Board to individually consider new gTLD applications, such as through the RFR mechanism, it does not require that the Board do so in each and every case, *sua sponte*. The Guidebook, § 5.1, provides in relevant part that:

*ICANN’s Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result ... the use of an ICANN accountability mechanism.*²⁰⁵

157. The IRP Panel determines that in the absence of a party’s recourse to an accountability

²⁰³ Guidebook, § 3.4.6. The New gTLD Objections Procedure further provides in Article 2(d) that:

The ‘Expert Determination’ is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).

²⁰⁴ Guidebook, § 6.6.

²⁰⁵ Guidebook, § 5.1.

mechanism such as the RFR, the ICANN Board has no affirmative duty to review the result in any particular SCO case.

158. In this case, Vistaprint did submit a Reconsideration Request and the BGC did engage in a detailed review of the alleged errors in process and procedures raised by Vistaprint. The BGC explained what it considered to be the scope of its review, which is consistent with the mandate in Article IV, § 2.2 of the Bylaws for review of “staff actions or inactions that contradict established ICANN policies”:

*In the context of the New gTLD Program, the reconsideration process does not call for the BGC to perform a substantive review of expert determinations. Accordingly, the BGC is not to evaluate the Panel’s substantive conclusion that the Requester’s applications for .WEBS are confusingly similar to the Requester’s application for .WEB. Rather, the BGC’s review is limited to whether the Panel violated any established policy or process in reaching that Determination.*²⁰⁶

159. In contrast to Vistaprint’s claim that the BGC failed to perform its task properly and “turned a blind eye to the appointed Panel’s lack of independence and impartiality”, the IRP Panel finds that the BGC provided in its 19-page decision a detailed analysis of (i) the allegations concerning whether the ICDR violated its processes or procedures governing the SCO proceedings and the appointment of, and challenges to, the experts, and (ii) the questions regarding whether the Third Expert properly applied the burden of proof and the substantive standard for evaluating a String Confusion Objection. On these points, the IRP Panel finds that the BGC’s analysis shows serious consideration of the issues raised by Vistaprint and, to an important degree, reflects the IRP Panel’s own analysis.²⁰⁷

160. For example, in relation to Vistaprint’s contention that the First Expert failed to maintain independence and impartiality, in violation of Article 13(c) of the New gTLD Objections Procedure, the BGC reasoned:

The only evidence the [Vistaprint] cites in support of its argument that Mr. Koh failed to maintain his independence during the proceeding is the ICDR’s statement that it had decided to remove Mr. Koh “due to a new conflict.” (Request, Section 10, Pgs. 9-10.) The ICDR did not provide any further information as to the nature of the conflict. Conflicts can take many forms, such as scheduling or personal conflicts unrelated to the proceedings. There is no evidence that the conflict that inflicted

²⁰⁶ BGC Determination, p. 7, Request, Annex 26.

²⁰⁷ Vistaprint also asserted that based on the Third Expert’s determination in the *Vistaprint SCO*, the Third Expert lacked impartiality and independence, or alternatively lacked qualification. On a complete review of the entire record in this case, including the SCO proceedings and the Reconsideration Request before the BGC, the IRP Panel has found no foundation for these allegations against the Third Expert, and no violation of ICANN’s Articles or Bylaws in the manner in which the BGC handled these assertions. The BGC found that these assertions were insufficient to merit reconsideration, as stated in its RFR decision, in footnote 10:

[Vistaprint] concludes with the following claim: “The cursory nature of the Decision and the arbitrary and selective discussion of the parties’ arguments by the Panel show the lack of either the Panel’s independence and impartiality or the Panel’s appropriate qualifications.” (Request, Section 10, Pg. 23.) [Vistaprint’s] assertion is not accompanied by any discussion or further explanation for how ICANN processes were purportedly violated. [Vistaprint’s] summary conclusions are without merit and insufficient to warrant reconsideration. Furthermore, [Vistaprint’s] claim that the Determination was “cursory” and only contained “selective discussion of the parties’ arguments” is unsupported. The Determination was eighteen pages long and contained more than six pages of discussion of the parties’ arguments and evidence.

Mr. Koh was related to the instant proceedings or otherwise impacted Mr. Koh's ability to remain impartial and independent.

Furthermore, [Vistaprint] neither claims to have been, nor presents any evidence of being, materially and adversely affected by Mr. Koh's removal. Indeed, had [Vistaprint] successfully challenged Mr. Koh for lack of independence at the time he was removed, the remedy under the applicable ICDR procedures would have been the removal of Mr. Koh, which was the result here.²⁰⁸

161. The BGC concluded that Vistaprint provided no evidence of being materially and adversely affected by the First Expert's removal. Moreover, to the extent that there was an impact due to the First Expert stepping down, this conduct was attributable to the First Expert, not to the ICDR. As the BGC states, had there been a concern about the First Expert's lack of independence, the remedy under the applicable ICDR procedures would have been the removal of that expert, which is what actually occurred.

162. Vistaprint also argued that the BGC conducted no investigation as to the nature of the new conflict that confronted the First Expert and instead "developed baseless hypotheses for the other reasons that could have led to this Panel stepping down."²⁰⁹ In this respect, perhaps the BGC could have sought to develop evidence on this issue by inquiring with the ICDR about the circumstances concerning the First Expert. Article IV, § 2.13 of the Bylaws provides the BGC "may also request information relevant to the request from third parties," but it does not require that the BGC do so. However, it would not have changed the outcome, as noted above. It is also noteworthy that Article IV, § 2.2(b) of the Bylaws provides that a party may submit a Reconsideration Request to the extent that the party has been adversely affected by:

one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act.

163. Here, there was no showing that Vistaprint attempted to develop information concerning how the removal of the First Expert might have had a material and adverse impact on Vistaprint, or information concerning the reasons for the First Expert stepping down.

