Dot Registry, LLC,
Claimant,

v.

Internet Corporation for Assigned Names and Numbers,
Respondent.

**SUBMISSION OF
DOT REGISTRY, LLC
ON THE LAW APPLICABLE TO ICANN
AND THE STRUCTURE OF THE IRP PROCEEDINGS**

List of Exhibits

Ex. No.	Description
C-63	Hearing Transcript, 163:11-:13 (May 23, 2015).
C-64	ICANN Bylaws, Art. IV, § 3.12 (Apr. 11, 2013).
C-65	ICANN Bylaws, Art. IV, § 3.10 (May 29, 2008).
C-66	Supplementary Procedures Rule 4 (version in effect at the time of the first IRP in 2008.

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THE MATTER OF AN INDEPENDENT REVIEW PROCESS

BEFORE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

_____)

DOTCONNECTAFRICA TRUST,   )

      Claimant.   )

 v.   )   ICDR Case No.

INTERNET CORPORATION FOR   )   50 2013 00 1083

ASSIGNED NAMES AND NUMBERS,   )

      Respondent.   )   Volume II

_____)

CONTINUED HEARING ON THE MERITS

BEFORE THE PANEL: PRESIDENT BABAK BARIN,

HONORABLE JUDGE WILLIAM CAHILL, AND

PROFESSOR CATHERINE KESSEDJIAN

Saturday 23, 2015; 9:13 a.m.

Reported by: Cindy L. Sebo, RMR, CRR, RPR, CSR,
         CCR, CLR, RSA, LiveDeposition Authorized Reporter
Job No.   14040

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 3

 4   Continued Hearing on the Merits in the

 5   above-styled manner, held at the offices of:

 6

 7

 8

 9

10   Jones Day

11   51 Louisiana Avenue Northwest

12   Washington, D.C. 20001

13   202.879.3939

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18   The continued proceedings having been

19   reported by the Registered Merit Real-Time Court

20   Reporter, CINDY L. SEBO, RMR, CRR, RPR, CSR, CLR,

21   RSA, and LiveDeposition Authorized Reporter.

22

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 1   A P P E A R A N C E S (Continued):

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14      ALSO PRESENT:

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16           AMY STATHOS, Deputy General Counsel at
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 1   P R O C E E D I N G S

 2

 3   Washington, D.C.

 4   Saturday, May 23, 2015; 9:13 a.m.

 5

 6   PRESIDENT BARIN: Good morning,

 7   everyone.

 8   The second day of the Merits Hearing

 9   in the IRP under the American Arbitration

10   Association Case Number 50 2013 00 1083.

11   We are going to have the closing

12   arguments this morning, but a preliminary

13   housekeeping matter.

14   After yesterday's hearing of the

15   witnesses produced by both ICANN and

16   DCA Trust, the Panel, having consulted one

17   another, would like to get, Mr. LeVee, a

18   copy of the reports of the Subcommittee on

19   Ethics and Conflicts that's available in

20   relation to the testimony that Mr. Chalaby

21   gave yesterday.

22   So to the extent those are available

23   and -- then the Panel would request that a

24   copy be provided to it.

25   MR. LEVEE: Yes, I understand the

 1   request. Because the documents are

 2   privileged, I will take the request back

 3   to ICANN and have an answer for you next

 4   week.

 5   PRESIDENT BARIN: Okay. Thank you.

 6   MR. LEVEE: Thank you.

 7   PRESIDENT BARIN: Okay. Then that

 8   brings us to the closing argument.

 9   Mr. Ali, good morning.

10   - - -

11   CLOSING STATEMENT ON BEHALF OF CLAIMANT

12   DOTCONNECTAFRICA TRUST

13   - - -

14   MR. ALI: Good morning.

15   And thank you, Members of the Panel.

16   Good morning colleagues from

17   Jones Day.

18   One of the best things about a

19   closing before such a hot Panel, and I

20   mean that in the sense of a very active

21   Panel, is that, in many respects, make

22   our life --

23   HONORABLE JUDGE CAHILL: Thank you.

24   Thank you.

25   MR. ALI: -- easier.

1   But I should say that I'm sure I

2   don't speak just for myself, but sort of

3   the colleagues from ICANN. We very much

4   appreciate the degree of preparedness of

5   the questions that you put to us and to

6   the witnesses.

7   And, of course, as one does a

8   closing, one tries to divine what it is

9   that's of the greatest interest to a

10   panel. And with any sort of predictive

11   process of that nature, what ends up

12   happening is that rather than presenting

13   a symphony, one presents something that's

14   more like a Bohemian Rhapsody.

15   So I will -- with that caveat --

16   HONORABLE JUDGE CAHILL: "Bohemian

17   Rhapsody For A Hot Panel," that's a great

18   title.

19   MR. ALI: -- to try and present a

20   coherent view of what it is that we

21   believe has happened and why it is that

22   ICANN has breached its Bylaws and

23   Articles of Incorporation, as well as the

24   Applicant Guidebook.

25   Let me start out with some quick

 1   pointed remarks associated with the

 2   presentation of yesterday from my

 3   colleague and friend, Mr. LeVee.

 4   Mr. LeVee took the position, which I

 5   must say I find quite remarkable, that

 6   ICANN is not a regulator, but ICANN is

 7   just an administrator; that the AGB, the

 8   Applicant Guidebook, is just a contract;

 9   and ICANN simply promises to evaluate the

10   applications that are put forward in

11   accordance with this contract.

12   Now, ultimately, there are some

13   questions that are immediately raised by

14   a contract that apparently has only

15   limited enforceability in any fora and,

16   apparently, even before you.

17   So that's Point Number 1.

18   In fact, it isn't just a contract;

19   it is a set of rules that are reflective

20   of ICANN's core principles and reflective

21   of the fundamental underlying principle

22   in ICANN's Articles -- written Articles

23   of Incorporation that ICANN must conduct

24   itself in accordance with local law and

25   international law.

 1   That constitutive document, which

 2   constitutes part of ICANN's raison d'être

 3   and ICANN's commitment that they're

 4   reflected in the Bylaws, and the Bylaws

 5   get reflected in the Applicant Guidebook.

 6   So ICANN's promise is not just

 7   evaluate the application according to the

 8   Applicant Guidebook, but to evaluate the

 9   application according to the Guidebook,

10   the Bylaws and the Articles of

11   Incorporation, everything that they

12   reflect and incorporate and the promise

13   that is thereby made to parties that are

14   seeking to participate in the domain name

15   system which ICANN is responsible for.

16   And you need only look at Article IV

17   of the Articles of Incorporation. The

18   quote would state The corporation shall

19   operate for the benefit of the Internet

20   community as a whole, carrying out its

21   activities in conformity with relevant

22   principles of international law and

23   applicable international conventions and

24   local law and, to the extent appropriate

25   and consistent with these Articles and

1   its Bylaws, through open and transparent

2   processes that enable competition and

3   open entry in Internet-related markets.

4   Then one need just simply go through

5   various parts of ICANN's bylaws.

6   Article I, The mission of the Internet

7   Corporation for Assigned Names and

8   Numbers is to coordinate, at the overall

9   level, the global Internet's systems of

10   unique identifiers and, in particular, to

11   ensure the stable and secure operation of

12   the Internet's unique identifier systems.

13   In particular -- and there are a

14   variety of obligations and functions of

15   ICANN, including policy development.

16   Now, a coordinator of policy

17   development also ensures that the

18   policies are implemented. And ICANN does

19   that through the various mechanisms that

20   we have heard about.

21   So ICANN does have a regulatory

22   function. ICANN is a body that is the

23   curator of the Internet domain name

24   system. It governs who it is that

25   actually has the right to seek Internet

1   domain name, and it governs who it is

2   that ultimately can go forward in terms

3   of a domain name being put into the

4   Internet server.

5   So ICANN will tell you, No, that's

6   the U.S. Government, and there are others

7   involved, but those are ultimately really

8   rubber stamps that are applied once ICANN

9   has done its job, which one hopes is done

10   fairly, transparently and in a balanced

11   way, and in accordance with the missions

12   they're going to look at.

13   So the question was -- was put to

14   Mr. LeVee by the President as to who is

15   ICANN answerable if there is an issue.

16   Who is ICANN answerable to if -- in light

17   of this litigation waiver?

18   When an applicant has a problem --

19   yes, ICANN is answerable to governments

20   generally, although it pushes back and

21   says, No, we do not, we're not guided by

22   governments, but we have a bottom-up

23   process.

24   But at the end of the day, the only

25   people that ICANN is accountable to are

 1   the three of you in the -- in this

 2   particular instance, the Independent

 3   Review Panels.

 4   Within the system that they have

 5   created, one that constitutes a -- in

 6   this instance, the NGPC, which is part of

 7   the Board, a Board Governance Committee

 8   that reviews the NGPC's work, and the

 9   NGPC adopts the Board Governance

10   Committee's recommendations.

11   Somewhat incestuous, particularly

12   when one looks at the number of people

13   who are on the Board -- the Board, the

14   NGPC, the Board Governance Committee.

15   It's all -- there's a fair amount of --

16   of overlap.

17   And so where does the accountability

18   come in? When we have no right to seek

19   damages, according to ICANN, that is; we

20   have no right to go to public forum; we

21   have no right to apparently seek a

22   binding decision, according to the rules

23   that they have written and rules which

24   they change as and when they wish.

25   Now, that's put down to

1   interpretation, but I would submit to you

2   that it is arbitrary application of rules

3   that are very clear as to what must

4   happen.

5   But ICANN chooses how those rules

6   will be applied. And when those rules

7   are applied in a way that creates for an

8   applicant, such as DCA Trust, a -- a -- a

9   significant problem in that its vision,

10   its goals, its objectives, its work is

11   simply wiped away, but they can go

12   nowhere but to an IRP Panel that could

13   only issue a recommendation which the

14   very Board whose conduct is being

15   questioned can decide whether they're

16   going to accept it or not.

17   Is that a real system of

18   accountability?

19   I would submit to you, no. The

20   accused cannot decide whether it will

21   accept the verdict as correct or not.

22   At the end of the day, there is a

23   decision that ICANN will tell you, Oh, of

24   course, we will comply with it, but we're

25   not bound by it.

 1   So the curator of the Internet and

 2   fair play in the Internet governance

 3   system cannot decide what it will do when

 4   it wants to and decide whether or not it

 5   is going to be bound by the hard work

 6   that you are doing.

 7   Now, we're also told that ICANN

 8   tries to be neutral but has no obligation

 9   to be neutral.

10   Let me table that for one side,

11   because that's going to be a core part of

12   my overall presentation.

13   And I'm quoting Mr. LeVee. ICANN

14   tries to be neutral but has no obligation

15   to be neutral.

16   Now, I know that Mr. LeVee knows the

17   Bylaws inside and out. And the Bylaws

18   are replete with references to

19   neutrality, transparency, equity,

20   nondiscrimination, and fairness and

21   equitable treatment.

22   So let's -- let's just turn now, if

23   we might, to some of the key facts that

24   we have now become aware of and that we

25   believe are undisputed, and those which

1   are disputed and which we would hopefully

2   convince you that the evidence falls in

3   our favor in terms of our view of what

4   happened.

5   So there's no question that through

6   2007 to 2010, DCA has gone about

7   gathering support in support of its -- or

8   endorsements in support of its idea, its

9   initiative.

10   Maybe ICANN will say it's irrelevant

11   that, ultimately, .africa was

12   Ms. Bekele's idea and initiative and

13   vision.

14   But what did DCA do? DCA went

15   around the African continent and obtained

16   support at the highest levels of the AUC,

17   which, like most public bodies, is rife

18   with politics. But she got the support

19   of Chairman Ping; she got the support of

20   UNECA, a UN body that -- that represents

21   African interests; it got the support of

22   the Ethiopian Government; got the support

23   of the Kenyan Government.

24   And we've heard two things from

25   ICANN, that at the time the application

 1   was submitted, DCA Trust did not have the

 2   support that was required.

 3   Well, that's incorrect. Perhaps

 4   there are questions that can be raised

 5   about the AUC's position, which certainly

 6   should be viewed under a cloud, in light

 7   of what the AUC is doing at the same

 8   time, which is acting as a competitor or

 9   was a competitor to DCA Trust.

10   But when the application was

11   submitted, there was support. And as the

12   rules state very clearly, that support

13   can continue to be garnered throughout

14   the process of evaluation of financial

15   and technical and other infrastructure

16   aspects -- do something that is very

17   technical, operate a registry that will

18   not, in any way, undermine the security

19   and stability of the Internet.

20   And so support will come along

21   during this process.

22   What we do know, though, is that

23   ZACR, the AUC's applicant, actually

24   didn't have, technically, the same kind

25   of support that DCA did when the

1   application was submitted.

2   What ZACR was relying upon was the

3   support that was given by the AUC -- AU

4   Members for the Reserved Names Initiative

5   that, ultimately, ICANN rejected.

6   Now, insofar as this issue of

7   support is concerned, I would simply ask

8   you to look at the correspondence between

9   ICANN Staff and the independent

10   Geographic Names Panel, because that

11   documentation, which we will visit

12   shortly, makes it very clear that the

13   independent Geographic Names Panel

14   certainly considered that DCA did have

15   support.

16   And this discussion went on for over

17   a year between ICANN Staff -- between

18   ICANN -- really, one shouldn't make a

19   distinction. ICANN Staff operates at the

20   behest and direction of the Board.

21   ICANN -- I mean, for -- for -- for

22   Mr. LeVee to say, Well, you can only look

23   at Board action or inaction, independent

24   of ICANN Staff, I find to be, with all

25   respect, something of an absurd

 1   proposition.

 2   ICANN Staff only does what they are

 3   directed to do or what they believe they

 4   can do if they do not have specific

 5   direction and are, therefore, part of the

 6   overall accountability through the

 7   mechanism of the IRP examining the

 8   actions or inaction of the Board and,

 9   thereby, ICANN and its constituent

10   organizations.

11   And I will point you shortly to

12   where it says that ICANN is responsible

13   or that your responsibility is to look at

14   the overall application of the system --

15   ICANN system that includes ICANN, the

16   Secretariat and the constituent bodies.

17   So DCA's gathered support. ZACR

18   doesn't have it -- doesn't have support

19   when it files its application. At the end

20   of the day, there's a big question mark of

21   how they're going to deal with this

22   question of support.

23   The application window opens in

24   January 2012. Slightly before that, we

25   have seen the request that was made by the

 1   AUC. The AUC has written to ICANN

 2   October 2011.

 3   And what the AUC wants -- and we heard

 4   some reference to this yesterday about

 5   country code top-level domains, such as

 6   .fr; or .us; or, in the special instance of

 7   the European Union, .eu.

 8   Well, the African Union Commission --

 9   the Secretariat has made a request to ICANN

10   saying, We want the same thing as the EU.

11   Yes, we accept that we're not the EU --

12   they know that -- but we want the same

13   thing that the EU has. We want .africa

14   reserved. Although it's well-recognized

15   country code, it's not on the list of

16   country codes, but we want .africa,

17   .afrikia, you know, .afrique reserved for

18   us.

19   And ICANN writes back telling the AUC,

20   after some months of deliberation, which

21   includes, as we have seen, consultation of

22   some sort with the GAC -- and, clearly,

23   Ms. Dryden couldn't remember how much

24   consultation, or perhaps could have been

25   reminded through documentation, which we

 1   didn't have, of the degree of consultation

 2   that took place.

 3   But we know that she was given the

 4   opportunity to review the final

 5   communication that went back to the AUC's

 6   request.

 7   And what is it that the -- that ICANN

 8   tells the AUC?

 9   Well, it says, Look, we can't do what

10   you want because the Reserve Names List is

11   closed. And you don't technically fall

12   within this reserve names category, but we

13   are going to tell you how you can achieve

14   the same end through the processes that are

15   in place.

16   And I would suggest to you that

17   there's nothing necessarily sinister about

18   that. But is the same direction, guidance,

19   advice being given to .africa or other

20   applicants where the applicant will be able

21   to use the system to its own benefit when

22   the other applicants aren't being told --

23   the nongovernmental applicants aren't being

24   told that governments can apply -- oh,

25   well, it doesn't say that governments can't

1   apply, so, therefore, governments can

2   apply -- and that governments can use the

3   system in any way they so wish to benefit

4   themselves?

5   That really isn't fairness. That's an

6   imbalance of power within the context of

7   what is supposed to be rules that apply

8   with equal force and effect to all parties.

9   And to the -- and that is what ICANN,

10   in some respects, is saying. Look, we

11   cannot do for you what you want, but play

12   in this system where these rules apply,

13   but, by the way, you can game the system to

14   your benefit to achieve the same ends.

15   And, of course, as we come to see, the

16   AUC took that very much to heart.

17   Now, the AUC -- again, Ms. Dryden

18   couldn't help us very much as to why the

19   AUC was part -- made part of the GAC, how

20   it moved from being a nonvoting member to a

21   voting member.

22   And, apparently, nobody really quite

23   knows, including the GAC Chair, as who it

24   is to be a voting member, a nonvoting

25   member, whether or not you can issue

 1   Early Warnings or not, whether or not you

 2   can issue GAC advice or participate in the

 3   issuance of GAC advice or not.

 4   If the GAC Chair isn't clear, how is

 5   it that DCA Trust is supposed to know what

 6   any of this means?

 7   But I will put forward to you, as the

 8   Independent Review Panel, the following

 9   proposition: that when the system allows

10   applicant to also participate in the

11   overall judging, there is a higher degree

12   of care that is required in the evaluation

13   of that application.

14   And what is it that we know from the

15   documents? There is a debate that starts

16   as early as August 2012, soon after the

17   application period is closed. There is a

18   debate that's taking place about the highly

19   politicized nature of these applicants, the

20   controversy associated with these

21   applications.

22   Everybody appreciates and understands

23   that there are issues associated with these

24   applications, issues associated with

25   potential conflicts of interests vested

1   interests, that there are two applicants,

2   there's the AUC, the AUC may not

3   necessarily be entitled to be in the

4   position that it is.