164. Vistaprint also alleged that the ICDR unjustifiably accepted a challenge to the Second Expert, or created the circumstances for such a challenge. As the BGC noted, the procedure governing challenges to experts is set forth in Article 2 § 3 of the ICDR's New gTLD Objections Procedure, which provides:

Upon review of the challenge the DRSP in its sole discretion shall make the decision on the challenge and advise the parties of its decision.

165. The BGC reasoned that while Vistaprint may disagree with the ICDR's decision to accept the challenge to the Second Expert, that decision was in the "sole discretion" of the ICDR and it was not the BGC's role to second guess the ICDR's discretion in this regard.²¹⁰ The IRP Panel finds that the BGC violated no Article, Bylaw or the Guidebook by taking this

²⁰⁸ BGC Determination, p. 12, Request, Annex 26.

²⁰⁹ Request, ¶ 77.

²¹⁰ BGC Determination, p. 12, Request, Annex 26.

view. However, it does appear that the ICDR might have avoided the challenge situation in the first place by appointing someone other than the Second Expert – who had served as the expert panel in previous SCO case administered by the ICDR – given that the basis for the challenge against him, which the ICDR accepted, was his involvement in the previous case.

166. Vistaprint also claimed that the Third Expert incorrectly applied both the burden of proof and the substantive criteria for evaluating the String Confusion Objection. The BGC rejected these contentions and the IRP Panel agrees. The BGC’s decision looked closely at the standard to be applied in String Confusion Objection proceedings, as well as how the Third Expert extensively detailed the support for his conclusion that the .WEBS string so nearly resembles .WEB – visually, aurally and in meaning – that it is likely to cause confusion.²¹¹ In this respect, the BGC did not violate ICANN’s Articles or Bylaws by determining that the Third Expert properly applied the relevant Guidebook policy for String Confusion Objections. As the BGC noted,

*The Requester’s disagreement as to whether the standards should have resulted in a finding in favor of Requester’s application does not mean that the panel violated any policy or process in reaching the decision.*²¹²

167. The Guidebook provides that the following evaluation standard is to be applied in String Confusion Objection proceedings:

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.

168. Vistaprint in its Request emphasized that ICANN has indicated that the SCO test sets a high bar²¹³:

22. *At various times, ICANN has indicated that the string confusion test sets a high bar:*

- “[T]he standard indicates that confusion must be probable, not merely possible, in order for this sort of harm to arise. Consumers also benefit from competition. For new gTLDs, the similarity test is a high bar, as indicated by the wording of the standard.[...] Therefore, while the objection and dispute resolution process is intended to address all types of similarity, the process is not intended to hobble competition or reserve a broad set of string [sic] for a first mover.” (fn. omitted)

- “Policy discussions indicate that the most important reason to disallow similar strings as top-level domain names is to protect Internet users from the increased exposure to fraud and other risks that could ensue from confusion of one string for another. This reasoning must be balanced against unreasonable exclusion of top-level labels and denial of applications where considerable investment

²¹¹ BGC Recommendation, pp. 15-18, Request, Annex 26.

²¹² BGC Determination, p. 17, Request, Annex 26.

²¹³ Request, ¶¶ 22-23.

has already been made. As the top-level grows in number of registrations, drawing too large a circle of “similarity protection” around each existing string will quickly result in the unnecessary depletion of available names. The unnecessary exclusion of names would also tend to stifle the opportunity of community representation at the top-level and innovation.” (fn. omitted)

23. ICANN’s high standard for dealing with string confusion objections has been explicitly confirmed by the NGPC, which states that in the 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. During the policy development and implementation design phases of the New gTLD Program, aural and conceptual string similarities were considered. These types of similarity were discussed at length, yet ultimately not agreed to be used as a basis for the analysis of the string similarity panels’ consideration because on balance, this could have unanticipated results in limiting the expansion of the DNS as well as the reach and utility of the Internet. [...] The NGPC reflected on existing string similarity in the DNS and considered the positive and negative impacts. The NGPC observed that numerous examples of similar strings, including singulars and plurals exist within the DNS at the second level. Many of these are not registered to or operated by the same registrant. There are thousands of examples [...]” (NGPC Resolution 2014.02.056. NG02).

169. The passages quoted by Vistaprint, referencing ICANN materials and a resolution of the NGPC, arguably provide useful context in applying the test for String Confusion Objections. After citing these passages, however, Vistaprint contends in its Request that

“[a]s a result, two strings should only be placed in a contention set if they are so similar that they would create a probability of user confusion were both to be delegated into the root zone, and the finding of confusing similarity must be balanced against the risk of unreasonable exclusion of top-level labels and the denial of applications” (no underlining added).²¹⁴

170. However, the problem with the test as posited by Vistaprint is that it would add a balancing element that is not in the Guidebook’s standard: according to Vistaprint the finding of confusing similarity must be balanced against the risk of unreasonable exclusion of top-level labels and the denial of applications. This part of the standard (as advanced by Vistaprint) is not in the Guidebook, although the concerns it represents were reflected in the other ICANN materials. The Guidebook standard is as follows:

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.

171. There is no reference in this standard to balancing the likelihood of confusion against the needs to promote competition and to guard against the unreasonable exclusion of top-level strings. While it might be advisable to consider whether the standard for String Confusion Objections should be revised to incorporate such a balancing test, these elements were not in the policy that was applied by the Third Expert. Nor was there a violation, by the BGC or the ICANN Board, of any Articles or Bylaws in formulating the SCO standard as it was formulated (based on community input), and in determining that the Third Expert properly applied this policy.

²¹⁴ Request, ¶ 24.