5   Well, all of this considered and

6 evaluated by intelligent individuals and many

7 individuals within the ICANN infrastructure

8 should lead to the outcome that I'm suggesting,

9 that we need to apply a heightened degree of

10 diligence and care associated with these

11 applications because of the imbalance of power.

12   Now, I wish I had the documentation

13 that would allow me to prove the propositions

14 that we fundamentally believe that ICANN and the

15 GAC and the AUC were basically rigging the

16 system. And I think that there's enough there

17 for you to be able to make -- to arrive at the

18 conclusion that what they were doing was perhaps

19 not purposely, perhaps not in a sinister fashion,

20 but ICANN, as a political organization, was

21 tilting the balance in favor of one of the

22 parties to achieve the ccTLD outcome through a

23 process which is not the right process, because

24 it couldn't use the right process to achieve the

25 outcome that the AUC wanted.

 1   All right. So we -- there are

 2   question marks now that are raised about the GAC

 3   advice that are, I believe, incredibly

 4   significant.

 5   What's the image that was created in

 6   my mind as I heard Ms. Dryden speak? A large

 7   room filled with people milling in and out,

 8   having discussions, discuss- -- discussions in

 9   the corridor, discussions in the room. And

10   there's Ms. Dryden, who puts forward a

11   proposition that apparently appears on the agenda

12   that we haven't seen, but what we're told is, All

13   the agenda says is .africa and DCA's application.

14   That's her testimony.

15   Redacted - GAC Designated Confidential Information

1

19   As she tells you, Well, we had no

20   rationale. We're not required to give a

21   rationale. I didn't give a rationale. That's

22   not the GAC's job.

23   What does she tell you? Whose job is

24   it? It is the Board's job. It is our job to

25   somehow reflect some type of consensus, consensus

 1   of one government that raises its hand, consensus

 2   by acquiescence or silence, and the Board then

 3   simply accepts that.

 4   What sort of system of fairness,

 5   transparency and integrity is that? Certainly

 6   not one that I believe is appropriate for the

 7   massive responsibility that ICANN has to the

 8   Internet domain name system and the applicants

 9   who spend their money and come before ICANN

10   asking for a fair deal.

11   How is it fair that ICANN Staff are

12   trying to strong-arm the independent Geographic

13   Names Panel? Why?

14   Ask yourself the following questions,

15   please: What role is it of ICANN Staff to say to

16   the Geographic Names Panel whether or not the

17   AUC's endorsement is valid or not and to say, no,

18   it's not in August 2012; to question whether or

19   not UNECA's support is sufficient; to delay the

20   very questions, the clarifying questions that the

21   GNP is insisting, per the Guidebook, per the

22   rules, by the Bible, by the Koran, per the --

23   whichever book you wish, the very, very rules say

24   that these clarifying questions should be issued.

25   Why delay? Why delay? Why delay?

1   Delay for over a year?

2   No, you mustn't send those out, please

3   confirm that you are not going to send those out.

4   You mustn't contact the AU. You

5   mustn't contact the AU- -- well, actually, they

6   don't say, Don't contact the AUC; they say, Don't

7   contact the AU.

8   Send the clarifying questions to the

9   individual applicants, is their final concession;

10   but within days of that final consensus, they

11   write back and say, Oh, don't send out the

12   clarifying questions and, by the way, the AU

13   support -- or the AUC support is sufficient; a

14   complete about-face between May of 2012 and May

15   of 2013.

16   Is that fair? Is that transparent?

17   I believe not.

18   So let's take a look very quickly at

19   some of these -- some of the standards that we

20   believe you should be applying.

21   I, yesterday, addressed the -- the

22   question of the standard review, so I won't

23   repeat myself. But, of course, I look forward to

24   answer any questions that you have.

25   I'll simply emphasize that please

 1   think of the standard review within the context

 2   of where you sit, the litigation waiver, the fact

 3   that there is this incestuous circular system of

 4   checks and balances or controls within ICANN.

 5   And at the end of the day, you are the only

 6   independent objective reviewers of what it is --

 7   HONORABLE JUDGE CAHILL: What do you

 8   mean by "litigation"?

 9   MR. ALI: The litigation waiver,

10   sir?

11   HONORABLE JUDGE CAHILL: Yes.

12   MR. ALI: Yes. As you know, as --

13   when an applicant files an application,

14   they are required --

15   HONORABLE JUDGE CAHILL: The

16   waiver -- the trial --

17   MR. ALI: -- to waive all of their

18   rights with respect to taking ICANN to

19   any forum other than the IRP --

20   HONORABLE JUDGE CAHILL: I

21   understand what --

22   MR. ALI: -- so I think that that,

23   to me, is dispositive.

24   HONORABLE JUDGE CAHILL: What you're

25   talking about is when you say, I'm not

 1   going to go to Court, right?

 2   MR. ALI: Yes. We cannot take you

 3   to Court. We cannot take you to

 4   arbitration. We can't take you anywhere.

 5   We can't sue you for anything.

 6   The only thing you, applicant, can

 7   do is come before this Panel, which, by

 8   the way, cannot issue anything that's

 9   binding against us, which, of course, we

10   don't agree with, as -- as DCA, and the

11   Panel, you know, must defer to -- to the

12   omnipotence of ICANN.

13   So let's just go back, if we could.

14   Let's run back to Slide 4.

15   I already told you about Slide -- on

16   the third slide, you had the Articles of

17   Incorporation.

18   I'd like you to take a look at

19   Slide 4.

20   This is direct response to

21   Mr. LeVee's submission yesterday on

22   neutrality.

23   Let's take a look at what ICANN's

24   core values provide.

25   In performing its mission, the

1   following core values should guide the

2   decisions and actions of ICANN. And

3   Number 8, Making decisions by applying

4   documented policies neutrally and

5   objectively, with integrity and fairness.

6   Those are words that are incredibly

7   important, "integrity and fairness,"

8   "neutrally and objectively."

9   Let's take a look at Section 3 of

10   the Bylaws.

11   ICANN shall not apply its standards,

12   policies, procedures or practices

13   inequitably or single out any particular

14   party for disparate treatment unless

15   justified by substantial and reasonable

16   cause, such as the promotion of effective

17   competition.

18   Yes, there is a carve-out, the

19   promotion of effective competition.

20   Well, the disparate treatment to

21   which -- that was applied to -- to

22   .africa -- to DCA Trust, was that to

23   promote effective competition?

24   Not at all. It was completely the

25   opposite. There was no reason to single

1   out or treat DCA Trust in the way that it

2   was treated.

3   Article III, Transparency. ICANN

4   and its constituent bodies shall operate,

5   to the maximum extent feasible, in an

6   open and transparent manner and

7   consistent with procedures designed to

8   ensure fairness.

9   I wish to speak. I say something

10   that is incomprehensible. The GAC Chair

11   reformulates what I say, tables a motion

12   based on what she says. And that is

13   supposed to be fairness?

14   The consequence that it has with --

15   the GAC Chair knows what the consequence

16   could be because the GAC Chair

17   participates in the subsequent meetings.

18   And there are at least two meetings,

19   May 8th and June 4th of 2013, when the

20   GAC Chair is participating in the NGPC

21   review, or the GAC advice.

22   And she cannot recall whether she

23   said anything, and she cannot recall

24   whether anything was raised.

25   I recall what I said about the

1   heightened standard that should be

2   applied.

3   I'm not saying by evidentiary

4   standard; I'm saying greater diligence

5   when you know that there are

6   sensitivities at play.

7   When it should be just so obvious,

8   as it was to Mr. Chalaby when I put my

9   last question to him about conflicts of

10   interest. And Mr. Chalaby, who said that

11   he applies the highest standards of

12   conflict of interest, that you have

13   applicant and judge within the system,

14   well, greater care is required, greater

15   diligence is required of the NGPC. Ask

16   questions, investigate, do what you are

17   required to do according to the very

18   Bylaws that govern the way you are

19   supposed to operate.

20   But they give it short shrift. It

21   goes to the Board Governance Committee,

22   which includes some people of the NGPC,

23   and the Board is required to conduct

24   investigations, or at least it should

25   conduct greater investigation of the

1   matter. But it doesn't; it gives it

2   short shrift.

3   Now, Mr. LeVee told us yesterday --

4   we can go to Slide Number 8. My numbers

5   are different. Go a slide back,

6   please -- that I don't know that the core

7   values refer to anticompetitive conduct

8   within a particular gTLD string. The

9   mission of ICANN was to increase

10   competition in the registry space.

11   I mean, that's, to me, akin to

12   saying that the United States economy is

13   an open capitalist economy, and it

14   doesn't matter if Microsoft acts

15   anticompetitively.

16   No. Competition applies at every

17   level. It applies a granular level,

18   because without those grains, the system

19   can't grow and remain anti- -- remain

20   competitive.

21   So I think that is a statement which

22   Mr. LeVee may want to retract.

23   So we'll move on.

24   I've talked a little bit about the

25   GAC. So let's -- you know, we've -- no

 1   distinct rules; there is the limited

 2   public records; fluid definitions of

 3   memberships and quorums; fluid

 4   definitions of what can happen within the

 5   context of the -- the GAC.

 6   It's all politicized. We're not

 7   quite sure even what different GAC

 8   Members do within the GAC.

 9   So, you know, again, I think that

10   there is yet another violation of the --

11   that -- there's another element of

12   unfairness as a result of how the GAC

13   operated.

14   But the GAC then transfers over

15   responsibility to -- to the Board. And I

16   must say, I -- I think, with respect to

17   this interaction between the Board -- the

18   GAC and the NGPC, the following

19   statements should say it all:

20   "Question: So not all countries

21   share the same view as to what entities,

22   such as the AUC, should -- what they

23   should be able to do. Is that what you

24   said?

25   "Answer: Right, because that would

 1   only get clarified if there is

 2   circumstances where you find the force --

 3   I'm sure that's meant to say

 4   something else -- meant to sent something

 5   else. But this is the interesting

 6   part -- in our business, we talk about

 7   creative ambiguity. We leave things --

 8   we leave things unclear so we don't have

 9   conflict."

10   "Creative ambiguity," I don't find

11   those words anywhere in the GAC

12   principles. I don't find those words

13   anywhere in the Bylaws. I don't find

14   those words anywhere articulating any

15   principle of California law or

16   international law.

17   But creative ambiguity is what was

18   applied, and creative ambiguity is the

19   responsibility that is then transferred

20   over, according to Ms. Dryden, to the

21   Board.

22   What does she say with respect to

23   the GAC consensus of advice that's a

24   result of creative ambiguity?

25   That isn't my concern as the Chair.

 1   It's really for the Board to interpret --

 2   to interpret the creative ambiguity

 3   outputs coming from the GAC.

 4   Okay. So does -- and then she goes

 5   on to tell you, I'm telling you the GAC

 6   did not provide a rationale. And that

 7   was not a requirement for issuing GAC

 8   advice.

 9   So GAC issues this advice through

10   facts that we now know that reflect a

11   decision taken in moments, creative

12   ambiguity as the overall atmosphere, and

13   now it goes over to the Board.

14   And you can take a look at what it

15   is that the Board is supposed to do.

16   Let's go to the slide that shows

17   what the Board must do in exercising due

18   diligence in care. And this is some

19   element of the standard review.

20   So even if we look at the specific

21   elements of what it is that -- that

22   the -- that the Board is supposed to

23   particularly do -- do. So did the Board

24   act without conflict of interest in

25   taking its decision?

 1   Well, just very briefly on the

 2   conflict of interest -- and I had made an

 3   absolute commitment to Mr. LeVee that I

 4   would end on 45 minutes.

 5   So five minutes left, if you're

 6   timing me.

 7   MR. LEVEE: I'm not timing you.

 8   MR. ALI: Okay.

 9   The -- on the question of the

10   conflict of interest, I mean, we know

11   very little, other than the fact that

12   Mr. Chalaby doesn't know and cannot

13   recall whether or not he interviewed, in

14   his digging and digging and digging and

15   digging, Mr. Silber and Mr. Disspain.

16   But they normally dig and dig and dig,

17   but he can't remember whether that

18   happened here or not.

19   He can't remember what materials

20   were actually presented as part of this

21   overall conflict of interest.

22   And, frankly, given the timing of

23   this conflict-of-interest review, six to

24   eight weeks after the actual vote was

25   taken, what difference would it have

1   made?

2   This review that they took -- that

3   they apparently did, digging and digging

4   and digging, wouldn't have changed the

5   outcome if they had come to the

6   conclusion that there was a conflict of

7   interest.

8   Why? Because, apparently, they had

9   enough votes anyway.

10   So there's a fundamental

11   inconsistency here.

12   How can you, on one hand, say the

13   vote was fair, transparent, and that

14   nothing untoward took place insofar as

15   the potential conflicts were concerned,

16   and, at the same time, say that we did a

17   very thorough conflicts of interest

18   review?

19   The only reason we were given was

20   that if conflicts of interest had been

21   determined, those who were -- those who

22   were the conflicted parties would have

23   been removed from the Board for purposes

24   of subsequent decisions.

25   That doesn't help DCA Trust. And we

 1   don't know, because we don't have

 2   details. They don't provide details. We

 3   don't have the details as to what

 4   Mr. Disspain's role or what Mr. Silber's

 5   role was in guiding the outcomes.

 6   But we do know that Mr. Silber is on

 7   the -- is -- is a nonexecutive Board

 8   member of ZADNA, and ZADNA has endorsed

 9   the AUC application.

10   Actual, potential, or perceived

11   conflict of interest? I think that all

12   three standards are satisfied here.

13   Now, there's no obligation for the

14   NGPC to follow the GAC advice. It

15   doesn't say that. It doesn't say they

16   must accept GAC advice. It simply says

17   that it should be duly taken into

18   account.

19   Well, I would say that that actually

20   means something when you decide to adopt

21   a GAC advice. There's no doubt that the

22   Board members understand how the GAC

23   operates. That requires the Board, as a

24   control mechanism, to dig into and

25   understand what it is that happened

 1   within the GAC advice and how that GAC

 2   advice has come about.

 3   Why else does Heather Dryden

 4   participate as a nonvoting liaison? A

 5   liaison liases. A liaison provides

 6   information. A liaison describes what

 7   happened. Ah, here were the

 8   communications that took place, this is

 9   what Kenya said, here is what was the

10   final agreed text of the governments, and

11   here's what happened at the meeting.

12   That's what she's supposed to

13   present as a liaison; that's what's

14   supposed to be the inquiry by the Board;

15   and that is what Mr. Chalaby is supposed

16   to be directing. But, apparently, none

17   of that happened.

18   So once the NGPC unanimously accepts

19   the GAC advice, DCA files a request for

20   reconsideration, which now goes to the

21   Board Governance Committee. And the

22   Board Governance Committee also has

23   certain obligations. It doesn't --

24   again, there is what they call their

25   "control mechanism." These are the

1   internal checks and balances.

2   The Board Governance Committee is --

3   is supposed to conduct a meaningful

4   review, according to the Bylaws,

5   Section -- Article IV, Section 2, that

6   lays out a number of things that the

7   Board should do.

8   And here, in this instance where the

9   Board Governance Committee and the NGPC

10   know how complicated and politically

11   sensitive this application is with two

12   applicants competing and one applicant

13   having certain superpowers or certain

14   extraordinary influence on the outcomes,

15   the control mechanisms don't work.

16   The NGPC -- well, the GAC basically

17   lies down. The Board Governance

18   Committee says, Well, we'll just casually

19   accept, with wave of a hand, that we got

20   from the GAC -- the NGPC, sorry, and then

21   the Board Governance Committee says,

22   Well, you know, we will sort of look at

23   this application. We don't see anything

24   that causes us any concern, so we're

25   going to accept the NGPC's -- we're

 1   not -- we're going to deny the request

 2   for reconsideration.

 3   And then all the Board Governance

 4   Committee members walk next door to the

 5   room that says NGPC, and they say, Well,

 6   we adopt the Board Governance Committee's

 7   recommendation. And they then tell

 8   ICANN Staff, "ICANN Staff, please, go

 9   right ahead."

10   And ICANN Staff goes right ahead and

11   does what it wanted to do, which is to

12   draft the support letter from the AUC to

13   the Geographic Names Panel.

14   Okay. Yes, it was a template, but

15   this is just nothing more than reflective

16   of how they were treating this applicant

17   all along.

18   But even more telling is the fact

19   that after months and months and months

20   and months of delay, some of which may

21   have been partly due to legitimate

22   debate, and some of it, I'll even

23   concede, may have been due to the fact

24   that ICANN Staff is somewhat busy and

25   overburdened, but 12 months of debate,

 1   12 months of delay, 12 months of

 2   resisting what it is that the GNP is

 3   asking.

 4   And then, as soon as the Board

 5   Governance -- as soon as the NGPC accepts

 6   the GAC advice, it's now rush, rush,

 7   rush, rush, rush. We need to get this

 8   application approved; and we need to get

 9   this application voted on; and we need to

10   get this application pushed through.

11   Not fair, not in the least bit

12   equitable, no transparency. And

13   certainly, their internal systems that

14   they're asking you to defer to didn't

15   operate with the rigor or care that one

16   would expect and DCA Trust expected when

17   it put its application in and the rules

18   and the Bylaws and the Articles of

19   Incorporation demand.

20   So with that, I will stop exactly on

21   48 minutes, and thank you very much for

22   your attention.

23   HONORABLE JUDGE CAHILL: Thank you.

24

25   MR. ALI: I should have said if you

 1   had any questions, now, I'm happy to

 2   answer them or --

 3   HONORABLE JUDGE CAHILL: Don't

 4   worry. We would have.

 5   ARBITRATOR KESSEDJIAN: I just have

 6   a very short question. And it came up

 7   yesterday when Ms. Bekele was testifying.

 8   Could you, at some stage before the

 9   end of the proceedings, point out to us

10   the exact rule -- it's probably in the

11   Guidebook -- which says that an applicant

12   can have an extra time to garner support

13   after the first application has been -- I

14   was unable to find the exact rule.

15   But you can answer later if you

16   want, but --

17   MR. ALI: It's right here. I may

18   forget.

19   PRESIDENT BARIN: We do have some

20   questions for Mr. Ali. I'm happy to ask

21   them now or after Mr. LeVee is done.

22   MR. ALI: I will point to -- take a

23   look in our opening slides at two

24   particular slides, 31 and 32.

25   Thirty-one --

 1   HONORABLE JUDGE CAHILL: What pages?

 2   PRESIDENT BARIN: Just one minute.

 3   HONORABLE JUDGE CAHILL: What page

 4   numbers?

 5   MR. ALI: Thirty-one and 32 of our

 6   opening slides.

 7   ARBITRATOR KESSEDJIAN: Okay. So

 8   that's in your --

 9   MR. ALI: Yes, the evaluation --

10   sorry -- well, 31 says -- addresses, I

11   think, a fundamental point here that --

12   which reflects the process, that really

13   does reflect what can happen here and

14   what the -- what the Bible says, which

15   is, you know what, countries can accept

16   the applications or support the

17   applications of two applicants, fair

18   game. Let them go into the ring and let

19   them, you know, duke it out with each

20   other.

21   So that's what 31 tells you.

22   And 32 says, on -- on Page 32, which

23   is Claimant's Exhibit 11, Page 72, AGB

24   Module 2.2.1.4.4, In cases where an

25   applicant has not provided the required

 1   documentation, the applicant will be

 2   contacted and notified of the requirement

 3   and given -- given a limited time frame

 4   to provide the documentation.

 5   HONORABLE JUDGE CAHILL: Who makes

 6   the -- who contacts the -- the applicant?

 7   MR. ALI: The GNP is supposed to.

 8   HONORABLE JUDGE CAHILL: The GNP is

 9   supposed to contact the applicant --

10   MR. ALI: Yes.

11   HONORABLE JUDGE CAHILL: -- and say,

12   You don't have enough support?

13   MR. ALI: Right, the GNP is supposed

14   to have this opportunity to do that.

15   And then it says, The applicant will

16   have additional time to obtain the

17   required documentation; however, if the

18   applicant has not produced the required

19   documentation by the required date (at

20   least 90 calendar days from the date of

21   notice), the application will be

22   considered incomplete.

23   So there are a number of

24   opportunities for the applicant to garner

25   the political -- the support, the

 1   endorsements, along the way.

 2   At the end of the day, that

 3   support -- you know, that's a soft

 4   requirement. I mean, governments change,

 5   political whims change, as we've seen.

 6   At the end of the day, the technical

 7   and financial criteria cannot change

 8   because those two elements go to the core

 9   functioning of the Internet stability and

10   integrity.

11   PRESIDENT BARIN: Now, in Procedural

12   Order Number 18 -- we don't have to stick

13   to that -- we said we would ask you

14   questions after Mr. LeVee is done with

15   his presentation.

16   I do have some questions for you.

17   So I'm happy to ask them now or wait

18   until Mr. LeVee --

19   MR. LEVEE: That's your pleasure.

20   PRESIDENT BARIN: Okay.

21   While we have you, Mr. Ali, let's --

22   MR. ALI: I'm not going anywhere.

23   PRESIDENT BARIN: -- let's ask you,

24   because then -- then, if my colleagues

25   have any questions, then they can

1   follow-up.

2   I would like you to do -- well, I

3   have a couple of questions. One of them

4   is the following -- you can also take the

5   time to amend if you wish.

6   If you look at Article IV, Section 3

7   of the ICANN rules -- sorry -- Bylaws, I

8   want to know how you would assist the

9   Panel in reconciling what Section 3,

10   Subparagraph 4 says with Section 11.

11   So -- and you -- put the screen up

12   yourself, if you will.

13   MR. ALI: So Bylaws, Article IV?

14   PRESIDENT BARIN: Right.

15   MR. ALI: Article IV, Section 3?

16   PRESIDENT BARIN: Article IV,

17   Section 3, that's Subparagraph 4, which

18   says, Requests for independent review

19   shall be referred to the IRP, which shall

20   be charged with comparing contested

21   actions of the Board through the Articles

22   of Incorporation and Bylaws, and then

23   declaring whether the Board has acted --

24   and then the questions that it sets out.

25   Then, if you turn to Subsection 11,

1   it says, The IRP Panel shall have the

2   authority to.

3   And you, yourself, put up, I guess,

4   a number of these. And one of them in

5   11.c. says, Declare whether an action or

6   inaction of the Board was consistent with

7   the Articles of Incorporation or Bylaws.

8   So is the IRP -- my question to you

9   is, Is the IRP allowed to do all of that,

10   do a combination of 4 and 11? And where

11   do you draw in terms of any limits there

12   are in terms of what the IRP can or

13   cannot do?

14   Is my question clear?

15   MR. ALI: I think sufficiently for

16   me to give you an answer now. And I will

17   certainly reflect upon what you've asked.

18   And this was a question -- a very

19   similar question that was put to us by

20   the Schwebel Panel, and it's something

21   that's very, I think, to a certain

22   degree, controversial because of the way

23   in which ICANN has designed its

24   accountability mechanisms.

25   Given how much of a mess the

1   accountability system is at ICANN -- and

2   ICANN is now undergoing a full review of

3   its accountability mechanisms in light of

4   the fact that it has been heavily

5   criticized for what it has done -- I

6   think that you are at a certain liberty

7   to try and to put order within -- you

8   know, that applies to the particular case

9   that's before you. But to take the

10   construct, the construct that is provided

11   by the Bylaws, that's provided -- keeping

12   in mind that the Bylaws are supposed to

13   reflect the principles reflected in the

14   Articles of Incorporation -- and apply

15   those within the Board of construct or

16   the dispute resolution framework, that

17   you are free to and have so far

18   constructed that is appropriate for the

19   particular case at hand.

20   Now, with respect to what you can

21   do, you are testing Board action and

22   inaction. To use the terminology that

23   was provided by Mr. LeVee, what the Board

24   knew and what the Board should have

25   known, what the Board did and what the

 1   Board should have done with reference to

 2   the principles that are set out in the

 3   Articles and the Bylaws and the Applicant

 4   Guidebook.

 5   So, from our perspective,

 6   particularly when you -- you know, when

 7   you cradle all of this within the

 8   principles of international law that, to

 9   me, also include fundamental principles

10   of -- of -- of procedure and due process,

11   allows you to -- allows you considerable

12   amplitude and latitude in terms of what

13   it is that that you can do.

14   Now, at one level, you could be

15   looking at the particular Bylaw and say,

16   Well, technically, yes, this was

17   breached, and that was not breached; or

18   this was breached, and that was not

19   breached. But I think that you have a

20   more significant role, and that more

21   significant role is -- is motivated,

22   informed -- and informed by

23   the -- the -- the Articles of

24   Incorporation and the Bylaws, themselves.

25   PRESIDENT BARIN: Are you, in

 1   essence, saying -- and I will obviously

 2   put the same question to you,

 3   Mr. LeVee -- are you, in essence, saying

 4   that, if you will, Subparagraph 4 gives

 5   us a framework, but that then Sub 11

 6   gives us the broad powers to decide what

 7   we need to -- perhaps in light of the

 8   facts and circumstances that you've given

 9   us?

10   Is that a fair characterization?

11   MR. ALI: That's a fair

12   characterization --

13   PRESIDENT BARIN: Okay.

14   MR. ALI: -- but, ultimately, I

15   believe that you have the latitude that

16   you need to do what it is that's really,

17   at its core, applying the standards and

18   the Bylaws.

19   And every regulator will say, Let's

20   take a look specifically at what my rules

21   say, but, you know, at the end, they have

22   to be applied in good faith in accordance

23   with the core values.

24   And who is there to police the core

25   values?

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 1              PRESIDENT BARIN:  As a follow-up to
 2         that -- and I appreciate that I'm sort of
 3         throwing this at you now, but maybe when
 4         you sit down and reflect on it -- I would
 5         be interested in -- in seeing where you
 6         could find support -- maybe it goes
 7         without saying, but if, for example,
 8         staff or people involved in a -- in an
 9         organization do certain things or do not
10         do certain things or whatever they are,
11         that ultimately then sort of either goes
12         up or down to -- to the Board -- the
13         action or inaction.
14              So to the extent that you can give
15         the Panel some support for that, either
16         Bylaws and Articles of Incorporation, I
17         would be interested in that -- in seeing
18         that.
19              MR. ALI:  Absolutely.
20              I will respond, but I would like to
21         think about that, because I think I have
22         a -- a good response.  But I want to
23         articulate it since it is in a more
24         coherent fashion than I have answered
25         your last question.
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 1   PRESIDENT BARIN: In all fairness,

 2   that's why I asked it now as opposed to

 3   later.

 4   I have one other question for you,

 5   and, again, you may reflect on this.

 6   I want you to tell us, Mr. Ali, what

 7   it is exactly that -- and I want this

 8   articulated clearly -- what it is exactly

 9   the DCA Trust is asking this Panel to do.

10   I have put up on my own screen the

11   relief requested in your Amended Notice

12   of IRP, and I have also put up on my own

13   screen the conclusion and the -- what I

14   would say, the relief that you have

15   requested in the DCA Memorial on the

16   Merits.

17   And I think the Panel would be

18   grateful if it has a very clear

19   indication from you as to what it is that

20   DCA Trust is seeking. Because,

21   admittedly, I understand what the relief

22   sought is in the Amended Notice of IRP;

23   but when I read what is being sought in

24   the Merits Memorial, it perhaps goes

25   beyond what the initial request is.

 1   MR. ALI: Sorry? Beyond?

 2   PRESIDENT BARIN: It goes beyond the

 3   initial request, if you will.

 4   And maybe that's my misunderstanding

 5   or maybe my characterization; but if I'm

 6   wrong, I would like to know that.

 7   HONORABLE JUDGE CAHILL: Yes.

 8   It's important we know what you're

 9   asking us to do.

10   MR. ALI: Yes. Let me review this

11   specifically. Thinking of being more

12   specific with respect to what we had put

13   in the amended request, I will view the

14   requests in light of the question you

15   just put to me and, of course, also

16   consult Ms. Bekele as to the precise

17   relief we're requesting.

18   HONORABLE JUDGE CAHILL: On Page 56

19   and 57 of your client's declaration, she

20   also states what she's seeking. And I --

21   not all -- we want it to be consistent,

22   so we want to be very clear what you're

23   seeking and she's seeking.

24   Okay?

25   MR. ALI: Okay.

1   ARBITRATOR KESSEDJIAN: May I add on

2   this particular problem?

3   The way I read your submissions was

4   that, basically, what is here in Page 30,

5   3-0, of your Memorial of the Merits was

6   superceding, in a way, or, kind of, you

7   know, the -- the actual --

8   MR. ALI: It's an evolution, yes, of

9   what was in the amended request. So it

10   is more -- it is a -- it is a more

11   precise articulation, at least that's how

12   we'd intended it, of what it is that we

13   wanted.

14   The way I would put it, both with

15   respect to the amended request, as well

16   as with respect to Ms. Bekele's

17   statement, is that the amended request,

18   the statement ultimately reflected an

19   articulation of the requested relief at

20   Paragraph 56.

21   But I will --

22   ARBITRATOR KESSEDJIAN: Fifty-six?

23   I was reading that only.

24   So in your response later on, you

25   must tell us whether I was correct or

 1   whether we should do something else.

 2   MR. ALI: Yes, absolutely.

 3   PRESIDENT BARIN: And, again, I'm

 4   going to insist on that, because we have

 5   to walk away from this knowing exactly

 6   what it is that's being sought --

 7   MR. ALI: Absolutely.

 8   PRESIDENT BARIN: -- so depending on

 9   what your answer is and how you

10   articulate it, then I will certainly have

11   some questions for you --

12   MR. ALI: Okay.

13   PRESIDENT BARIN: -- but I'd rather

14   give you the time to reflect on that, and

15   then we can come back to it.

16   MR. ALI: I must consult with my

17   client to make sure we've got it down

18   with the requisite precision.

19   PRESIDENT BARIN: I understand.

20   HONORABLE JUDGE CAHILL: When I

21   first read it, I was wondering whether we

22   had the power to do some of the things

23   you were asking for, even if we agree

24   with you on the standard of care, the

25   standard review and everything else.

 1   It seemed like there was some --

 2   MR. ALI: Fair question.

 3   And that's, again, what we will be

 4   discussing with Ms. Bekele and relay that

 5   to the Panel. A very fair question.

 6   HONORABLE JUDGE CAHILL: Okay.

 7   PRESIDENT BARIN: Okay.

 8   Thank you.

 9   MR. ALI: Thank you.

10   PRESIDENT BARIN: Would you like a

11   little break?

12   MR. LEVEE: I would like a very

13   short break so I can deal with the

14   computer issues and get everything

15   switched around.

16   PRESIDENT BARIN: Okay.

17   Great. So maybe --

18   MR. LEVEE: Ten minutes is fine.

19   PRESIDENT BARIN: -- 10 minutes?

20   10:30?

21   MR. LEVEE: Thank you.

22   - - -

23   (Whereupon, a brief recess was taken

24   from 10:23 a.m. to 10:35 a.m.)

25   - - -

1   PRESIDENT BARIN: Mr. LeVee.

2   - - -

3   CLOSING STATEMENT ON BEHALF OF RESPONDENT

4   INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

5   - - -

6   MR. LEVEE: Thank you,

7   Mr. President.

8   Let me begin my closing by

9   acknowledging that the Members of the

10   Panel, opposing counsel, everyone has put

11   in an enormous amount of effort into this

12   matter.

13   On behalf of ICANN, we very much

14   appreciate the effort and the attention

15   you paid, and we -- we do appreciate that

16   very much.

17   I know there's more to do, but this

18   is the culmination of a -- particularly

19   for the two of you, a very long period of

20   time, much longer than ICANN hopes in

21   these situations.

22   But we did have a death of a

23   panelist and things happen, so we're very

24   pleased to have reached this point.

25   I'm going to do three things in my

1   opening -- in my closing -- if I'm doing

2   my opening, I'm a little late, I

3   suppose -- first, I'm going to run

4   through, pretty quickly, a couple of the

5   Bylaws, provisions that you were looking

6   with Mr. Ali.

7   Secondly, in the opening statement

8   that DCA presented to you, they listed

9   what they believe the various Bylaws and

10   Guideline breaches were. I think there

11   were seven of them. And I'm going to

12   review them one by one with you.

13   And then, third, I'm going to

14   return, again, briefly, to the

15   assumptions that I laid out for you in my

16   opening statement and demonstrate to you

17   that after the testimony that we've had,

18   that it is, in fact, the case that each

19   of DCA's assumptions is false.

20   And so while DCA makes a number of

21   arguments, each of those arguments is

22   based on these assumptions. And if the

23   Panel finds the assumptions false, then

24   it should find in ICANN's favor.

25   First, you have already referred to

 1   and quoted this provision of the Bylaws

 2   on multiple occasions, but Article IV,

 3   Section 3, Paragraph 2 does say that Any

 4   person materially affected by a decision

 5   or action by the Board that he or she

 6   asserts is inconsistent with the Articles

 7   or Bylaws may request an independent

 8   review.

 9   The person must suffer injury or

10   harm that is directly or causally

11   connected to the Board's alleged

12   violation of the Bylaws or the Articles

13   of Incorporation, and not as a result of

14   third parties acting in line with the

15   Board's action.

16   So you asked a question yesterday,

17   Well, what about the GAC?

18   And the answer is that an

19   Independent Review Proceeding does not

20   exist to test whether the GAC conformed

21   to the ICANN Bylaws or the Articles, or,

22   candidly, even to its own operating

23   principles. So we're not here under the

24   Bylaws to test whether the GAC got it

25   right.

 1   That's not to say that the GAC isn't

 2   relevant. Clearly, it is. Because the

 3   GAC issued consensus advice -- I'll call

 4   it "consensus advice," recognizing that

 5   there's a dispute -- and that advice went

 6   to the Board.

 7   And then the question is, Did the

 8   Board deal with the advice consistent

 9   with the Guidebook, the Articles and the

10   Bylaws?

11   But looking at whether the GAC does

12   things really or whether the GAC has good

13   operating principles or what -- what

14   happened inside that room, it's not for

15   this Panel to decide.

16   Next --

17   HONORABLE JUDGE CAHILL: Can I ask

18   you a question about that?

19   MR. LEVEE: Of course.

20   HONORABLE JUDGE CAHILL: Is it your

21   position that the Board has nothing --

22   has no -- let me try this again.

23   The powers that the GAC have, where

24   do they come from? The Board?

25   MR. LEVEE: The GAC. The GAC makes

 1   its own rules.

 2   These are governments. The

 3   governments have no interest in having

 4   ICANN lay down rules or set rules.

 5   The GAC determines its rules.

 6   Ms. Dryden said that yesterday.

 7   HONORABLE JUDGE CAHILL: No. I

 8   remember that.

 9   PRESIDENT BARIN: Let me just follow

10   up on that, then.

11   Who is responsible for the GAC?

12   MR. LEVEE: The GAC.

13   PRESIDENT BARIN: And does the GAC

14   report to anybody?

15   MR. LEVEE: When you say "report,"

16   the GAC issues communiqués to ICANN.

17   You've seen one of them, but it does so

18   in almost every meeting of the Board.

19   It then has a nonvoting liaison, the

20   Chair, who participates in ICANN

21   meetings, but not as a voting member.

22   But it doesn't really report to

23   anyone. It -- it -- the GAC is -- is --

24   it is its own body.

25   PRESIDENT BARIN: Okay. But then --

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 1        then help me out in terms of trying to

 2        understand.

 3             If the GAC then issues the

 4        communiqué, is the communiqué of the GAC

 5        of any significance without the approval

 6        of the Board?

 7             MR. LEVEE:  The communiqué has

 8        significance to the governments, and then

 9        the communiqué is transmitted to the

10        Board.

11             Now, it depends what the communiqué

12        says.  The communiqué can say to ICANN,

13        We recommend that you look at something.

14        The communiqué can say to ICANN, We wish

15        that we be involved in policy relating to

16        something.