172. ICANN has argued that the time for Vistaprint to have objected to the Guidebook and its SCO policy has long since passed. Vistaprint has responded that it contests the *implementation* of the Guidebook and its *policies*, not just the policies themselves. Even assuming that the Guidebook's policies could be challenged at this point, the IRP Panel finds that the relevant policies, such as the standard for evaluating String Confusion Objections, do not violate any of ICANN's Articles or Bylaws reflecting principles such as good faith, fairness, transparency and accountability. However, the Panel does agree with ICANN that the time for challenging the Guidebook's standard for evaluating String Confusion Objections – which was developed in an open process and with extensive input – has passed.
173. Vistaprint has also complained that it was not provided with the opportunity to appeal the Third Expert's decision on the merits, such that the BGC or some other entity would re-evaluate the Expert's string confusion determination. As noted above, the BGC's review focused on whether the ICDR and the Third Expert properly applied the relevant rules and policies, not on whether the BGC, if it had considered the matter *de novo*, would have found string confusion as between the .WEBS and .WEB strings.
174. The IRP Panel finds that the lack of an appeal mechanism to contest the merits of the Third Expert's SCO determination is not, in itself, a violation of ICANN's Articles or Bylaws. ICANN's commitment through its Articles and Bylaws to act in good faith and with accountability and transparency, and to apply documented policies neutrally, objectively and fairly, does not require that it must have designed the SCO mechanism so that the result of a string confusion determination would be subject to a right of appeal. Other significant dispute resolution systems – such as the international legal regime for commercial arbitration regarding awards as final and binding²¹⁵ – do not normally provide for a right of appeal on the merits.
175. In respect of Vistaprint's *SCO Proceedings Claim*, the IRP Panel denies each of Vistaprint's claims concerning ICANN's alleged breaches of obligations under the Articles, Bylaws and Affirmation of Commitments, as follows:
- (1) Vistaprint claims that ICANN failed to comply with its obligation under Article 4 of the Articles and IV § 3.4 of the Bylaws to act in good faith with due diligence and independent judgment by failing to provide due process to Vistaprint's .WEBS applications.²¹⁶ The IRP Panel denies Vistaprint's claim that Vistaprint was not given a fair opportunity to present its case; was deprived of procedural fairness and the opportunity to be heard by an independent panel applying the appropriate rules; and was not given any meaningful opportunity for remedy or redress once the SCO determination was made, even in the RFR procedure.
 - (2) Vistaprint claims ICANN failed to comply with its obligation under Article I § 2.8 to neutrally, objectively and fairly apply documented policies as established in the

²¹⁵ See *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 1958).

²¹⁶ Request, ¶¶ 69-71.

Guidebook and Bylaws.²¹⁷ As discussed above, the IRP Panel rejects Vistaprint's claim that the *Vistaprint SCO* determination – finding that the .WEBS and .WEB gTLD strings are confusingly similar – is contradictory to ICANN's policy for String Confusion Objections as established in the Guidebook.

- (3) Vistaprint claims ICANN failed to comply with its obligation to act fairly and with due diligence and independent judgment as called for under Article 4 of the Articles of Incorporation, Articles I § 2.8 and IV § 3.4 of the Bylaws by accepting the SCO determination made by the Third Expert, who was allegedly not independent and impartial.²¹⁸ As noted above, the IRP Panel finds that there was no failure of the BGC to act with due diligence and independent judgment, and to act in good faith as required by ICANN's Bylaws and Articles, when it determined that Vistaprint's claim – that the Third Expert was not independent and impartial and/or was not appropriately qualified – did not merit reconsideration.
- (4) Vistaprint claims that ICANN failed to comply with its obligations under the Article 4 of the Articles, and Article I §§ 2.7 and 2.8 and Article III § 1 of the Bylaws (and Article 9.1 of the Affirmation of Commitments) to act fairly and transparently by failing to disclose/perform any efforts to optimize the service that the ICDR provides in the New gTLD Program.²¹⁹ The IRP Panel rejects Vistaprint's contention that the BGC's Reconsideration determination shows that the BGC made no investigation into Vistaprint's fundamental questions about the Third Expert's arbitrariness, lack of independence, partiality, inappropriate qualification, or that the BGC did not exercise due diligence in making its determination on this issue.
- (5) Vistaprint claims ICANN failed to comply with its obligation to remain accountable under Articles I § 2.10 and IV § 1 of the Bylaws (and Articles 3(a) and 9.1 of the Affirmation of Commitments) by failing to provide any remedy for its mistreatment of Vistaprint's gTLD applications.²²⁰ The IRP Panel disagrees with Vistaprint's claim that ICANN's Board and the BGC adopted the Third Expert's SCO determination without examining whether it was made in accordance with ICANN's policy and fundamental principles under its Articles and Bylaws. In particular, as described above, the IRP Panel rejects Vistaprint's claim that the *Vistaprint SCO* determination is contradictory to ICANN's policy as established in the Guidebook and agrees with the BGC's analysis on this issue. Regarding Vistaprint's contention that ICANN should have created a review mechanism for challenging the substance of SCO expert determinations, as discussed above, the IRP Panel finds that the lack of such a general appeal mechanism creates no inconsistency with ICANN's Articles or Bylaws.
- (6) Vistaprint claims ICANN failed to promote competition and innovation under Articles I § 2.2 (and Article 3(c) of the Affirmation of Commitments) by accepting the Third

²¹⁷ Request, ¶ 72.

²¹⁸ Request, ¶ 73.

²¹⁹ Request, ¶¶ 52 and 77.

²²⁰ Request, ¶¶ 78-79.

Expert's determination.²²¹ Finally, the IRP Panel disagrees with Vistaprint's contention that the Board's acceptance of the determination in the *Vistaprint SCO* was contrary to ICANN's Bylaws because it was contrary to the interests of competition and consumers.

c. Disparate Treatment Claim

176. Vistaprint's final claim is one that raises a close question for this IRP Panel. Vistaprint contends that ICANN's Board discriminated against Vistaprint through the Board's (and the BGC's) acceptance of the Third Expert's determination in the *Vistaprint SCO*, while allowing other gTLD applications with equally serious string similarity concerns to proceed to delegation²²², or permitting still other applications that were subject to an adverse SCO determination to go through a separate additional review mechanism.

177. The IRP Panel agrees with Vistaprint's statement that the "IRP Panel's mandate includes a review as to whether or not ICANN's Board discriminates in its interventions on SCO expert determinations."²²³ As discussed above, in the Guidebook, § 5.1, ICANN has reserved the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community:

*....The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application....*²²⁴

178. However, as a counterbalance against this reserved power to individually consider new gTLD applications, the ICANN Board must also comply with Article II, § 3 of ICANN's Bylaws, providing for non-discriminatory treatment:

Section 3 (Non-Discriminatory Treatment)

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

179. As Vistaprint maintains in its First Additional Submission, "[w]hen the ICANN Board individually considers an application, it must make sure that it does not treat applicants inequitably and that it does not discriminate among applicants."²²⁵

180. As discussed above in relation to standard of review, the IRP Panel considers that the Board's actions or omissions in this area of alleged non-discriminatory treatment bear the scrutiny of independent and objective review, without any presumption of correctness. Moreover, ICANN's Bylaws in Article I, § 2 set out its core values that should guide the

²²¹ Request, ¶ 80.

²²² ICANN has permitted the delegation of the .car and .cars gTLDs, the .auto and .autos gTLDs, the .accountant and .accountants gTLDs, the .fan and .fans gTLDs, the .gift and .gifts gTLDs, the .loan and .loans gTLDs, the .new and .news gTLDs and the .work and .works gTLDs.

²²³ Vistaprint's Second Additional Submission, ¶ 20.

²²⁴ Guidebook, § 5.1.

²²⁵ Vistaprint's First Additional Submission, ¶ 31.

decisions and actions of ICANN, including the requirement, when balancing among competing core values, to exercise judgment to determine which core values are the most relevant and how they apply to the specific circumstances at hand. Of particular relevance to Vistaprint's disparate treatment claim are the core values set out in §§ 2.8 and 2.9:

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

* * * *

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

[Underlining added]

181. Vistaprint's disparate treatment claim is based on the following allegations:

- On June 25, 2013, the NGPC, a sub-committee of ICANN's Board, determined in Resolution 2013.06.25.NG07 that no changes were needed to the existing mechanisms in the Guidebook to address potential consumer confusion from allowing singular and plural versions of the same gTLD string. The NGPC had addressed this issue in response to advice from the ICANN's Government Advisory Committee ("GAC") that due to potential consumer confusion, the Board should "reconsider its decision to allow singular and plural version of the same strings."
- On February 5, 2014, the day before Vistaprint submitted its Reconsideration Request to the BGC on February 6, 2014, the NGPC approved Resolution 2014.02.05.NG02, which directed ICANN's President to initiate a public comment period on framework principles of a potential review mechanism to address perceived inconsistent String Confusion Objection expert determinations. The NGPC resolution provides in relevant part:

Whereas, on 10 October 2013 the Board Governance Committee (BGC) requested staff to draft a report for the NGPC on String Confusion Objections "setting out options for dealing with the situation raised within this Request, namely the differing outcomes of the String Confusion Objection Dispute Resolution process in similar disputes involving Amazon's Applied-for String and TLDH's Applied-for String."

Whereas, the NGPC is considering potential paths forward to address the perceived inconsistent Expert Determinations from the New gTLD Program String Confusion Objections process, including implementing a review mechanism. The review will be limited to the String Confusion Objection Expert Determinations for .CAR/.CARS and .CAM/.COM.

Whereas, the proposed review mechanism, if implemented, would constitute a change to the current String Confusion Objection process in the New gTLD Applicant Guidebook.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the

Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.02.05.NG02), the NGPC directs the President and CEO, or his designee, to publish for public comment the proposed review mechanism for addressing perceived inconsistent Expert Determinations from the New gTLD Program String Confusion Objections process.

[Underlining added]

- Vistaprint emphasizes that ICANN's Board (through the NGPC) took this decision the day before Vistaprint filed its Reconsideration Request; however, this did not prevent the BGC from denying Vistaprint's RFR less than one month later without considering whether such a review mechanism might also be appropriate for dealing with the SCO determination involving .WEBS/.WEB.²²⁶
- Vistaprint's Reconsideration Request and the BGC's decision on that Request rendered on February 27, 2014 contain no reference to the concerns that had been raised both by the BGC (on October 10, 2013 in a prior RFR determination) and the NGPC in its February 5, 2014 resolution concerning inconsistent expert SCO determinations, some of which involved plural and singular versions of the same gTLD string. Neither Vistaprint nor the BGC raised any discussion of disparate treatment at that time. The BGC's determined that its decision on Vistaprint's Reconsideration Request "shall be final and does not require Board (or NGPC) consideration."²²⁷
- On October 12, 2014, approximately 8 months after the BGC's decision on Vistaprint's Reconsideration Request, and after Vistaprint had filed its Request in this IRP (in June 2014), the NGPC approved Resolution 2014.10.12.NG02, in which it identified certain SCO expert determinations "as not being in the best interest of the New gTLD Program and the Internet community," and directed ICANN's President to establish processes and procedures to re-evaluate certain previous SCO expert determinations. Resolution 2014.10.12.NG02 also stated in its rationale:

The NGPC also considered whether there was a reasonable basis for certain perceived inconsistent Expert Determinations to exist, and particularly why the identified Expert Determinations should be sent back to the ICDR while other Expert Determinations should not. The NGPC notes that while on their face some of the Expert Determinations may appear inconsistent, including other SCO Expert Determinations, and Expert Determinations of the Limited Public Interest and Community Objection processes, there are reasonable explanations for these seeming discrepancies, both procedurally and substantively.