17             You have seen only GAC communiqué

18        that relates to specific advice relating

19        to the new gTLD program.  That advice

20        does get transmitted to the Board, and it

21        creates what we've seen, the strong

22        presumption if the advice should be

23        accepted.

24             But that's only one piece of what

25        the GAC has done.
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 1   Historically, prior to the new gTLD

 2   program, the GAC issued communiqués on

 3   all sorts of subjects, and they were

 4   transmitted to ICANN. And, typically,

 5   they were in the form of requesting

 6   information, requesting that ICANN do

 7   something, requesting that ICANN take

 8   things into account. And ICANN would

 9   listen and ask.

10   PRESIDENT BARIN: But, you know,

11   let's be very specific about this,

12   because --

13   MR. LEVEE: Sure.

14   PRESIDENT BARIN: -- the communiqué

15   that's issued by the GAC, if it's just a

16   communiqué and it goes nowhere, then it's

17   simply a reflection or, I guess, a -- a

18   reprint of what transpired as -- you

19   know, in a certain event, right?

20   I mean, does it have any more

21   meaning than that? In other words --

22   MR. LEVEE: To be clear, all GAC

23   communiqués are transmitted to the Board.

24   PRESIDENT BARIN: Right.

25   And if they're transmitted to the

1   Board, to the extent that the Board then

2   acts on them, does it not create, I

3   guess, the value that that GAC -- GAC

4   communiqué then brings forward? In other

5   words, without the approval of the Board,

6   what is the value of the GAC communiqué?

7   MR. LEVEE: I get your point.

8   You're exactly right. The advice of

9   the GAC can only be acted on by the

10   Board, particularly in the sense of

11   advice not -- that a particular

12   application should not proceed.

13   But sometimes -- I'm just trying to

14   be clear that sometimes the GAC is

15   issuing communiqués that the GAC is

16   saying, We wish to be involved. Even

17   with the new gTLD program, the GAC

18   periodically said, Hey, you guys are

19   doing something. We, as governments,

20   would like to be involved. And so we

21   hereby notify ICANN to, you know, talk to

22   us.

23   PRESIDENT BARIN: But in this

24   case -- specifically in this case, when

25   GAC says, for example, We are objecting

 1   to it or there's an objection to an

 2   application --

 3   MR. LEVEE: Yes.

 4   PRESIDENT BARIN: -- if the Board

 5   does not approve that, then is the

 6   decision of the GAC of any value?

 7   MR. LEVEE: No. With these two

 8   caveats: first, the Guidebook says that

 9   the -- the issuance of consensus advice

10   by the GAC creates a strong presumption

11   that the Board should follow.

12   Then the Bylaws -- separate and

13   apart from the Guidebook, the Bylaws have

14   a provision that says that if ICANN is

15   not going to follow GAC advice, there's

16   then a process that has to occur where

17   the parties talk to one another -- and

18   that's in my first -- in my opening

19   statement, I had -- it was part of my

20   opening statement yesterday -- so the

21   parties would have to talk to each other.

22   ICANN cannot simply say, Thank you,

23   GAC, for recommending something, nah, and

24   we're done. There's a process --

25   PRESIDENT BARIN: Okay.

 1   MR. LEVEE: -- but, otherwise, I'm

 2   not -- I think I'm answering your

 3   question. I'm just not sure.

 4   PRESIDENT BARIN: No; you are. You

 5   are.

 6   But I just want to follow up just on

 7   one more thing.

 8   If -- if the Board gets a communiqué

 9   from the GAC and thinks that it should

10   follow up, as you say, on the communiqué,

11   or perhaps something was followed or not

12   followed, or whatever, it can then go

13   back and say, Why was this done this way

14   or not done this way? Or is that

15   possible?

16   MR. LEVEE: I do believe that the

17   Board has the power to ask the GAC to

18   clarify advice. I'll be candid. I've

19   never seen it happen, but I do believe

20   the Board has the power to ask the GAC,

21   Why did you send me this advice or Could

22   you amplify on it?

23   I certainly believe that that's one

24   thing within the Board's --

25   HONORABLE JUDGE CAHILL: There's no

 1   way to answer that question from the

 2   testimony we heard because she doesn't

 3   have an idea of what the reasons are.

 4   She just accepts the --

 5   MR. LEVEE: I think Ms. Dryden was

 6   worried about dealing with it

 7   hypothetically, because there's so many

 8   different scenarios that come up.

 9   From the GAC's perspective, when the

10   GAC issues advice, they do so at a place

11   and time, and it is their advice.

12   Governments change, policies change,

13   advisors and representatives change. And

14   so she can never be confident that

15   something that the GAC says in March

16   would be the same outcome of what the GAC

17   might say in August, because the people

18   in the room are different and the

19   governments might have changed policy --

20   I'm sorry.

21   ARBITRATOR KESSEDJIAN: Sorry. I

22   didn't want to interrupt.

23   MR. LEVEE: -- so her whole --

24   Ms. Dryden's whole point was that she

25   doesn't -- there can be communication --

 1   HONORABLE JUDGE CAHILL: Right.

 2   MR. LEVEE: -- but when the GAC

 3   issues something, they view it as final.

 4   Now, if the Board comes back to the

 5   GAC and says, Well, we want to discuss

 6   something or We need your rationale, the

 7   GAC could then choose to provide it or

 8   not. The GAC would have -- would be

 9   under no obligation to -- to say, Well,

10   the Board has asked me to clarify

11   Section 2 that I issued on the communiqué

12   in April, but we choose not to.

13   PRESIDENT BARIN: Sorry.

14   ARBITRATOR KESSEDJIAN: Go ahead.

15   PRESIDENT BARIN: Let me follow on

16   this, because these are important

17   questions.

18   MR. LEVEE: I'm with you.

19   PRESIDENT BARIN: To the extent

20   that -- and I'm putting a hypothetical to

21   you -- to the extent that the Board then

22   adopts a view or a communiqué of GAC

23   without taking the time to perhaps either

24   look at it closely or analyze it or do

25   further examination of it, and approves

 1   it, then is it not then the Board's

 2   decision, and the consequences then

 3   follow from that? In other words, where

 4   else can the issue be put to if it's not

 5   to the Board?

 6   MR. LEVEE: Yes. So applied here --

 7   and that's what I was trying to make

 8   clear -- applied here -- I'm not saying

 9   at all that the Board's decision

10   vis-a-vis the GAC advice on DCA's

11   application is not reviewable by this

12   Panel; it is.

13   The Board did something. It acted.

14   It approved the GAC advice. It had a

15   Guidebook that said there was a strong

16   presumption that it should. It reviewed

17   various materials. It reached that

18   conclusion. That conclusion is

19   reviewable by this Panel, undoubtedly.

20   Have I clarified that?

21   PRESIDENT BARIN: You have. Thank

22   you.

23   HONORABLE JUDGE CAHILL: But -- I'm

24   sorry. Go ahead.

25   ARBITRATOR KESSEDJIAN: I'll be

 1   patient.

 2   No, no. You may ask the same

 3   question as I have in mind. And if so,

 4   then I will be quiet; but if not, I will

 5   go after you.

 6   HONORABLE JUDGE CAHILL: I think I

 7   forgot my question now.

 8   DCA is arguing that the GAC, when it

 9   made its decision to stop the

10   application, basically killed the

11   project -- killed DCA's project.

12   Does the Board have any

13   responsibility? Because the Board is

14   supposed to evaluate the applications

15   based on financial, technical, all that,

16   but that never happened because of what

17   happened at the GAC. And --

18   MR. LEVEE: Well, there was some

19   evaluation, but once the GAC ruled and

20   then the Board adopted the GAC advice, it

21   is correct that, at that point, the

22   application evaluation terminated.

23   The -- but I'm not sure I'm

24   answering your question.

25   If -- the killing that Mr. Ali was

 1   referring to is the fact that because of

 2   the strong presumption, there has to be

 3   an awfully good reason for the Board not

 4   to accept the GAC advice.

 5   DCA, under the Guidebook, was given

 6   an opportunity to respond to the GAC

 7   advice. It did with a 15-page response.

 8   It's in the exhibits that I gave to you

 9   yesterday.

10   The Board considered -- the NGPC

11   considered that response along with the

12   GAC advice, along with the Guidebook, and

13   made a decision; it accepted the advice.

14   So the killing, I suppose -- I don't

15   like using the word --

16   HONORABLE JUDGE CAHILL: I know.

17   MR. LEVEE: -- but the decision to

18   suspend evaluation of that application

19   was done by the Board, and that is

20   certainly a decision that the Panel can

21   review.

22   HONORABLE JUDGE CAHILL: And review

23   in what way? That we can say -- we can

24   go back and look at the GAC process and

25   decide -- have an opinion as to whether

 1   GAC did its job right?

 2   MR. LEVEE: No. That's what --

 3   HONORABLE JUDGE CAHILL: That's

 4   where we're stuck here.

 5   MR. LEVEE: -- the -- and that's

 6   why -- let me lay out -- it's actually in

 7   the next slide, although I don't want to

 8   jump ahead.

 9   ARBITRATOR KESSEDJIAN: I have a

10   question.

11   HONORABLE JUDGE CAHILL: You have a

12   different one?

13   MR. LEVEE: If you have a different

14   one, let's go there. And the next slide

15   answers the next question.

16   PRESIDENT BARIN: I assure you, you

17   will have all the time you need.

18   MR. LEVEE: Turn off the watch.

19   HONORABLE JUDGE CAHILL: You have

20   48 minutes.

21   PRESIDENT BARIN: We are asking you

22   questions, but these are important

23   questions, so . . .

24   MR. LEVEE: I've always encouraged

25   you to interrupt.

 1   ARBITRATOR KESSEDJIAN: Okay. So my

 2   question goes to your Slide Number 2 --

 3   if we could have it on the screen -- and

 4   your last -- actually, the slide on the

 5   screen is not the one we have in our --

 6   there's something missing --

 7   HONORABLE JUDGE CAHILL: That's

 8   Number 2.

 9   ARBITRATOR KESSEDJIAN: -- the last

10   bullet.

11   That's it. That's it.

12   HONORABLE JUDGE CAHILL: I see. I

13   see.

14   There I am.

15   ARBITRATOR KESSEDJIAN: So you are

16   telling us that we do not have the

17   mandate to review GAC's conduct?

18   MR. LEVEE: Correct.

19   ARBITRATOR KESSEDJIAN: Now, several

20   questions: One, what is the legal

21   basis -- where in the Bylaws, Articles of

22   Incorporations or Guidebook do you see

23   the basis for this assumption, for

24   this --

25   MR. LEVEE: In the paragraph I quote

 1   above and the paragraph on the next

 2   slide.

 3   ARBITRATOR KESSEDJIAN: The

 4   paragraph above does not say what you

 5   say.

 6   MR. LEVEE: Obviously, we're

 7   disagreeing.

 8   ARBITRATOR KESSEDJIAN: What you're

 9   saying is that your interpretation of

10   Article IV, 3, 2 --

11   MR. LEVEE: And -- and Article IV,

12   3, 4, which is --

13   ARBITRATOR KESSEDJIAN: Where does

14   it say?

15   MR. LEVEE: That's the next -- you

16   can look. It's on the next page --

17   ARBITRATOR KESSEDJIAN: Okay --

18   MR. LEVEE: -- it says --

19   ARBITRATOR KESSEDJIAN: -- so your

20   basis -- the legal basis for you is IV,

21   3, 2 and IV, 3, 4?

22   MR. LEVEE: And, really, if you look

23   in the entirety of Section IV -- so

24   here -- why are we here today?

25   We're here because ICANN created

1   what we've -- you and I have had this

2   discussion before -- ICANN created this

3   very unusual process that says We're

4   going to permit Independent Review Panels

5   to evaluate things.

6   ICANN's position is these are

7   unique, we get to decide the rules.

8   Now, to be clear, these rules were

9   created with thousands of public

10   comments, accountability panels, experts,

11   all of that. It's not the Staff and I

12   sitting in a room wishing for an outcome.

13   But the decision was made to adopt

14   this particular form of independent

15   review.

16   We could have adopted a form of

17   independent review that specifically

18   says, By the way, we're also going to

19   review what the Staff does.

20   That exact proposal is under

21   consideration as we speak, but it's not

22   what these Bylaws say.

23   ARBITRATOR KESSEDJIAN: I have

24   follow-up.

25   Now I know what's your answer to my

 1   first question.

 2   My second question is, If it were

 3   true that the GAC's conduct cannot be

 4   reviewed by us, why in the world you ask

 5   Ms. Dryden to be a witness?

 6   You were the ones who gave us the

 7   declaration, and it's because you did

 8   this that we went on and on and on

 9   discussing what the GAC was doing and

10   what the processes in the GAC were --

11   were done.

12   So I don't understand the rationale

13   behind your procedure or strategy.

14   MR. LEVEE: I can tell you exactly.

15   We had this exact discussion.

16   The application challenged the

17   Board's decision to accept the GAC

18   advice, and it said that the GAC advice

19   was not consensus advice.

20   That was DCA's amended notice,

21   which, by the way, was all I had at the

22   time Ms. Dryden -- we had to make the

23   decision.

24   I had a 25-page piece of paper that

25   said, Here's what Mr. Buruchara had

 1   written in an e-mail. He objected to GAC

 2   advice.

 3   He wasn't at the meeting. He may or

 4   may not have been the GAC representative

 5   from Kenya. He may or may not have the

 6   authority to do what he was e-mailing

 7   about. But their notice said, Here's

 8   what we've got.

 9   So I called Ms. Dryden. I said,

10   This seems like an incomplete picture.

11   Can you tell me what actually happened?

12   And she did.

13   By submitting her declaration, I

14   then explained to you that the Board

15   should have had and did have confidence

16   that what the GAC told the Board was

17   accurate.

18   The GAC did issue consensus advice,

19   according to Ms. Dryden.

20   We can debate -- I know the Panel

21   will ultimately look at these issues

22   fresh -- but Ms. Dryden's view is that

23   it's not a close call.

24   She explained to you how you issue

25   consensus advice and it was done.

 1   That's why we gave you her

 2   declaration, to demonstrate that the

 3   Board's reliance on the GAC advice was --

 4   was a good thing, was accurate, was

 5   within its realm.

 6   Because if I had given you no

 7   declaration and we had just this

 8   assertion that the GAC advice was not GAC

 9   advice, then I think it would be

10   reasonable for somebody to say, Well, if

11   the Board was on notice that the GAC

12   advice was not, in fact, consensus

13   advice, why didn't the Board do its own

14   investigation?

15   ARBITRATOR KESSEDJIAN: Would you

16   agree, nonetheless, that at least, as you

17   say, as far as the Board's way of taking

18   its decision, the GAC conduct is

19   pertinent?

20   MR. LEVEE: It is. I'm not

21   suggesting that it's not.

22   ARBITRATOR KESSEDJIAN: Thank you.

23   HONORABLE JUDGE CAHILL: I think she

24   did a better job than me.

25   Go ahead.

 1   PRESIDENT BARIN: I just want to

 2   complete one circle coming back to

 3   Professor Kessedjian's question.

 4   If you look at the last bullet

 5   point, where you say GAC conduct is not

 6   the proper subject of an IRP.

 7   If I was to ask you to complete that

 8   sentence in saying GAC conduct is the

 9   proper subject of what review --

10   MR. LEVEE: In this instance,

11   there's no specific accounting mechanism

12   to challenge GAC advice that is

13   separate -- in other words, the GAC

14   issues advice, and no one does anything

15   with it.

16   So take my previous example where

17   the GAC says, I want to be involved in

18   the creation of the New GTLD Program.

19   Somebody might think that's a bad thing

20   for governments to do. There would be no

21   basis to challenge that.

22   The only basis would be when the

23   Board adopts or does not adopt specific

24   GAC advice, you are clearly free to look

25   at the Board's decision. And in that

 1   regard, if you were to find that the

 2   Board was on notice that the GAC just

 3   fell down, that there was no GAC needed,

 4   that the -- you know, that the

 5   representative of Kenya walked into the

 6   Board meeting and said, Wait a second, I

 7   was at the GAC meeting and I jumped up

 8   and down, and Ms. Dryden refused to

 9   recognize me when I tried to oppose the

10   issuance of GAC advice, if those types of

11   things had happened, then you would say

12   maybe the Board didn't do due diligence

13   because the applicant submits a response

14   to the Board, and the Board reads it, and

15   maybe the Board didn't do due diligence

16   in evaluating it.

17   Instead, what we know is what

18   Ms. Dryden testified in her declaration

19   and testified to the Panel, and she does

20   attend the Board -- these meetings as a

21   liaison. She's doesn't remember this

22   particular meeting. I'm not surprised.

23   She's attended literally hundreds of

24   meetings during her tenure as the GAC

25   Chair.

 1   And while what brings us here today

 2   is important for all of us, what I heard

 3   her say yesterday was that there are a

 4   lot of other things that are also very

 5   important, much more complicated

 6   politically for her to deal with.

 7   So I don't know that this was the

 8   most important thing that ever happened

 9   to her at the GAC.

10   PRESIDENT BARIN: So, in other

11   words, if I was to say it in my way, the

12   GAC decision and conduct is whatever it

13   is, and it's not really reviewable or

14   subject to any, if you will, analysis up

15   until the time it's then put up to the

16   Board?

17   And then the Board accepts it or

18   approves it or acts on it --

19   MR. LEVEE: Yes.

20   PRESIDENT BARIN: -- at which point

21   in time, it becomes something that has

22   value, at which point in time, it becomes

23   subject to the IRP?

24   MR. LEVEE: Yes.

25   HONORABLE JUDGE CAHILL: You require

 1   actual notice to the Board if something

 2   is going wrong in the GAC, right?

 3   MR. LEVEE: I didn't hear you.

 4   HONORABLE JUDGE CAHILL: You would

 5   require -- for instance, Mr. Ali's

 6   arguing that the -- there was just this

 7   quiet, you know -- very quickly, it was

 8   approved -- the issue was tabled and

 9   there was consensus on it --

10   MR. LEVEE: Yes.

11   HONORABLE JUDGE CAHILL: -- and it

12   basically sounds like it happened in a

13   minute, but -- and that's one of the

14   things he really has been hitting us on.