First, on a procedural level, each expert panel generally rests its Expert Determination on materials presented to it by the parties to that particular objection, and the objector bears the burden of proof. Two panels confronting identical issues could – and if appropriate should – reach different determinations, based on the strength of the materials presented.

Second, on a substantive level, certain Expert Determinations highlighted by the community that purportedly resulted in "inconsistent" or "unreasonable" results, presented nuanced distinctions

²²⁶ Request, ¶ 52.

²²⁷ BGC Recommendation, p. 19, Request, Annex 26.

relevant to the particular objection. These nuances should not be ignored simply because a party to the dispute disagrees with the end result. Further, the standard guiding the expert panels involves some degree of subjectivity, and thus independent expert panels would not be expected to reach the same conclusions on every occasion. However, for the identified Expert Determinations, a reasonable explanation for the seeming discrepancies is not as apparent, even taking into account all of the previous explanations about why reasonably "discrepancies" may exist. To allow these Expert Determinations to stand would not be in the best interests of the Internet community.

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

It should also be noted that in response to advice from the Governmental Advisory Committee (GAC), the NGPC previously considered the question of whether consumer confusion may result from allowing singular and plural versions of the same strings. On 25 June 2013, the NGPC adopted a resolution resolving "that no changes [were] needed to the existing mechanisms in the Applicant Guidebook to address potential consumer confusion resulting from allowing singular and plural versions of the same string" <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm#2.d>. The NGPC again notes that the topic of singular and plural versions of the same string also may be the subject of further community discussion as it relates to future rounds of the New gTLD Program.

The NGPC considered community correspondence on this issue in addition to comments from the community expressed at the ICANN meetings. The concerns raised in the ICANN meetings and in correspondence have been factored into the deliberations on this matter.

- In view of the NGPC's Resolution 2014.10.12.NG02, Vistaprint describes its disparate treatment claim in its First Additional Submission as follows:

13 Since the filing of Vistaprint's request for IRP, the ICANN Board clarified how the string similarity standard must be applied. In its resolutions of 12 October 2014, the ICANN Board identified certain SCO determinations "as not being in the best interest of the New gTLD Program and the Internet community" and set out the rules for a re-evaluation of these SCO determinations (fn. omitted):

- A first SCO determination that needed re-evaluation is the SCO determination in which ICDR's expert accepted Verisign Inc.'s objection to United TLD Holdco Ltd. ('United TLD')'s application for .cam. We refer to this SCO determination as the 'United TLD Determination'. In the United TLD Determination, ICDR's appointed expert found United TLD's application for .cam confusingly similar to Verisign Inc. ('Verisign')'s .com gTLD (RM 23). The ICANN Board decided that (i) the United TLD Determination was not in the best interest of the New gTLD Program and the Internet community and (ii) a new three-member panel must be established to re-evaluate the United TLD Determination (fn. omitted).

Verisign had also raised a SCO on the basis of its .com gTLD against the application for .cam by Dot Agency Limited and the application for .cam by AC Webconnecting Holding B.V. In both cases, the appointed experts determined that no confusing similarity existed between the .cam and .com strings (fn. omitted). We refer to these SCO determinations as the 'Related .cam/.com Determinations'. The ICANN Board decided that the Related .cam/.com Determinations need no

re-evaluation. In addition, the ICANN Board recommended that the three-member panel charged with re-evaluating the United TLD Determination must review the Related .cam/.com Determinations as background (fn. omitted).

- Another SCO determination that needed re-evaluation is the determination in which ICDR's appointed expert accepted Commercial Connect LLC's objection to Amazon EU S.à.r.l. ('Amazon')'s application for .通販 (which means .onlineshopping in Japanese) (fn. omitted). We refer to this SCO determination as the 'Onlineshopping Determination'. ICDR's appointed expert found in the Onlineshopping Determination that Amazon's application for .通販 was confusingly similar to Commercial Connect LLC's application for .shop. Commercial Connect LLC also invoked its application for .shop in a SCO against Top Level Domain Holdings Limited's application .购物 (which means 'shop' in Chinese). ICDR's appointed expert rejected the latter SCO (fn. omitted). We refer to this SCO determination as the 'Related shop/.shop Determination'. The ICANN Board decided that a three-member panel needs to re-evaluate the Onlineshopping Determination and that no re-evaluation is needed for the Related shop/.shop Determination. The ICANN Board decided that the Related shop/.shop Determination must be reviewed as background by the three-member panel that is charged with re-evaluating the Onlineshopping Determination (fn. omitted).

14. The ICANN Board's recommendations to the three-member panels charged with the re-evaluation of the United TLD Determination and the Onlineshopping Determination are clear. Related determinations – involving the same gTLD string(s) and finding that there is no confusing similarity – will not be re-evaluated and must be taken into account in the re-evaluations.

15. Upon instigation of the ICANN Board, ICANN had developed the same process for re-evaluating the SCO determination in which ICDR's appointed expert accepted Charleston Road Registry Inc. ('CRR')'s objection to DERCars, LLC's application for .cars. We refer to this SCO determination as the 'DERCars Determination'. In the DERCars Determination, ICDR's appointed expert found DERCars, LLC's application for .cars confusingly similar to CRR's application for .car. CRR had also objected to the applications for .cars by Uniregistry, Corp. and Koko Castle, LLC, claiming confusing similarity with CRR's application for .car. The latter objections by CRR were not successful. ICANN decided that DERCars, LLC should be given the option of having the DERCars Determination reviewed. ICANN was not allowing a review of the other SCO determinations involving .car and .cars (fn. omitted).

16. The above shows that ICANN and its Board have always decided in favor of co-existence of 'similar' strings. The ICANN Board explicitly allowed singular and plural gTLD strings to co-exist (fn. omitted). To support this view, the ICANN Board referred to the existence of thousands of examples of singular and plurals within the DNS at second level, which are not registered to or operated by the same registrant. The ICANN Board inter alia referred to the co-existing car.com and cars.com (fn. omitted).