15   Does the Board -- you're saying that

16   the Board doesn't know that or know that

17   objection, then the Board is reasonable

18   to accept the GAC's recommendation --

19   MR. LEVEE: What the Board in this

20   instance had, it had a communiqué from

21   the GAC saying we have issued consensus

22   advice against the Application Number so

23   forth. It then had Ms. Bekele's response

24   to the GAC advice, 15 pages, in which she

25   explains why she thinks the GAC advice

1   should not sway the Board and was

2   improperly issued.

3   The Board then meets -- it has this

4   information. It meets. It approved the

5   GAC advice.

6   So the Board is not operating in a

7   vacuum, say, taking the GAC advice and

8   not listening to anybody else. It had a

9   thorough response from the applicant that

10   did not persuade the Board.

11   And Ms. Dryden -- one of the

12   purposes of Ms. Dryden's declaration was

13   to explain to you that the objection that

14   DCA made was not, in fact, accurate.

15   ARBITRATOR KESSEDJIAN: Mr. LeVee,

16   the Board has records and minutes?

17   MR. LEVEE: It does.

18   ARBITRATOR KESSEDJIAN: Do we have

19   those in the binder?

20   MR. LEVEE: We do. They were in the

21   binder I gave to you yesterday,

22   the minutes of that particular meeting

23   showing what the Board reviewed.

24   I'll get you the exhibit number.

25   But it's the minutes of the

1 meeting that show -- it's Exhibit R-1.

2 It's the formal minutes of the ICANN NGPC

3 meeting of June 2013, and it says what

4 the Board looked at.

5 HONORABLE JUDGE CAHILL: So you

6 would say, with all due respect to

7 Mr. Ali, the fact that you think that the

8 GAC operated unfairly is really

9 irrelevant to what my job is to do here

10 because you -- no matter what they did,

11 they had the other side of the story?

12 MR. LEVEE: Okay. Let me come to it

13 now. I was going to come to it later.

14 I have a completely different

15 perspective of whether the GAC acted

16 fairly or unfairly.

17 The GAC had an agenda that had been

18 generated three weeks in advance of the

19 meeting, according to Ms. Dryden's

20 testimony yesterday. Three countries

21 placed on the agenda their interest in

22 having a consensus advice objection

23 issued vis-a-vis DCA's application.

24 Ms. Dryden, her job is then to go

25 through the agenda. She goes through the

1 agenda.

13   We went from a few minutes to a

14 nanosecond during Mr. Ali's closing --

15   HONORABLE JUDGE CAHILL: Fair

16 enough.

17   MR. LEVEE: -- but whatever

18 second -- however much time it takes, I

19 don't think it takes a long time to

20 register that no one opposes.

21   In fact, no one opposes. The

22 request carries, at which time, there is

23 applause in the room, according to

24 Ms. Dryden. So people were paying

25 attention.

 1   So I think the GAC advice was issued

 2   exactly as it was supposed to be.

 3   There isn't necessarily supposed to

 4   be tons of debate at the meeting. What

 5   Ms. Dryden said is we put these things on

 6   the agenda three weeks in advance so that

 7   the government officials can go back to

 8   their own countries and get instructions.

 9   And then they come to the meeting.

10   If there is consensus, it will be

11   reflected at the meeting. There's

12   nothing more to do. There's no debate to

13   have.

14   Redacted - GAC Designated Confidential Information

19   We know Mr. Katundu, who is the

20   representative from Kenya, he's

21   physically in Beijing. He's physically

22   attending GAC meetings. And all

23   Ms. Dryden told you was, Look, I've got a

24   lot of these meetings. There's 70 to 150

25   people in the room. I can't tell you at

 1   the moment whether he was there or not.

 2   HONORABLE JUDGE CAHILL: So if the

 3   GAC -- Mr. Ali argues that the GAC

 4   procedures were flawed and the result was

 5   not fair, that's -- that, to you, no

 6   matter what the answer to that question

 7   is, we don't get to look at that?

 8   MR. LEVEE: No, you don't --

 9   HONORABLE JUDGE CAHILL: Okay.

10   MR. LEVEE: -- and there -- first of

11   all, this is the first time I'm hearing

12   that the notion of issuing consensus

13   advice is unfair --

14   HONORABLE JUDGE CAHILL: He said the

15   procedure -- the procedure is what he's

16   talking about.

17   MR. ALI: -- but this is how the GAC

18   has been operating since Ms. Dryden was

19   involved in 2007. That's her testimony.

20   And there's no indication that the

21   GAC has ever operated in any other

22   fashion.

23   HONORABLE JUDGE CAHILL: Well, she

24   said this is the first time that this was

25   done this way.

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 1            MR. LEVEE:  For gTLDs --

 2            MR. ALI:  Fair enough.

 3            MR. LEVEE:  -- the GAC has issued

 4    consensus advice many, many times.

 5            It's the first time that a gTLD --

 6    and she also said there were several

 7    other gTLDs on the agenda, one of which

 8    got consensus advice, another of which

 9    did not.

10            ARBITRATOR KESSEDJIAN:  Mr. LeVee,

11    have you attended a GAC meeting ever?

12            MR. LEVEE:  A long time ago, not

13    recently.

14            ARBITRATOR KESSEDJIAN:  Okay.  So is

15    my assumption correct that each

16    government has a flag, has a --

17            MR. LEVEE:  No.  They actually made

18    a decision some time ago not to have

19    flags.

20            ARBITRATOR KESSEDJIAN:  No, I mean

21    flags -- something with their name or

22    something with the name of the country.

23            MR. LEVEE:  Like a name tag or a

24    card?

25            ARBITRATOR KESSEDJIAN:  Yeah.
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 1   MR. LEVEE: No, I don't think they

 2   even do that now. They didn't when I was

 3   there. I don't think they do that now.

 4   Ms. Dryden knows everyone in the

 5   room.

 6   ARBITRATOR KESSEDJIAN: So you

 7   answered the question that was coming.

 8   MR. LEVEE: Yes.

 9   ARBITRATOR KESSEDJIAN: So how do

10   you reconcile that to the fact that she

11   says that she didn't know whether Katundu

12   was there or not? She knows everybody.

13   She says it's the Chair's job to know

14   everybody.

15   MR. LEVEE: She does know everyone.

16   I think Ms. Dryden was being

17   incredibly honest. She was saying -- I

18   wanted her to say, Wasn't he in the

19   room --

20   ARBITRATOR KESSEDJIAN: I'm not

21   asking you that. I'm not asking you to

22   rehearse what she said.

23   MR. LEVEE: Why doesn't she

24   remember? I think it's easy.

25   There are so many people in these

 1   rooms -- she did not say one thing I wish

 2   she would have said, which is to explain

 3   that the GAC meeting sometimes go on for

 4   eight, 10, 12 hours. People are coming

 5   and going.

 6   She did say that a lot of the real

 7   work of the GAC is done --

 8   ARBITRATOR KESSEDJIAN: You should

 9   have been on the stand instead of her.

10   MR. LEVEE: She -- what she said was

11   that people are coming and going, and a

12   lot of the work is done outside.

13   When I asked her, when we were

14   sitting together drafting her

15   declaration, and I said, Can you place

16   him in the room?

17   She said, Look, there are so many

18   meetings that I cannot, at that meeting,

19   say that he was there.

20   I know he didn't speak at the

21   meeting because, if he did, I would

22   remember that he was there.

23   But I have no fault for Ms. Dryden

24   not remembering that a particular

25   individual -- it turned out to be

 1   important to us whether the

 2   representative from Kenya was in the room

 3   or not, but it was not something she

 4   would have known at the time to even look

 5   for.

 6   HONORABLE JUDGE CAHILL: Okay. So

 7   the authority for us that we read, we

 8   have no power to evaluate what the GAC

 9   did is in what you have given us in

10   Article IV, right?

11   PRESIDENT BARIN: Let me -- I just

12   want to clarify one last question.

13   When the Board -- and the minutes

14   are there. I've looked at them, but you

15   can perhaps help -- when the Board looks

16   at the consensus advice that's being put

17   before it in this case for DCA Trust --

18   and you earlier said, if I understood

19   correctly, that there was, of course, the

20   submission, if you will, of DCA Trust or

21   its opposition --

22   MR. LEVEE: Yes.

23   PRESIDENT BARIN: -- that the Board

24   was then able to compare, and then based

25   on that, I believe your position was that

1   then the Board took its decision -- was

2   the Board privy to also what happened in

3   that meeting that Ms. Dryden was at and

4   the particular facts or the explanations

5   that she gave when that request was

6   raised?

7   MR. LEVEE: The Board members would

8   not ordinarily be attending the GAC

9   meetings where those issues are

10   addressed. They're actually excluded.

11   They attend other meetings.

12   So if you're asking whether Board

13   members were in attendance, the answer

14   would be no.

15   PRESIDENT BARIN: No.

16   Did the Board members ask questions

17   from Ms. Dryden, who was there and who

18   was the --

19   MR. LEVEE: They have the ability to

20   do so.

21   Ms. Dryden's testimony was that she

22   didn't remember that there was discussion

23   or not. She just didn't remember.

24   PRESIDENT BARIN: And there's

25   nothing reflected in the minutes?

 1   MR. LEVEE: Correct.

 2   ARBITRATOR KESSEDJIAN: Am I correct

 3   to think that the -- the NGPC had Ms.

 4   Bekele answer, so 15 pages?

 5   MR. LEVEE: Yes.

 6   ARBITRATOR KESSEDJIAN: And I see --

 7   I'm reading R-1.

 8   MR. LEVEE: Yes. It's highlighted

 9   on Page 4 of 5 what the NGPC had before

10   it.

11   Do you see that?

12   ARBITRATOR KESSEDJIAN: Okay.

13   There's nothing highlighted in the copy I

14   have, but it's okay. I will read it

15   thoroughly.

16   MR. LEVEE: It is on Page 5. And

17   I'm sorry that yours is not highlighted.

18   PRESIDENT BARIN: I can explain why.

19   In your copy yesterday, I remember

20   clearly it was highlighted. You were

21   absolutely right, Mr. LeVee.

22   But then copies were made for us. I

23   asked your colleague to make -- and these

24   are probably the new copies that we got

25   that don't have the highlighting, which

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 1        explains why.

 2             MS. ZERNIK:  That's a copy of all

 3        our exhibits.

 4             ARBITRATOR KESSEDJIAN:  So we should

 5        take the copy in the opening statement?

 6             PRESIDENT BARIN:  Right --

 7             MR. LEVEE:  That's the version

 8        that's highlighted.

 9             PRESIDENT BARIN:  -- and then you

10        will have a highlighted version there.

11             MR. LEVEE:  Okay.

12             ARBITRATOR KESSEDJIAN:  Got it.

13             PRESIDENT BARIN:  I just want to

14        clarify this was the first -- the one and

15        only time, in the case of a gTLD, that

16        this issue of a consensus advice was

17        being put up.

18             MR. LEVEE:  It was the first and the

19        second at the same meeting.  In other

20        words, there were two gTLDs that received

21        consensus advice at that meeting.

22             It was the first time that the GAC

23        had taken up any of the applications.

24             The -- the -- the applications were

25        not published to the world until June of
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 1   2012.

 2   This was the GAC meeting in April of

 3   2013. It was the first time they had

 4   been, in essence, digesting and going

 5   through the applications.

 6   Subsequently, there had been more,

 7   but it was the first time that they had

 8   done this.

 9   PRESIDENT BARIN: Okay. So I'm

10   going to put a very hard question to you.

11   And I realize it's a hard question,

12   Mr. LeVee, but I want to do it for the

13   Panel and for what this Panel does.

14   Do you think the Board did what it

15   should have and it could in light of all

16   the facts that it had when an application

17   was put up for the first time for the

18   gTLD with the actual, if you will, Chair

19   of the gTLD being present at that -- at

20   that Board meeting in arriving at the

21   conclusion or the decision that it

22   reached?

23   MR. LEVEE: Absolutely.

24   Now, you guys obviously have a very

25   different perspective --

 1   PRESIDENT BARIN: I don't want you

 2   to think we have any perspective, because

 3   at this point, we don't.

 4   MR. LEVEE: I will be candid. You

 5   won't like my answer, but I don't view

 6   this as a close call. I know you do.

 7   This is why I don't: The GAC has a

 8   process for issuing consensus advice. It

 9   does it all the time. Yes, this was the

10   first time it issued consensus advice

11   vis-a-vis a particular application, but

12   it followed the policy that it always

13   follows. Ms. Dryden laid that out for

14   you.

15   You put an item on the agenda. It

16   allows governments to deliberate. And

17   then you do -- then you come at the

18   meeting.

19   What happens at the meeting is what

20   happens. And there are a lot of

21   political reasons for that, because

22   literally -- as she said, you're taking a

23   decision at a place and time.

24   So I think what the GAC did was

25   absolutely appropriate.

 1   Did it have a consequence?

 2   Absolutely, it did. It was intended to.

 3   The Guidebook gave the GAC the ability

 4   that the GAC had not previously had,

 5   which was to give ICANN advice that ICANN

 6   was almost forced to take into account.

 7   It created a -- a so-called "strong

 8   presumption." That language didn't exist

 9   previously with the GAC. The GAC had

10   requested the ability to have that kind

11   of influence over the course of

12   several years of negotiating the

13   Guidebook.

14   The GAC got that influence. It

15   exercised that influence.

16   I -- the fact that it's the first

17   time doesn't mean that -- that we ought

18   to give it a bogey and say, Well, we

19   really think you should do it again. I

20   think they did it exactly how they were

21   supposed to.

22   PRESIDENT BARIN: All right.

23   Understood.

24   But how do you then reconcile, if

25   you will, what we understood -- and,

1   again, subject to being corrected -- but

2   the GAC end of it was perhaps, if you

3   will, the consensus, the political, the

4   endorsements, the views that were being

5   expressed by Members that were there --

6   MR. LEVEE: Yes.

7   PRESIDENT BARIN: -- there is then

8   what I call the sort of technical,

9   financial, all of the ability and the

10   time and know-how and the $185,000 that

11   goes into this application, all of that

12   sort of gets by the wayside because you

13   have a decision of the GAC that says --

14   or a proposal by the GAC that says,

15   Somebody raised their hand and said, This

16   application should not go forward?

17   MR. LEVEE: The answer to your

18   question --

19   PRESIDENT BARIN: I told you it was

20   a tough question.

21   MR. LEVEE: Again, I don't view it

22   as a tough question.

23   -- the answer to your question is

24   the Guidebook is very clear that any

25   applicant that applies subject to GAC

 1   advice -- any applicant could have put

 2   in years and years of time, passed all of

 3   the other evaluations, been the best TLD

 4   that anyone could have ever imagined for

 5   the entire world, and if the GAC issues

 6   advice that creates the strong

 7   presumption, the Board adopts it, that's

 8   how -- that's the rule.

 9   You may say you don't like the rule.

10   I get that.

11   But if ICANN is following the rule,

12   what did it do wrong?

13   ARBITRATOR KESSEDJIAN: We don't

14   contest that this is the rule. We

15   contest the way -- I mean -- we contest.

16   Sorry -- we -- we are puzzled at this --

17   I am puzzled by the way it was done.

18   I see the rule. I'm totally with

19   you with the rule. And it happens that I

20   know, because I have studied the

21   Guidebook for other cases, so I know what

22   they are.

23   But what the perception is to this

24   moment is that the accumulation of a

25   number of hiccups in the process may end

 1   up giving the conclusion that the -- the

 2   Bylaws -- the exact words in your

 3   Bylaws -- the ICANN Bylaws, that the

 4   process -- the processes must be fair,

 5   must be transparent, must be neutral.

 6   I mean, you have set up -- the "you"

 7   being ICANN -- ICANN has set up for

 8   itself a very high standard --

 9   MR. LEVEE: Yes, it has.

10   ARBITRATOR KESSEDJIAN: -- and what

11   I am struggling with, because I don't

12   want to speak for my colleagues, of

13   course, on the Panel -- but what I'm

14   struggling with is did -- in this

15   particular case, did we respect those

16   high standards?

17   And, you know, when you -- when you

18   point out our attention to R-1 and you

19   want us to be just satisfied by those

20   three little paragraphs that say

21   nothing -- I'm sorry, they say nothing

22   that you have highlighted in the -- in

23   the -- now I found the highlighted

24   version -- how do you want us to -- to

25   make a decision on this?

 1   MR. LEVEE: But that's how ICANN

 2   does minutes. It does not do minutes by

 3   having a scribe write down what everybody

 4   says.

 5   So there are so many meetings, so

 6   many decisions by the Board that ICANN

 7   literally -- and it's very public about

 8   what it does.

 9   You would like for the minutes to

10   say there was an objection, the Board

11   talked about the consensus advice, the

12   Board asked Ms. Dryden 50 questions, and

13   there was an hour-long discussion.

14   I don't actually know whether any of

15   that did or did not happen, but it gets

16   encapsulated in the minutes. And that's

17   what ICANN does.

18   ARBITRATOR KESSEDJIAN: I'm used to

19   organizations who are more prolific in

20   their --

21   MR. LEVEE: There are times where

22   ICANN has transcripts, full Board

23   meetings, various other meetings that do

24   get posted. Not every meeting and not

25   every NGPC meeting.

 1   But let me posit one other scenario.

 2   I was going to save this for last, but --

 3   the fairness issue, I think, comes back

 4   to the question that you asked Ms. Bekele

 5   yesterday about the time and the effort

 6   and so forth that went into this.

 7   I respect that. She did a lot of

 8   work. I get that.

 9   And maybe the AUC took her idea and

10   made it its own. And -- and that's too

11   bad.

12   I don't see anything in the

13   Guidebook that tells me they couldn't do

14   that.

15   But there's one thing that we do

16   know, which is that Ms. Bekele knew that

17   she had lost the AUC support. She goes

18   ahead and applies, and she submits with

19   her application the 2009 letter from the

20   AUC. But she knew in 2011 that the AUC

21   had stopped supporting her -- actually,

22   she knew in 2010. She asked for a

23   reinstatement in 2011. She didn't get

24   it.

25   One question you might ask is, Why

 1   did she proceed?

 2   Did she believe in good faith that

 3   she had the ability to get 60 percent of

 4   the countries of Africa to support her

 5   when the AUC, which was her main trump

 6   card at the beginning, had withdrawn the

 7   card to go elsewhere?

 8   So fairness is in the eyes of the

 9   beholder. My only point is that ICANN --

10   and it's in the rest of the slides. I'll

11   try to get through them -- ICANN did

12   treat the applicants equally pursuant to

13   the terms of the Guidebook.

14   When -- it wasn't ICANN that said Go

15   to the GAC. There's no evidence of that.

16   It wasn't ICANN that put the AUC on the

17   GAC. It wasn't -- and by the way, the

18   AUC didn't even put the issue on the

19   GAC's agenda.

20   Redacted - GAC Designated Confidential Information

24   MR. LEVEE: -- so the GAC then

25   issues consensus advice. None of this

1   has happened as a result of a single

2   thing that ICANN did.

3   The only piece of evidence that --

4   that DCA has ever pointed to is

5   Dr. Crocker's letter, which I am more

6   than happy to rely on, because it

7   factually says what the Guidebook says.

8   So ICANN did not maneuver this.

9   What happened is that the AUC decided to

10   support one particular proposal. It

11   issued an RFP. DCA didn't respond -- she

12   explained her view as to why she did

13   that -- and then it submits an

14   application.

15   And the countries of Africa then

16   say, Well, we want to support the AUC.

17   Sixteen of them issue Early Warning

18   notices that say we want what the AUC is

19   doing.

20   ARBITRATOR KESSEDJIAN: Mr. LeVee,

21   there's something that I don't understand

22   what you just said to us.

23   The AUC is not an applicant.

24   MR. LEVEE: They supported an

25   applicant.

 1   ARBITRATOR KESSEDJIAN: Well, they

 2   supported an applicant but they are not

 3   an applicant --

 4   MR. LEVEE: Correct.

 5   ARBITRATOR KESSEDJIAN: -- and that

 6   makes a fairly strong difference.

 7   There's another thing that you are

 8   not saying here, as Ms. Bekele testified

 9   yesterday, that -- and it is in her

10   written statement, so we didn't hear it

11   yesterday, that ICANN went to Africa -- I

12   don't remember the country, Dakar or

13   whatever -- explained to a bunch of

14   people in the room how to do it -- they

15   didn't know how to do it, so how to do

16   it -- bypassing DCA.

17   The person from ICANN, the employee

18   from ICANN got a reprimand, got a

19   novation -- I don't know how Ms. Bekele

20   characterized the whole thing. I call it

21   a reprimand.

22   So you are saying here ICANN didn't

23   do anything, ICANN is a virgin. But I

24   hear from the other side, that, in fact,

25   ICANN did a number -- again, the

 1   impression I get -- and I hope you

 2   understand my point. I'm trying the best

 3   I can to be fair myself.

 4   And, therefore, what I'm hearing is

 5   every single step may not -- as of

 6   itself, if it were isolated, may not be

 7   of such a nature to actually trigger a

 8   problem for ICANN, but it's the

 9   accumulation of everything, the fact that

10   DCA has not been called to certain

11   meetings where they should have been

12   called, the way they have been treated,

13   the fact that -- I mean, I have not heard

14   from you -- of course, we have asked you

15   a lot of questions, so you were not

16   able -- but that is the one question I

17   would like you to address.

18   Madam Bekele said yesterday that

19   even ZACR didn't have the proper support.

20   So why is ZACR treated one way and

21   DCA is treated another way?

22   MR. LEVEE: It is in the slides, but

23   let me -- let me respond to the one thing

24   about ICANN going to Africa with a

25   proposal.

 1   I also heard the testimony

 2   yesterday. If we were in a court of law,

 3   as you know, none of that testimony gets

 4   admitted. It's entirely hearsay.

 5   I have no way of challenging it.

 6   There's not a single piece of paper that

 7   anyone has produced -- not in our files,

 8   and DCA didn't produce it -- that says

 9   that ICANN, in the fall of 2011, went to

10   Africa and said, Here's how you do it,

11   you get a reserve name.

12   All I know is that when the AUC

13   asked ICANN formally to reserve the name,

14   ICANN said no.

15   So I'll be candid. That testimony

16   is very puzzling to me. I, personally,

17   have no basis to credit it because

18   there's not any corroborating evidence --

19   PRESIDENT BARIN: But --

20   MR. LEVEE: -- and even if it

21   occurred, what I don't know is did

22   ICANN -- like, when Mr. -- when

23   Dr. Crocker, Chairman of the Board of

24   ICANN, writes a nine-page letter to the

25   African Union answering all of their

 1   requests, not giving them what they want,

 2   but telling them a bunch of other things,

 3   that letter is 100 percent accurate.

 4   What I don't know is if there was a

 5   meeting of people who I never met -- so I

 6   don't know who they are, other than the

 7   possibility that someone from the AUC

 8   then reported it -- I don't know if that

 9   person from the AUC was at the meeting,

10   but then they reported it, apparently, to

11   Ms. Bekele -- I don't know if the same

12   basic presentation wasn't given, which

13   is, if Africa wants to have a name, there

14   are ways of going about doing that, which

15   would have been a completely factually

16   based presentation.

17   I simply don't know.

18   What I do know is this: There's no

19   reason that one particular applicant

20   should be the only applicant. Ms. Bekele

21   acknowledged that there was nothing

22   improper for the AUC to sponsor ZACR for

23   their application. And I don't know -- I

24   just -- I don't understand why that

25   alleged event causes anyone to feel that

1   something happened that was unfair.

2   If ICANN communicated factually, we

3   have a New GTLD Program. It's about

4   to -- our application window is about to

5   open. If you are interested, we're happy

6   to come talk to you.

7   What's wrong with that?

8   Nothing.

9   So I also hear --

10   ARBITRATOR KESSEDJIAN: Do you do

11   that with all applicants?

12   MR. LEVEE: Any applicant that

13   wanted information, absolutely. People

14   ask questions of ICANN -- ICANN provided

15   a ton of information in addition to the

16   Guidebook.

17   ARBITRATOR KESSEDJIAN: Do you meet

18   with potential applicants?

19   MR. LEVEE: ICANN would -- I don't

20   remember meetings.

21   There were -- I don't attend. I

22   know Amy is not -- my understanding is

23   that anyone that had questions about the

24   application process, a letter to apply,

25   did, in fact, and was encouraged to, meet

 1   with ICANN.

 2   And, in fact, some of the senior

 3   officials of ICANN went all over the

 4   world explaining to people what this

 5   program was. There was a whole

 6   communications program that ICANN adopted

 7   to let people know about this program,

 8   because they wanted people to apply.

 9   And ICANN has gotten some prominence

10   now, but back in 2011, nobody knew

11   anything about ICANN. So it was trying

12   to get people aware of this opportunity.

13   And if ICANN went to Africa and said

14   to people in those countries that they

15   have the ability to apply for a domain

16   name, including .africa, that would have

17   been a good thing, not a bad thing.

18   PRESIDENT BARIN: I'm very mindful,

19   Mr. LeVee, that you have to -- that

20   you've got slides that you want to go

21   through.

22   So, please, do you want to take a

23   few minutes to gather your thoughts or

24   just go?

25   MR. LEVEE: No; I'm fine.

 1   I'm fine. Let's keep moving.

 2   PRESIDENT BARIN: I do want you to

 3   get to the end of your --

 4   MR. LEVEE: Yeah.

 5   HONORABLE JUDGE CAHILL: Sorry. But

 6   we're clear that the authority that we

 7   have not the ability to review the GAC is

 8   in the slides you gave us, right?

 9   MR. LEVEE: Yes.

10   So this provision and the previous

11   slide, that's the authority that says you

12   look at what the Board has done, and then

13   it says here, The IRP Panel must apply a

14   defined standard review to the IRP

15   request focusing on -- and then those --

16   the three things that I'm not going to

17   read in full.

18   Then -- and, Professor Kessedjian,

19   you asked, Well, what about Paragraph 11,

20   a little bit farther down, which says,

21   The IRP Panel shall have the authority

22   to: c., declare whether an action or

23   inaction of the Board was consistent

24   [verbatim] with the Articles of

25   Incorporation or Bylaws --

 1   ARBITRATOR KESSEDJIAN: That was the

 2   Chair.

 3   MR. LEVEE: Oh, it was the Chair.

 4   My apology.

 5   -- and the answer is absolutely,

 6   there's no inconsistency. You do have

 7   the ability to declare whether an action

 8   or inaction of the Board was inconsistent

 9   with the Bylaws.

10   What Paragraph 4 is doing is -- we

11   want you to focus on these three things,

12   but you have every right -- if the Board

13   makes a decision, you have every right to

14   declare that decision, in your view,

15   right or wrong, as in consistent or

16   inconsistent with the Bylaws.

17   I'll note that in Paragraph d -- I

18   don't have a slide for this, I

19   apologize -- the Panel -- and by the way,

20   Paragraph 11 is the authority of the

21   Panel, what you have the authority to

22   do --

23   ARBITRATOR KESSEDJIAN: It's

24   Paragraph 11 of the Bylaws?

25   MR. LEVEE: Correct, we're in the

1   Bylaws. It's Article IV, Section 3.

2   ARBITRATOR KESSEDJIAN: Yes.

3   MR. LEVEE: And this is what the

4   Panel has the authority to do.

5   You asked Mr. Ali, to come back,

6   Well, what do you want us to do? This

7   paragraph tells you what you have the

8   authority to do.

9   And in d., it says that you can

10   recommend that the Board stay any action

11   or decision or that the Board take any

12   interim action until such time as the

13   Board reviews and acts upon the opinion

14   of the IRP.

15   I'm not going to get into, today,

16   the question of whether it's binding --

17   your Panel's declaration is binding or

18   not. You've already made a preliminary

19   ruling on that. We don't have to discuss

20   it --

21   HONORABLE JUDGE CAHILL: Yeah,

22   whatever.

23   MR. LEVEE: -- my point is that

24   these are the specific things that the

25   Panel is authorized to do. And I do urge

 1   you to look at Paragraph 11 when you make

 2   the decision.

 3   One other thing that we now have --

 4   HONORABLE JUDGE CAHILL: Let me

 5   ask -- sorry -- Mr. Ali makes the

 6   argument that there's an obligation in

 7   the Bylaws of ICANN for transparency,

 8   accountability, fairness and equitable

 9   treatment.

10   Does that apply to the GAC?

11   MR. LEVEE: No.

12   I think the GAC tries to do all of

13   those things, but I don't think it's

14   bound to do any of those things.

15   HONORABLE JUDGE CAHILL: Okay.

16   MR. LEVEE: We have a declaration

17   that another IRP Panel made in March.

18   And I don't view any IRP decision as

19   binding, but the Articles do say that

20   they are -- that they do provide

21   precedent and -- much like developing

22   case law.

23   We have a decision in the

24   Booking.com matter, and, basically, what

25   it says that it's not for the Panel to

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 1         opine on whether the Board could have

 2         acted differently.  The IRP Panel's role

 3         is to assess whether the actions of the

 4         Board were consistent with the applicable

 5         rules found in the Bylaws -- Articles,

 6         Bylaws and Guidebook.  Nor, as stated, is

 7         it for us to purport to appraise the

 8         policies and procedures established by

 9         ICANN in the Guidebook.

10              And my point here is simply, it's

11         easy to second-guess anything that's in

12         the Guidebook and wish that something was

13         done differently.  Indeed, the

14         Booking.com Panel raised questions for

15         ICANN to look at for the next Guidebook.

16         And there will be another one some -- a

17         few years for the next round.

18              But the Panel made it clear, We're

19         going to look at the current Guidebook;

20         we're going to look at ICANN's conduct

21         vis-a-vis the current Guidebook.

22              And all I would ask this Panel is to

23         do the same.

24              PRESIDENT BARIN:  Can I then maybe

25         stop you for a second?
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 1   MR. LEVEE: You can stop me anytime.

 2   PRESIDENT BARIN: I did take the

 3   time to read, at your suggestion,

 4   particularly when you introduced it at --

 5   as an exhibit, if you will, in this case,

 6   this very paragraph in the Booking.com

 7   case.

 8   I would need your help, Mr. LeVee,

 9   to reconcile the bold sentence that you

10   have put there that says, In other

11   words -- well, I think you have to start

12   from That -- that -- That being said, we

13   also agree with ICANN to the extent that

14   in determining the consistency of Board

15   action with the Articles, Bylaws and

16   Guidebook.

17   Now, an IRP Panel is neither asked

18   to, nor allowed to. The "asked to," I

19   understand.

20   The "nor allowed to substitute its

21   judgment for that of the Board," in other

22   words, it is not for the Panel to opine

23   on whether the Board could have acted

24   differently than it did, how would you

25   then reconcile that with 11.c. of the

 1   Bylaws, which says, to you, The IRP shall

 2   have the -- the authority to declare

 3   whether an action or inaction of the

 4   Board was consistent or inconsistent with

 5   the Articles of Incorporation or Bylaws?

 6   MR. LEVEE: I think they say exactly

 7   the same thing.

 8   PRESIDENT BARIN: So do you agree

 9   that the Panel can decide whether there

10   was an action or inaction?

11   MR. LEVEE: Oh, absolutely.

12   PRESIDENT BARIN: Okay. I don't get

13   quite the same thing, then, from what the

14   Booking.com, the bolded sentence --

15   MR. LEVEE: What I think the Panel

16   in Booking was saying is that the

17   applicant in Booking said, We think

18   that -- it was a string similarity case.

19   ICANN had a vendor that determined that

20   .hotels, H-O-T-E-L-S, and .hoteis,

21   H-O-T-E-I-S, were so similar that they

22   should not be both put into the Internet

23   root.

24   Booking did not like the process

25   that the Guidebook had established for

 1   the string similarity test. And Booking

 2   said, You know, we have our own expert,

 3   and he comes to a different conclusion.

 4   What the Panel said was, We're not

 5   going to opine as to whether the Board

 6   could have set up things differently or

 7   whether, in this instance, the Board

 8   could have done something differently.

 9   In that case, the Board didn't even

10   review the decision. String similarity

11   Panel said, These two are two confusingly

12   similar. And under the Guidebook, it's

13   automatically disqualifying for both.

14   One of them will get to proceed, but not

15   both.

16   So there was, actually, not even

17   Board action. But what Booking was

18   arguing -- that's the reason for the

19   language -- Booking was saying, You

20   should find that the process that the

21   Board established was inconsistent with

22   the Bylaws.

23   And the Panel said, No, we're not

24   going to second-guess what the Board did.

25   You could -- you could have set it up

 1   differently, but the way you set it up

 2   was consistent with the Guidebook and the

 3   Articles and the Bylaws.

 4   PRESIDENT BARIN: Yeah. And I guess

 5   the point is that a Panel is entitled to

 6   do that. But when you look at a

 7   situation objectively, what I was trying

 8   to point out to you is that 11.c., for

 9   example, says that the Panel can decide

10   whether there was an inaction on the

11   Board -- on the part of the Board,

12   "inaction" meaning it could have done

13   things differently.

14   MR. LEVEE: I see what you're --

15   you're focusing on the word "inaction"?

16   PRESIDENT BARIN: Right.

17   MR. LEVEE: I understand.

18   If -- if you think, in this

19   instance, that the Board had a duty to do

20   something and it didn't, then I think

21   that is an inaction.

22   We've had difficulty with the word

23   "inaction" over the years because there

24   are frequently situations where people

25   write letters to ICANN, I'm unhappy, my

 1   domain doesn't work, and ICANN does

 2   nothing, because it's not something ICANN

 3   does. It doesn't deal with people whose

 4   computers don't work.

 5   And people say, We're going to

 6   initiate an IRP, it's a Board inaction.

 7   We say No, No. It's not a Board

 8   inaction, because there's no duty to act.

 9   Here, I agree, the word "inaction"

10   is in the Bylaws, and if you find an

11   inaction where you felt there was an duty

12   to act, then I think you have

13   the -- the -- the legal ability under the

14   Bylaws to so say.

15   PRESIDENT BARIN: Thank you.

16   MR. LEVEE: Okay. So here's what

17   I'm going to do: I'm going to cut this

18   short by doing it this way:

19   I'm not going to discuss -- I will

20   explain to you what I'm going to do. I

21   had -- at the back of the opening -- of

22   my closing exhibit slides, I repeated the

23   five assumptions that I made, and then I

24   consolidated my responses to them.

25   I'm not going to cover that. Some

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 1          of them I've already done.

 2              I'm going to leave you -- you guys

 3      are reading everything --

 4              ARBITRATOR KESSEDJIAN:  We have --

 5      we have it.

 6              MR. LEVEE:  -- you have it.  You can

 7      look at it.

 8              PRESIDENT BARIN:  That I can assure

 9      you, we do read and have read --

10              MR. LEVEE:  It's clear --

11              PRESIDENT BARIN:  -- everything that

12      you've given us --

13              MR. LEVEE:  -- it's clear.

14              HONORABLE JUDGE CAHILL:  --

15      especially here.

16              MR. LEVEE:  -- what I do want to

17      do is -- and I will do this briefly -- go

18      to DCA's opening Slide 9.

19              So, again, just as a reminder, DCA's

20      opening Slide Number 9 was the slide that

21      is entitled Summary of ICANN's Actions in

22      Breach of the Bylaws.

23              HONORABLE JUDGE CAHILL:  That

24      Number 5 -- oh, their 9.

25              MR. LEVEE:  Their Number 9.
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 1            PRESIDENT BARIN:  I'm not following

 2      you.

 3            Hold on one second.

 4            MR. LEVEE:  It's from yesterday,

 5      their opening, their Slide Number 9.