17. Why did the ICANN Board intervene in the DERCars determination – involving the strings .car and .cars – but refused to intervene in the SCO Determination involving .web and .webs? In view of the small number of SCO Determinations finding confusing similarity between two strings (fn. omitted), it is a true mystery why the ICANN Board intervened in some matters, but refused to do so in the SCO determinations on Vistaprint's applications for .webs.

18. If anything, the .webs/.web string pair is less similar than the .cars/.car string pair. Cars is commonly used as the plural for car. Web, however, commonly refers to the world wide web, and as such, it is not normally a word where the plural form would be used.

182. Vistaprint contends that ICANN cannot justify the disparate treatment described above. While Vistaprint recognizes that ICANN's Board intervened to address perceived inconsistent or otherwise unreasonable SCO expert determinations, ICANN failed to explain why the SCO determination on Vistaprint's .WEBS applications was not just as unreasonable as the SCO expert determinations involving .cars/.car, .cam/.com, and 通販

/.shop.

183. In response to Vistaprint's disparate treatment claim, ICANN contends that ICANN's Board only intervened with respect to certain SCO expert determinations because there had been several independent expert determinations regarding the same strings that were seemingly inconsistent with one another. ICANN states that is not the case with respect to Vistaprint's applications, as no other expert determinations were issued regarding the similarity of .WEB and .WEBS.²²⁸ ICANN further urges that the Board was justified in exercising its discretion to intervene with respect to the inconsistent SCO expert determinations regarding .COM/.CAM, .CAR/.CARS and .SHOP/.通販, because the Board acted to bring certainty to differing SCO expert determinations regarding the same strings.²²⁹ However, this justification was not present with respect to the single *Vistaprint SCO*.
184. Finally, ICANN stated that "Vistaprint has identified no Articles or Bylaws provision violated by the ICANN Board *in exercising its independent judgment to intervene with respect to certain inconsistent expert determinations on string confusion objections unrelated to this matter, but not with respect to the single Expert Determination regarding .WEB/.WEBS*" (italics added).²³⁰
185. The IRP Panel has considered carefully the parties' contentions regarding Vistaprint's disparate treatment claim. The Panel finds that, contrary to what ICANN has stated above, ICANN's Board did not have an opportunity to "exercise its independent judgment" – in particular, in view of its decisions to implement an additional review mechanism for certain other inconsistent SCO expert determinations – to consider specifically whether it should intervene with respect to the adverse SCO expert determination involving Vistaprint's .WEBS applications.
186. It is clear that ICANN's Board, through the BGC and the NGPC, was aware of the concerns involving inconsistent decisions in SCO proceedings when it decided Vistaprint's Reconsideration Request in February 2014. The NGPC, on the day (February 5, 2014) before Vistaprint filed its Reconsideration Request and in response to a request from the BGC, initiated a public comment period on framework principles for a potential review mechanism to address perceived inconsistent SCO expert determinations. However, the BGC's decision on the Reconsideration Request rendered on February 27, 2014 made no mention of these issues.²³¹ By comparison, there is no evidence that

²²⁸ ICANN's First Additional Submission, ¶ 5.

²²⁹ ICANN's First Additional Submission, ¶ 18.

²³⁰ ICANN's Second Additional submission, ¶ 21.

²³¹ In this regard, the IRP panel in the *Booking.com final Declaration* (¶ 119) quoted Mr. Sadowsky, a member of the Board's NGPC committee, commenting on the Reconsideration process as follows:

The reconsideration process is a very narrowly focused instrument, relying solely upon investigating deviations from established and agreed upon process. As such, it can be useful, but it is limited in scope. In particular, it does not address situations where process has in fact been followed, but the results of such process have been regarded, sometimes quite widely, as being contrary to what might be best for significant or all segments of the...community and/or Internet users in general.

Vistaprint was aware of these issues at the time it filed its Reconsideration Request on February 6, 2014. Vistaprint has raised them for the first time in a timely manner during the pendency of this IRP.

187. In accordance with Article 1, § 2 of the Bylaws, the Board *shall* exercise its judgment to determine which competing core values are most relevant and how they apply to arrive at a defensible balance among those values in relation to the case at hand. Given the timing of Vistaprint’s Reconsideration Request, and the timing of ICANN’s consultation process for potential review mechanisms to address inconsistent SCO expert determinations, this exercise of judgment by the Board has not yet occurred in the case of Vistaprint’s .WEBS gTLD applications.
188. Here, ICANN is subject to the requirements of Article II, § 3 of its Bylaws regarding non-discriminatory treatment, providing that it 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.” ICANN has provided additional relief to certain gTLD applicants who were subject to adverse decisions in String Confusion Objection cases. In those cases, the differences in the gTLD strings at issue were not too dissimilar from the .WEBS/.WEB gTLD strings. One of the cases in which ICANN agreed to provide an additional mechanism for review involved a string confusion objection for the .CAR/.CARS strings, which involve the singular vs. plural of the same string. Meanwhile, many other singular and plural variations of the same gTLD strings have been permitted to proceed to delegation, including AUTO and .AUTOS; .ACCOUNTANT and ACCOUNTANTS; .FAN and .FANS; .GIFT and .GIFTS; .LOAN and .LOANS; .NEW and .NEWS; and .WORK and .WORKS.
189. This IRP Panel, among its three members, could not agree – in regards to the specific circumstances of Vistaprint’s gTLD applications – whether the reasons offered by ICANN in its Resolution 2014.10.12.NG02 for refusing the “to expand the scope of the proposed review mechanism to include other [SCO] Expert Determinations” would meet the standard of non-discrimination imposed by Article II, § 3 of the Bylaws, as well as the relevant core values in Article 1, § 2 of the Bylaws (e.g., applying documented policies neutrally and objectively, with integrity and fairness). For instance, one view is that limiting the additional review mechanism to only those SCO cases in which there were inconsistent decisions is a sufficient reason for intervening in these cases, but not in other SCO cases involving similar singular vs. plural gTLD strings where the applicant received an adverse decision. On the other hand, another view is that the real focus should be on the developments involving single vs. plural gTLDs strings, including the inconsistency of decisions and the offering of additional review mechanism in certain cases, and the delegation of so many other single/plural variations of the same gTLD strings, which are, at least in this way, similarly situated to the circumstances of the .WEBS/.WEB strings.²³²