 6            You don't even have to go find it --

 7      it's Slide 9.

 8            ARBITRATOR KESSEDJIAN:  That's

 9      DCA's, not ICANN's?  DCA's?

10            MR. LEVEE:  Yeah, DCA's.

11            This is what Mr. Ali and his

12      colleagues allege were the breaches --

13            PRESIDENT BARIN:  Right.

14            MR. LEVEE:  -- and I just want to go

15      through those.

16            So if you turn to the next slide,

17      Slide 6, right at the top, I'm repeating,

18      at the top, so DCA, colon, this is what

19      they say on Slide 9 --

20            ARBITRATOR KESSEDJIAN:  It's each of

21      the bullets --

22            MR. LEVEE:  Correct, the --

23            ARBITRATOR KESSEDJIAN:  -- of DCA's

24      slides --

25            MR. LEVEE:  Correct.
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 1   ARBITRATOR KESSEDJIAN: -- so this

 2   is Slide 9, first bullet?

 3   MR. LEVEE: Correct.

 4   PRESIDENT BARIN: Sorry. Just one

 5   minute.

 6   Can you help me? I'm not following.

 7   HONORABLE JUDGE CAHILL: Here.

 8   ARBITRATOR KESSEDJIAN: You take

 9   Slide 9 of DCA of the -- of the opening?

10   HONORABLE JUDGE CAHILL: The

11   opening?

12   ARBITRATOR KESSEDJIAN: Okay. Got

13   it.

14   So each bullet is the title of --

15   PRESIDENT BARIN: Great. Thank you.

16   MR. LEVEE: Okay.

17   I'll run through these fairly

18   quickly because, to some degree, I think

19   I've already done it.

20   The first allegation of the Bylaws

21   breach was that the Board directed the

22   AUC on using the GAC to quash DCA's

23   competing application.

24   I've already told you and Ms. Dryden

25   told you that ICANN has no authority over

 1   GAC membership.

 2   By the way, we were requested to

 3   produce, and we did produce, every

 4   communication between the GAC relating in

 5   any way to the AUC, relating in any way

 6   to .africa. There is no evidence of some

 7   correspondence or conspiracy.

 8   The only evidence was Dr. Crocker's

 9   letter, Exhibit C-24.

10   I'm not going to go through it.

11   It's on the next slide.

12   The guts of the letter say, you want

13   to reserve .africa. You can't. But the

14   countries of Africa can have significant

15   influence over the outcome. Of course,

16   they could. Any string that was going to

17   be named Africa had to have support of

18   60 percent of the governments.

19   Now, Dr. Crocker did not say, Go

20   join the GAC. He did not say, And when

21   you do, you can issue -- get the GAC to

22   issue consensus advice.

23   It's not in the letter, and there's

24   no evidence of any other communication

25   saying the same.

 1   So I skipped the next slide because

 2   that was just discussing the letter.

 3   Second, DCA alleges as a breach that

 4   the NGPC failed to investigate the many

 5   overt indications that the GAC advice was

 6   not consensus advice.

 7   I think I covered this in some

 8   considerable amount in answers to earlier

 9   questions. But Ms. Dryden told you how

10   consensus advice works.

11   You may not like that. You may wish

12   that the -- that the people had to speak

13   at length before consensus advice would

14   be issued. But the GAC has a process,

15   and the process worked.

16   Redacted - GAC Designated Confidential Information

24   Now, if you turn to the next slide,

25   Section 3.1 of the Guidebook provides

 1   that the GAC advice is intended to

 2   address applications that are identified

 3   by governments to be problematic, e.g.,

 4   that potentially violate national law or

 5   raise sensitivities.

 6   The Panel had questions yesterday as

 7   to what that means, problematic,

 8   violating national law, raising

 9   sensitivities.

10   Now, the GAC advice can be raised

11   with respect to any application that a

12   government, for whatever reason, deems

13   problematic. We've heard that there are

14   no restrictions for which GAC advice may

15   be issued.

16   And the GAC is not required to

17   provide a rationale.

18   But we know something else. We know

19   that 16 individual African governments

20   had issued Early Warning notices. And in

21   those notices, they said they want

22   .africa to be managed by the AUC for the

23   benefit of the African region.

24   That was the reasons that they gave

25   for issuing the Early Warning notices,

 1   and that clearly falls within the

 2   sensitivities that would be perfectly

 3   appropriate for the GAC to issue

 4   consensus advice.

 5   Now, as Ms. Dryden explained, the

 6   GAC doesn't give a rationale. There's no

 7   appendix. So it -- it doesn't feel that

 8   it has to do that.

 9   But we know that the governments,

10   themselves, that issued the

11   Early Warnings, they very much had a

12   rationale.

13   Finally -- you have to turn to the

14   next slide -- DCA, in the opening

15   statement, says that the NGPC failed to

16   investigate these indications and that

17   the Committee itself should have done

18   more.

19   Let's be clear that when the -- when

20   ICANN's Board received the consensus

21   advice, it created a, quote/unquote,

22   strong presumption that DCA's application

23   should not proceed.

24   The New gTLD Committee acted in

25   accordance with the Bylaws; it acted in

1   accordance with the Guidebook; it

2   reviewed the materials that Ms. Bekele

3   submitted; and it made a decision.

4   Now, the Guidebook also says that

5   the Board may consult with an independent

6   expert. And DCA has argued that we

7   should have. I get that.

8   But nothing an independent expert

9   would have done here would have addressed

10   DCA's main concern, which was that they

11   did not think the consensus advice, in

12   fact, was consensus.

13   No independent expert, somebody who

14   didn't even attend the meeting, could

15   have shed light on that issue.

16   So where the Board has discretion

17   whether to retain an expert, the failure

18   to do so in an instance where the

19   applicant can't even tell you what

20   exactly the expert could have shed light

21   on can't possibly be a violation of the

22   Guidebook.

23   The next bullet in the opening was

24   that ICANN Staff improperly coordinated

25   with the Geo Names Panel.

 1   First, we haven't heard any

 2   connection to the Board on this, only

 3   that the Staff interacted, but let's get

 4   past that.

 5   The evidence presented by DCA

 6   actually disproves the notion that ICANN

 7   coordinated with the AUC with respect to

 8   .africa.

 9   If there was coordination, surely,

10   ICANN would have said right at the outset

11   that the AUC's support was sufficient for

12   60 percent name -- 60 percent support

13   requirement. Instead, there was a lot of

14   back-and-forth, by the way, applied to

15   both applicants.

16   Why? Because DCA had submitted the

17   2009 letter of support, even though that

18   support had been withdrawn.

19   There was great confusion as to who

20   AUC was supporting. So, yes, it did take

21   a long time to sort out who we're going

22   to talk to, what we're going to ask and

23   what we're going to accept.

24   If the AUC's support had been

25   counted right off the bat, the AUC's

 1   endorsed candidate, ZACR, would have

 2   passed the Geo Names review almost

 3   immediately. And, by the way, DCA would

 4   have then failed at that same time.

 5   Instead, the process was -- took a

 6   long time. By the way, ICANN received

 7   1930 applications. They weren't staffed

 8   to be prepared to process that many, and

 9   it did take a long time to evaluate.

10   DCA argued (but provided no actual

11   evidence) that ICANN received the ICC's

12   recommendation to count the AUC's

13   endorsement only after the GAC advice was

14   accepted by ICANN's Board.

15   We have already given to you in our

16   briefs -- and this is part of the reason

17   I -- I just didn't accept all of these

18   arguments yesterday, because it's

19   literally addressed in two pages of all

20   of the briefing that DCA submitted.

21   We responded in our brief. It's on

22   Page 23. We cite an exhibit, C-R-16, and

23   others. We make it clear that ICANN

24   accepted the ICC's recommendations

25   sometime before April 26, 2013, while

1   DCA's application was still pending.

2   So the timing is not nefarious. The

3   timing is not evidence that we're trying

4   to support one or the other. The timing

5   reflects that it takes time.

6   Moving along. The next bullet

7   continues that ICANN Staff improperly

8   coordinated with the Geo Names Panel.

9   The evidence that you have been

10   provided makes it clear that the Staff

11   expressed concern that both applicants for

12   .africa be treated equally and be given the

13   same opportunity to demonstrate the

14   requisite support.

15   Now, ultimately, this issue then

16   becomes irrelevant for DCA, because the

17   DCA's application didn't proceed once the

18   Board accepts the GAC advice.

19   Nothing that the Geo Names Panel could

20   ever have done would have changed that.

21   Now, I do want to address -- you

22   asked, this morning, the Panel -- there was

23   a reference that you could submit stuff

24   later.

25   And there's two slides in the -- in

1   the closing that Mr. Ali gave you, and I

2   wanted to just note that it's not the case

3   that you could submit your application and

4   then have some unlimited amount of time to

5   go get support of the governments.

6   What these slides were saying -- it

7   says --

8   HONORABLE JUDGE CAHILL: Which ones

9   are they?

10   MR. LEVEE: I'm on 31 and 32 --

11   HONORABLE JUDGE CAHILL: Thank you.

12   ARBITRATOR KESSEDJIAN: Of the

13   closing?

14   MR. LEVEE: -- of Mr. Ali's closing.

15   PRESIDENT BARIN: Sorry.

16   When you say 31 and 32, I have only

17   got Page 27.

18   HONORABLE JUDGE CAHILL: Well, I've

19   got 27.

20   ARBITRATOR KESSEDJIAN: That must be

21   the opening.

22   MR. LEVEE: And you have the

23   opening?

24   PRESIDENT BARIN: No; I have the

25   closing.

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 1          HONORABLE JUDGE CAHILL:  No.  The

 2     closing is Page 27.

 3          MR. LEVEE:  I have, at the bottom,

 4     Slide 31.

 5          ARBITRATOR KESSEDJIAN:  So that must

 6     be the opening.

 7          MR. LEVEE:  My apology.  You are

 8     correct.  This is the opening.

 9          PRESIDENT BARIN:  So it's the

10     opening?

11          HONORABLE JUDGE CAHILL:  You were

12     just testing us.

13          MR. LEVEE:  I'm testing myself, I

14     think.

15          HONORABLE JUDGE CAHILL:  This is

16     what you're talking about (indicating)?

17          PRESIDENT BARIN:  We're still alert.

18          MR. LEVEE:  Now --

19          HONORABLE JUDGE CAHILL:  This one

20     (indicating) is what you're talking

21     about?

22          MR. LEVEE:  Correct.

23          HONORABLE JUDGE CAHILL:  Okay.

24          MR. LEVEE:  -- Slide 31 address a

25     situation where an application for a
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 1   string representing a name -- if there's

 2   more than one application, and the

 3   applications have the requisite

 4   government approvals -- so you have a

 5   situation where two applicants each have

 6   the requisite Government approvals.

 7   That's not this case.

 8   The AUC did -- was not endorsing

 9   DCA's application on the day Ms. Bekele

10   submitted it. And although she submitted

11   it, it -- this paragraph has nothing to

12   do with these facts.

13   Only if the two applicants both had

14   the requisite support would you then set

15   it aside.

16   The next page, Slide 32 from the

17   opening yesterday, is the other provision

18   that Mr. Ali said gives me more time --

19   gives DCA more time.

20   This is, again, only in a situation

21   where the applicant has not provided the

22   required documentation. The applicant

23   will be contacted and given additional

24   time.

25   So, as you know, the support letters

 1   had to say certain things. The AUC's

 2   original support didn't, so, ultimately,

 3   it had to be corrected.

 4   If an applicant submits

 5   documentation, but it's not the required

 6   documentation, ICANN said, Look, we're

 7   going to give you some more time. You

 8   can go have additional time and -- and

 9   get us the language that is correct.

10   Again, that's not the issue for DCA.

11   It's not that she had or -- had all of

12   the documentation submitted and the

13   documents were wrong; it's that she did

14   not actually have the support of the

15   governments or the AUC that she said.

16   I'm almost done.

17   PRESIDENT BARIN: You can take your

18   time, Mr. LeVee.

19   MR. LEVEE: The next bullet was

20   the -- DCA argued that the Staff drafted

21   a passing letter of endorsement for

22   ZACR's application.

23   I want to be clear. This was

24   entirely appropriate. There's absolutely

25   nothing wrong with ICANN and an entity

 1   that wants to support an application

 2   working together to write the correct

 3   words.

 4   It sounds -- they make it sound

 5   nefarious, but it's also appropriate if

 6   the entity is struggling to figure out

 7   how to do it.

 8   There's a sample attached to the

 9   Guidebook but nothing untoward.

10   But even more importantly, it just

11   doesn't matter here, because DCA's

12   application had already been stopped.

13   And so it doesn't affect the evaluation

14   of DCA's application.

15   Finally, there's a bullet that says

16   that BGC failed to undertake an

17   independent investigation.

18   I've quoted in this slide the

19   provision of the Bylaws that says what

20   the BGC is supposed to do. It then

21   issued an 11-page recommendation saying

22   that DCA had not met the standard.

23   I want to emphasize one thing.

24   DCA's request for consideration focused

25   on one topic, the Board's decision not to

 1   get an expert.

 2   DCA's reconsideration did not raise

 3   the GAC advice issue. It did not raise

 4   the conflict of interest issue. So there

 5   was nothing for the BGC to do.

 6   DCA said, We want you to reconsider

 7   and, in doing so, we think you ought to

 8   get an expert.

 9   BGC said, No. You haven't told us

10   what an expert could say.

11   The very last bullet.

12   DCA argued yesterday that the New

13   gTLD Program Committee reviewed and

14   approved its own decision. And that's

15   what happened, and I want to tell you

16   why.

17   The Bylaws provide that the BGC is

18   to review all reconsideration requests.

19   For reconsideration requests that

20   involve Board action, as opposed to Staff

21   action -- that's what happened here,

22   Board action -- the BGC does not make the

23   final determination; it makes a

24   recommendation to the Board.

25   But something else had happened

 1   here, which is that the Board had created

 2   the New gTLD Program Committee consisting

 3   of Members who did not have a conflict

 4   relative to the program.

 5   ARBITRATOR KESSEDJIAN: There's so

 6   many acronyms.

 7   MR. LEVEE: Way too many. I can't

 8   keep the acronyms straight.

 9   Why, oh, why would you send the

10   BGC's recommendation to a Board that

11   consisted of people who had declared

12   conflicts?

13   Instead, what -- as Mr. Chalaby

14   testified, the New gTLD Program Committee

15   was delegated all decision-making

16   authority with respect to the program.

17   So the Board resolved that in instances

18   that relate to the New gTLD Program,

19   including Board Governance request

20   recommendations, we're going to send

21   those to the NGPC, because that's the

22   committee that is not conflicted.

23   That's what happened, and that's

24   what should have happened.

25   Now, I'm going to skip to my

 1   conclusion.

 2   So all the other slides that I had

 3   addressing DCA's assumptions, you can

 4   read them separately. But it's a summary

 5   of what I said yesterday and the accuracy

 6   of those things.

 7   So here's the conclusion slide.

 8   You can look at it in your book.

 9   ARBITRATOR KESSEDJIAN: That's okay.

10   MR. LEVEE: DCA had five assumptions

11   --

12   PRESIDENT BARIN: Are you on

13   Page 33?

14   MR. LEVEE: Pardon me?

15   PRESIDENT BARIN: Are you on

16   Page 33?

17   MR. LEVEE: I am on Page 33.

18   PRESIDENT BARIN: Okay.

19   MR. LEVEE: -- each of DCA's

20   assumptions is false. The evidence

21   yesterday confirmed that.

22   None of the purported breaches

23   identified by DCA that I just went

24   through represent Board action that

25   violated the Articles, the Guidebook or

 1   the Bylaws.

 2   The AUC was entitled to sponsor an

 3   application for .africa. And that's

 4   where all of this goes sideways for

 5   Ms. Bekele, and I understand that.

 6   And it can be argued whether that

 7   was fair to her or not, but it had

 8   nothing to do with ICANN.

 9   ICANN didn't say, Oh, there's --

10   Ms. Bekele is doing something here, and

11   you should go trump her.

12   The AUC made an independent decision

13   to sponsor an application for .africa.

14   And they were entitled to do that, as

15   Ms. Bekele confirmed when she testified.

16   Nothing in the Guidebook says that

17   that sponsorship created a conflict of

18   interest or, at that point, relieves any

19   of the parties who are applying from the

20   requirement that they get 60 percent of

21   the support of the countries.

22   Whether the outcome is fair is truly

23   not the issue. Many applicants have

24   devoted years to this process but did not

25   obtain a gTLD.

1   DCA knew the risks, knew in

2   April 2010 that it had lost the AUC

3   support and knew that it did not have

4   support of 60 percent of the governments

5   of Africa.

6   It also knew that its application

7   could be the subject of GAC advice. It

8   was right there in the Guidebook.

9   ICANN took no actions to tilt the

10   "playing field" -- I put it in quotes

11   because that's what Mr. Ali said in his

12   opening -- in favor of AUC or ZACR.

13   ICANN followed the rules.

14   The outcome may seem unfair to the

15   applicant, but it does not create conduct

16   inconsistent with the Bylaws.

17   I don't know if I've exhausted you.

18   I have myself. But if you have other

19   questions, I'd be more than prepared.

20   The only other thing I wanted to say

21   is I know Mr. Ali is going to tell you

22   now specifically what he seeks. And

23   there were a couple of other questions.

24   I may wish to reserve three or four

25   minutes to respond.

 1   Other than that, I don't have

 2   anything else.

 3   PRESIDENT BARIN: Absolutely,

 4   Mr. LeVee.

 5   HONORABLE JUDGE CAHILL: I do have

 6   one question.

 7   MR. LEVEE: Oh, okay.

 8   HONORABLE JUDGE CAHILL: Yesterday,

 9   I asked you about constituent bodies,

10   including the GAC --

11   MR. LEVEE: Yes.

12   HONORABLE JUDGE CAHILL: -- and in

13   the closing argument I got from Mr. Ali,

14   there's a Page 9 that quotes it, and they

15   say this -- they argued your answer to be

16   yes, the GAC is a constituent body.