²³² Regarding inconsistent decisions, Vistaprint quoted the statement dated October 8, 2014, of ICANN’s former Chief Strategy Officer and Senior Vice President of Stakeholders Relations, Kurt Pritz, who had apparently been leading the introduction of the New gTLD Program, concerning ICANN’s objection procedure:

190. The IRP Panel is mindful that it should not substitute its judgment for that of ICANN's Board. The Board has not yet considered Vistaprint's claim of disparate treatment, and the arguments that ICANN makes through its counsel in this IRP do not serve as a substitute for the exercise of independent judgment by the Board. Without the exercise of judgment by ICANN's Board on this question of whether there is any inequitable or disparate treatment regarding Vistaprint's .WEBS gTLD applications, the Board would risk violating its Bylaws, including its core values. As the Emergency IRP Panel found in the *GCC Interim IRP Declaration*:

The ICANN Board does not have an unfettered discretion in making decisions. In bringing its judgment to bear on an issue for decision, it must assess the applicability of different potentially conflicting core values and identify those which are most important, most relevant to the question to be decided. The balancing of the competing values must be seen as "defensible", that is it should be justified and supported by a reasoned analysis. The decision or action should be based on a reasoned judgment of the Board, not on an arbitrary exercise of discretion.

*This obligation of the ICANN Board in its decision making is reinforced by the standard of review for the IRP process under Article IV, Section 3.4 of the Bylaws, quoted at paragraph 42 b. above, when the action of the Board is compared to the requirements under the Articles and Bylaws. The standard of review includes a consideration of whether the Board exercised due diligence and care in having a reasonable amount of facts before them and also whether the Board exercised its own independent judgment.*²³³

191. Here, the IRP Panel finds that due to the timing and scope of Vistaprint's Reconsideration Request (and this IRP proceeding), and the timing of ICANN's consultation process and subsequent NGPC resolution authorizing an additional review mechanism for certain gTLD applications that were the subject of adverse SCO decisions, the ICANN Board has not had the opportunity to exercise its judgment on the question of whether, in view of ICANN's Bylaw concerning non-discriminatory treatment and based on the particular

There is no doubt that the New gTLD Program objection results are inconsistent, and not predictable. The fact is most easily demonstrated in the 'string confusion,' objections where challenges to exactly the same strings yielded different results. [...] With globally diverse, multiple panelists invoking untried standards and questions of first impression in an industry with which they were not familiar and had little training, the panelists were bound to deliver inconsistent, unpredictable results. ICANN put no mechanism put [sic] into place to rationalize or normalize the answers. [...] It is my opinion that ICANN, having proven in the initial evaluation context that it could do so, should have implemented measures to create as much consistency as possible on the merits in the objection rulings, requiring DRSPs to educate and train their experts as to the specific (and only) standards to employ, and to review and correct aberrant results. The failure to do so resulted in violation of the overarching policy articulated by the GNSO and adopted by the Board at the outset of the new gTLD Program, as well as policies stated in the Bylaws and Articles of Incorporation concerning on discrimination, application of document policies neutrally, objectively and fairly, promotion of competition, and accountability." (fn. omitted).

²³³ See *GCC Interim IRP Declaration*, ¶¶ 76-77 ("Upon completion of the various procedures for evaluation and for objections under the Guidebook, the question of the approval of the applied for domain still went back to the NGPC, representing the ICANN Board, to make the decision to approve, without being bound by recommendation of the GAC, the Independent Objector or even the Expert Determination. Such a decision would appear to be caught by the requirements of Article 1, Section 2 of the Bylaws requiring the Board or the NGPC to consider and apply the competing values to the facts and to arrive at a defensible balance among those values" ¶ 90 (underlining added).

circumstances and developments noted above, such an additional review mechanism is appropriate following the SCO expert determination involving Vistaprint's .WEBS applications.²³⁴ Accordingly, it follows that in response to Vistaprint's contentions of disparate treatment in this IRP, ICANN's Board – and not this Panel – should exercise its independent judgment on this issue, in light of all of the foregoing considerations.

VI. Prevailing Party; Costs

192. Article IV, § 3.18 of ICANN's Bylaws requires that the IRP Panel "specifically designate the prevailing party." This designation is relevant to the allocation of costs, given that the same section of the Bylaws provides that the "party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider."

193. Article IV, § 3.18 of the Bylaws also states that "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."

194. Similarly, the Supplementary Procedures provide in Rule 11:

The IRP Panel shall fix costs in its Declaration. The party not prevailing in an IRP shall ordinarily be responsible for bearing all costs of the proceedings, but under extraordinary circumstances the IRP Panel may allocate up to half of the costs to the prevailing party, taking into account the circumstances of the case, including the reasonableness of the parties' positions and their contribution to the public interest.

In the event the Requestor has not availed itself, in good faith, of the cooperative engagement or conciliation process, and the requestor is not successful in the Independent Review, the IRP Panel must award ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.

195. Here, Vistaprint engaged in the Cooperative Engagement Process, although the process did not resolve the issues between the parties. The "IRP Provider" is the ICDR, and, in accordance with the ICDR Rules, the costs to be allocated between the parties – what the

²³⁴ The IRP Panel observes that the NGPC, in its Resolution 2014.10.12.NG02, sought to address the issue of why certain SCO expert determinations should be sent back to the ICDR while others should not. In that resolution, the NGPC determined that to promote the goals of predictability and fairness, establishing a review mechanism more broadly may be appropriate as part of future rounds in the New gTLD Program. The NGPC stated that applicants may have already taken action in reliance on SCO expert determinations, including signing Registry Agreements, transitioning to delegation, withdrawing their applications, and requesting refunds. However, in this case Vistaprint does not fall within the category of applicants who have taken such actions in reliance. Instead, it is still asserting its claims in this IRP proceeding. In accordance with the Bylaws, Vistaprint is entitled to an exercise of the Board's independent judgment to determine, based on the facts of the case at hand and in view of ICANN's Bylaws concerning non-discriminatory treatment and core values, whether Vistaprint should be entitled to the additional review mechanism that was made available to certain other gTLD applicants.

Bylaws call the "costs of the IRP Provider", and the Supplementary Procedures call the "costs of the proceedings" – include the fees and expenses of the IRP Panel members and of the ICDR.

196. ICANN is the prevailing party in this IRP. This designation is confirmed by the Panel's decisions concerning Vistaprint's requests for relief in this IRP:

- Vistaprint requests that the Panel find ICANN breached its Articles, Bylaws, and the Guidebook. The Panel declares that ICANN's Board (including the BGC) did not violate the Articles, Bylaws and Guidebook.
- Vistaprint requests that the Panel require ICANN to reject the Third Expert's determination in the *Vistaprint SCO*, disregard the resulting "Contention Set", and allow Vistaprint's applications for .WEBS to proceed on their merits. The Panel determines that it does not have authority to order the relief requested by Vistaprint. In addition, the Panel declares that the Board (through the BGC) did not violate the Articles, Bylaws and Guidebook in regards to the BGC's handling of Vistaprint's Reconsideration Request.
- Vistaprint requests, in the alternative, that the Panel require ICANN to reject the *Vistaprint SCO* determination and organize a new procedure, in which a three-member panel would re-evaluate the Third Expert's decision taking into account (i) the ICANN Board's resolutions on singular and plural gTLDs, as well as the Board's resolutions on the DERCars SCO Determination, the United TLD Determination, and the Onlineshopping SCO Determination, and (ii) ICANN's decisions to delegate the following gTLDs: .CAR and .CARS; .AUTO and .AUTOS; .ACCOUNTANT and ACCOUNTANTS; .FAN and .FANS; .GIFT and .GIFTS; .LOAN and .LOANS; .NEW and .NEWS; and .WORK and .WORKS. The Panel determines that it does not have authority to order the relief requested by Vistaprint. In addition, the Panel recommends that ICANN's Board exercise its judgment on the question of whether an additional review mechanism is appropriate to re-evaluate the Third Expert's determination in the *Vistaprint SCO*, in view of ICANN's Bylaws concerning core values and non-discriminatory treatment, and based on the particular circumstances and developments noted in this Declaration, including (i) the *Vistaprint SCO* determination involving Vistaprint's .WEBS applications, (ii) the Board's (and NGPC's) resolutions on singular and plural gTLDs, and (iii) the Board's decisions to delegate numerous other singular/plural versions of the same gTLD strings.

197. The IRP Panel also recognizes that Vistaprint, through its Request and submissions, raised certain complex and significant issues and contributed to the "public interest" involving the New gTLD Program and the Independent Review Process. It is therefore appropriate and reasonable to divide the IRP costs over the parties in a 60% (Vistaprint) / 40% (ICANN) proportion.

FOR THE FOREGOING REASONS, the IRP Panel hereby:

- (1) Declares that Vistaprint's IRP Request is denied;
- (2) Designates ICANN as the prevailing party;

(3) Recommends that ICANN's Board exercise its judgment on the question of whether an additional review mechanism is appropriate to re-evaluate the Third Expert's determination in the *Vistaprint SCO*, in view of ICANN's Bylaws concerning core values and non-discriminatory treatment, and based on the particular circumstances and developments noted in this Declaration, including (i) the *Vistaprint SCO* determination involving Vistaprint's .WEBS applications, (ii) the Board's (and NGPC's) resolutions on singular and plural gTLDs, and (iii) the Board's decisions to delegate numerous other singular/plural versions of the same gTLD strings;

(4) In view of the circumstances, Vistaprint shall bear 60% and ICANN shall bear 40% of the costs of the IRP Provider, including the fees and expenses of the IRP Panel members and the fees and expenses of the ICDR. The administrative fees and expenses of the ICDR, totaling US\$4,600.00 as well as the compensation and expenses of the Panelists totaling US\$229,167.70 are to be borne US\$140,260.62 by Vistaprint Limited and US\$93,507.08 by ICANN. Therefore, Vistaprint Limited shall pay to ICANN the amount of US\$21,076.76 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by ICANN upon demonstration that these incurred fees and costs have been paid; and

(5) This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute the Final Declaration of this IRP Panel.

Siegfried H. Elsing
Date:

Geert Glas
Date:



Christopher Gibson
Chair of the IRP Panel
Date: 9 Oct. 2015

(3) Recommends that ICANN's Board exercise its judgment on the question of whether an additional review mechanism is appropriate to re-evaluate the Third Expert's determination in the *Vistaprint SCO*, in view of ICANN's Bylaws concerning core values and non-discriminatory treatment, and based on the particular circumstances and developments noted in this Declaration, including (i) the *Vistaprint SCO* determination involving Vistaprint's .WEBS applications, (ii) the Board's (and NGPC's) resolutions on singular and plural gTLDs, and (iii) the Board's decisions to delegate numerous other singular/plural versions of the same gTLD strings;

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