17   Your first answer was, Yeah. Okay.

18   Then what you talked about -- what

19   you then said was that Independent Review

20   Proceedings don't apply to GAC --

21   MR. LEVEE: Yes.

22   HONORABLE JUDGE CAHILL: -- so is

23   GAC a constituent body or --

24   MR. LEVEE: GAC is a constituent

25   body.

1   HONORABLE JUDGE CAHILL: So why

2   wouldn't it apply to the --

3   MR. LEVEE: The -- the GAC set up

4   its own operating principles. And so

5   it -- I'm not saying that the -- maybe I

6   said it inartfully before. I'm not

7   saying that -- where the Guidebook refers

8   to the constituent bodies and their

9   obligations, that those don't apply to

10   the GAC; they do.

11   The -- what I'm saying is that the

12   Board has no mechanism to determine,

13   verify things that are happening in the

14   GAC so that -- to know whether the GAC

15   has done something right or wrong or

16   otherwise.

17   So the GAC -- the GAC is supposed to

18   have -- operate neutrally, operate

19   fairly, all those things.

20   The GAC, because it's a political

21   body, set up its own rules. And I think

22   it does a -- an excellent job, but it

23   is --

24   HONORABLE JUDGE CAHILL: So if that

25   is part of the ICANN Bylaws, why wouldn't

1   the -- this Panel be able to look and see

2   whether the GAC, as a constituent body,

3   was feasible, open and transparent?

4   MR. LEVEE: Because the IRP process,

5   which is defined in a different section,

6   lays out what the purpose of the Panel

7   is, which we went over.

8   HONORABLE JUDGE CAHILL: Okay.

9   MR. LEVEE: So, yeah, there are

10   multiple constituent bodies within

11   ICANN --

12   HONORABLE JUDGE CAHILL: Okay.

13   MR. LEVEE: -- none of the conduct

14   of -- you know, I gave you one of them,

15   which was the Generic Names Supporting

16   Organization, which came up with the

17   policy for this whole thing, the whole

18   program.

19   We've never had an IRP challenging

20   something that they do; it's only Board

21   action.

22   HONORABLE JUDGE CAHILL: Okay.

23   PRESIDENT BARIN: Just before you

24   go, Mr. LeVee -- but I think you also

25   told us there is nothing there; in other

 1   words, there's no process in place that

 2   can, in any way, examine or evaluate what

 3   the GAC does. In other words, the GAC

 4   can do whatever it wants to do and

 5   however it wants to do it.

 6   MR. LEVEE: I think that's fair.

 7   PRESIDENT BARIN: Is that a fair

 8   statement?

 9   MR. LEVEE: Yes, yes. That's why I

10   said -- I think that's right.

11   ARBITRATOR KESSEDJIAN: Then how do

12   you explain that the Chair of the GAC is

13   a liaison? If you -- if ICANN has felt

14   important to have a liaison, to have

15   somebody from the GAC who is not anybody

16   from the GAC, it's the Chair, she is the

17   one who organizes the meetings, who makes

18   sure the agenda is what the agenda is.

19   So how -- are you saying -- why and

20   how can you say that the Board doesn't

21   have the means to review?

22   MR. LEVEE: What I'm saying is -- so

23   there are five liaisons to the -- to the

24   Board, not just the GAC Chair.

25   The GNSO has a liaison, all of the

 1   supporting organizations have liaisons --

 2   ARBITRATOR KESSEDJIAN: The

 3   committees.

 4   MR. LEVEE: -- it's the means of

 5   liaisoning -- that's probably not a right

 6   word -- liaise? -- what I'm saying is

 7   that the Board does not have the -- the

 8   power to say to the GAC, You must do

 9   something --

10   ARBITRATOR KESSEDJIAN: No; but,

11   remember, it is only a presumption the --

12   the decision taken by the GAC is only a

13   presumption. We are lawyers, so let's be

14   clear on what it is.

15   Yes, it is a strong presumption, but

16   it's still a presumption --

17   MR. LEVEE: Yes, I agree.

18   ARBITRATOR KESSEDJIAN: -- so the

19   Board -- because the Board has the

20   authority not to accept the GAC's advice,

21   it seems, to me -- and because the Chair

22   is here in the room, it seems, to me,

23   that the Board has the possibility to

24   review what the GAC has done.

25   MR. LEVEE: Oh, if I left a

 1   different impression than that, I

 2   apologize.

 3   ARBITRATOR KESSEDJIAN: You agree

 4   with me?

 5   MR. LEVEE: I agree with you,

 6   absolutely. The Board can review what

 7   the GAC did; the Board can ask questions;

 8   the Board can say, GAC, we need more

 9   clarity --

10   ARBITRATOR KESSEDJIAN: Okay.

11   MR. LEVEE: -- the Board can do all

12   of that.

13   And it can ask Ms. Dryden, We're a

14   little confused. Can you tell us what

15   happened at the meeting? The Board has

16   the ability to do all of that.

17   ARBITRATOR KESSEDJIAN: And then

18   refuse the advice?

19   MR. LEVEE: And in the past, the GAC

20   has done certain things, and the Board

21   said, You know what, we don't really like

22   that; we're not going to do it.

23   Even when the Guidebook was being

24   prepared, the GAC took multiple positions

25   of things that it wanted, and ICANN said,

 1   No, we're not going to give that to you.

 2   So what happened was there were

 3   meetings -- Ms. Stathos was at a lot of

 4   them -- there were meetings where they

 5   tried to sort it out, but the GAC would

 6   say things, and the Board would say, I

 7   don't really like that.

 8   PRESIDENT BARIN: Before you leave,

 9   there's just one last question.

10   Is it also possible for the Board to

11   do that as part of the reconsideration

12   process?

13   MR. LEVEE: To do?

14   PRESIDENT BARIN: To, in other

15   words, look at an application or an issue

16   that's come up through the GAC, for

17   example?

18   MR. LEVEE: The reconsideration

19   process is much narrower under the

20   Bylaws. It is -- because they don't

21   want -- every time someone has a decision

22   made at the Board level, they don't want

23   people basically appealing that decision.

24   So the reconsideration process was

25   intentionally designed under the Bylaws.

1   We've put up the specific Bylaw. It was

2   internally designed to be much narrower,

3   where there are things you could have

4   said, things that you could have done,

5   things that you know the Board should

6   have looked at but didn't.

7   So it's a much narrower nature of

8   review.

9   PRESIDENT BARIN: Understood, in

10   terms of explanation.

11   But in terms of the process, is it

12   possible that -- is it possible for a

13   reconsideration application to review

14   what the GAC has done?

15   MR. LEVEE: I don't believe so --

16   PRESIDENT BARIN: Okay.

17   MR. LEVEE: -- it's very

18   hypothetical, but it -- yeah.

19   PRESIDENT BARIN: Hypothetically, I

20   ask, because if you look at the

21   reconsideration provisions, which, again,

22   I looked at carefully because it is part

23   of the accounting and review process

24   here, it says to you, The Board has

25   designated the Board Governance Committee

1   to review and consider any such

2   reconsideration requests. The Board

3   Governance Committee shall have the

4   authority to conduct whatever factual

5   investigation is deemed appropriate.

6   MR. LEVEE: Yes.

7   PRESIDENT BARIN: So, to me, that

8   seems that if the Board considers that

9   perhaps something isn't done, should --

10   should have been done or could have been

11   done differently, or whatever else, it's

12   part of that process.

13   MR. LEVEE: Within the defined

14   standard of the mandate of the Board

15   Governance Committee, absolutely, they

16   have the right to go figure out what

17   happened.

18   PRESIDENT BARIN: So in this case,

19   could they have if they wanted to?

20   MR. LEVEE: They weren't asked to,

21   and that was part of the -- the -- it was

22   important. They weren't asked to find

23   out anything about the GAC advice. They

24   weren't asked to look into the conflict

25   issue. They were asked why didn't the

1   Board hire an expert.

2   PRESIDENT BARIN: And who would have

3   had to ask that?

4   MR. LEVEE: The applicant, DCA.

5   HONORABLE JUDGE CAHILL: Sorry.

6   That raises one more.

7   You know, we have the issue about

8   the conflict, and the -- and the

9   ombudsman said at the time that there's

10   been no discussion about .africa;

11   therefore, at this time, there's no

12   conflict.

13   And we had this discussion yesterday

14   about the new fact, where the .africa

15   comes in and it starts being discussed by

16   the people who -- and objected to.

17   Whose responsibility would it be

18   then to check to see at that time whether

19   or not there was a conflict or not?

20   It could be you-all, because you

21   have this higher standard, or it could be

22   you don't respond unless the applicant

23   asks you to.

24   But if it turns out that when they

25   start talking about it, then it's got to

1   be reevaluated again, doesn't it?

2   MR. LEVEE: The -- the -- there are

3   two things going on simultaneously: One

4   is that each Board member is supposed to

5   be updating his forms --

6   HONORABLE JUDGE CAHILL: Yes.

7   MR. LEVEE: -- and the second is

8   that if an applicant is concerned, the

9   applicant is supposed to be saying

10   something.

11   HONORABLE JUDGE CAHILL: All right.

12   And they -- okay.

13   So they say something, and it's

14   clearly --

15   MR. LEVEE: They said something in

16   2012.

17   HONORABLE JUDGE CAHILL: Yeah.

18   But -- yeah, but -- you know, I'm not

19   sure whether there's an actual conflict.

20   Perceived conflict is a much more squishy

21   concept, but it's kind of determined by

22   outside people sometimes --

23   MR. LEVEE: Yeah.

24   HONORABLE JUDGE CAHILL: -- but when

25   the time came to look at the perceived

1   conflict later, nobody asked you to do

2   it, and you don't feel as though there

3   was any obligation for the ombudsman or

4   anyone else to look at that?

5   MR. LEVEE: The ombudsman usually

6   only acts in response to a complaint. He

7   doesn't initially investigate --

8   HONORABLE JUDGE CAHILL: So DCA

9   should have made a new complaint?

10   MR. LEVEE: Yes.

11   Now, you know, we -- I skipped over

12   this whole part because -- not in the

13   slides, but the -- what we have in this

14   situation is that because of the way it

15   came up, where there was a speech,

16   somebody thanked Mr. Disspain and

17   Mr. Sadowsky, and another Board member

18   said, Hey, shouldn't we just reconfirm

19   this?

20   HONORABLE JUDGE CAHILL: Yeah.

21   MR. LEVEE: There was a very

22   extensive process. We can debate the

23   nature of the investigation and whether

24   more or less should have been done --

25   HONORABLE JUDGE CAHILL: Yeah.

1   MR. LEVEE: -- but there was a very

2   extensive process that was done at that

3   time, all knowing that the Board's

4   approval was unanimous.

5   But even so, they wanted to check,

6   because if there were people conflicted,

7   those people should not be voting.

8   HONORABLE JUDGE CAHILL: I

9   understand that.

10   I'm not worried about the second

11   one. That seems, to me, like it was

12   handled properly.

13   MR. LEVEE: The conflicts policy

14   does not really address your scenario of

15   how this came up --

16   HONORABLE JUDGE CAHILL: Okay.

17   Right.

18   MR. LEVEE: -- it did come up in

19   some way as happenstance, but the Members

20   were asked twice, once at the meeting and

21   then once at the next meeting.

22   HONORABLE JUDGE CAHILL: It only

23   came up once for Mr. Silber. That was

24   the first time.

25   The second time, Mr. Silber was not

1   one of the two people in the statement

2   that was made at the meeting, so

3   Mr. Silber was not looked at a second

4   time.

5   But even though --

6   MR. LEVEE: Actually, Mr. Chalaby

7   said that he was.

8   HONORABLE JUDGE CAHILL: That's

9   right, he did say that. Yep.

10   MR. LEVEE: Because he had been part

11   of the first challenge.

12   HONORABLE JUDGE CAHILL: That was

13   for an actual conflict, not a perceived

14   conflict?

15   MR. LEVEE: Well, they knew there

16   had been a challenge to Silber and

17   Disspain.

18   HONORABLE JUDGE CAHILL: They knew

19   that it was one day --

20   MR. LEVEE: Earlier.

21   HONORABLE JUDGE CAHILL: -- yeah,

22   one day earlier.

23   MR. LEVEE: So they looked at Silber

24   and Disspain again. That's what Mr.

25   Chalaby testified.

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 1            HONORABLE JUDGE CAHILL:  I know.  He

 2       looked at them for actual conflicts, it

 3       sounded to me, not for perceived

 4       conflicts.

 5            MR. LEVEE:  That's not how I heard

 6       it.

 7            HONORABLE JUDGE CAHILL:  Okay.

 8       Well, it's all there in pixel form.

 9            By the way, I have no more

10       questions.

11            MR. LEVEE:  Thank you very much.

12            PRESIDENT BARIN:   Thank you,

13       Mr. LeVee.

14            How much --

15            MR. ALI:  Five minutes.

16            PRESIDENT BARIN:  Five minutes?

17            MR. ALI:  Yes.

18            PRESIDENT BARIN:  Do we need a

19       break, perhaps?

20            ARBITRATOR KESSEDJIAN:  If it is

21       five minutes.

22            HONORABLE JUDGE CAHILL:  It's not

23       going to be five minutes when we ask

24       questions.

25            MR. ALI:  We can take a break
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 1   and . . .

 2   PRESIDENT BARIN: Do you need a

 3   break?

 4   HONORABLE JUDGE CAHILL: I'm fine.

 5   PRESIDENT BARIN: So let's

 6   continue.

 7   HONORABLE JUDGE CAHILL: The one

 8   thing I need to hear is what your

 9   response to we have no authority as this

10   Panel to look at the -- the GAC conduct.

11   MR. ALI: That was going to be my

12   second --

13   HONORABLE JUDGE CAHILL: Let me be

14   quiet and let you do your job.

15   MR. ALI: Your wish is my command.

16   HONORABLE JUDGE CAHILL: No.

17   - - -

18 CLOSING STATEMENT (CONTINUED) ON BEHALF OF CLAIMANT

19   DOTCONNECTAFRICA TRUST

20   - - -

21   MR. ALI: So we had Mr. LeVee,

22   yesterday and today, confirm that the GAC

23   is a constituent body of ICANN. So that

24   is now uncontroversial.

25   The -- the second thing that I -- as

1   you, Judge Cahill, pointed out, is

2   Article III, Section 1 of the Bylaws. It

3   says, ICANN and its constituent bodies

4   shall operate, to the maximum extent

5   feasible, in an open and transparent

6   manner and consistent with the procedures

7   designed to ensure fairness.

8   And then Mr. LeVee pointed us to

9   Article IV on Accountability and Purpose.

10   And Article IV, Section 1 states, In

11   carrying out -- previously, what I just

12   read out was Article III, Section 1. So,

13   here, I'm in Article IV, Section 1.

14   And I quote, In carrying out its

15   mission as set out in these Bylaws, ICANN

16   should be accountable to the community

17   for operating in a manner that is

18   consistent with these Bylaws and with due

19   regard for the core values set forth in

20   Article I of these Bylaws.

21   So that's, overall, the accounting

22   framework.

23   The provisions of this Article,

24   creating processes for reconsideration

25   and independent review of ICANN actions

 1   and periodic review of ICANN's structures

 2   and procedures, are intended to reinforce

 3   the various accountability mechanisms

 4   otherwise set forth in these Bylaws,

 5   including the transparency provisions of

 6   Article III and the Board and other

 7   selection mechanisms set forth throughout

 8   these Bylaws.

 9   Now, that is the only place where we

10   can find a connection between the

11   accountability mechanisms set forth in

12   Article IV and the obligations of

13   fairness and transparency that are also

14   imposed on the -- on the constituent

15   bodies.

16   I would submit to you that it was

17   the intention of the drafters that the

18   IRP be a mechanism through which the

19   transparency and fairness, as set out in

20   Article III, Section 1 of the Bylaws, be

21   given effect and -- and enforced.

22   Otherwise, this is meaningless,

23   simply because, as has been pointed out,

24   there is no other mechanism foreseen,

25   either in the GAC operating principles or

1   within the context of the Bylaws, whereby

2   the GAC is held accountable.

3   So reading Article IV and

4   Article III together, and based on the

5   principle that rules or text or statutes

6   must be read in a way that allows for

7   them to be -- to be given effect in a

8   F-A-O-T law, whatever the -- would be

9   the -- the equivalent effective utility

10   or to implement, I think that therein

11   lies your avenue for reviewing the GAC

12   processes.

13   We're not talking about, here,

14   again, as was in Booking.com, whether or

15   not somebody actually likes the Guidebook

16   or not. We're talking about

17   implementation --

18   HONORABLE JUDGE CAHILL: Right.

19   MR. ALI: -- and that implementation

20   is tested at two levels: It is tested

21   through Article IV and Article III, as

22   I've just explained. And I think it's

23   tested on the other side by virtue of the

24   fact, as Ms. Dryden put it yesterday,

25   that the Board interprets the outputs of

1   the -- of the GAC.

2   As you were pointing out, there's

3   strong presumptions, but, ultimately, the

4   NGPC has a duty. And as Mr. LeVee

5   pointed out, if there is a duty, as you

6   just indicated, then -- or he indicated

7   in responding to your question,

8   Mr. President, is that -- that the -- the

9   discharge of that duty can be evaluated

10   by you.

11   And in this particular instance,

12   given the controversy, given the

13   sensitivities, given the politics, given

14   the fact that we had this imbalance in

15   the application process, the Board had a

16   duty, an absolute duty, to conduct

17   additional diligence and to make

18   inquiries as to what it is that had

19   happened.

20   What -- they might have just asked

21   one question of Ms. Dryden. We have an

22   agenda, which we haven't seen, that was

23   drafted three to four weeks before the

24   GAC meeting.

25

1 Redacted - GAC Designated Confidential Information

1

10   But the Board, what does the Board

11   know -- why would the Board ask those

12   questions?

13   ARBITRATOR KESSEDJIAN: They have

14   the 15-page of --

15   MR. ALI: It has to be incumbent

16   upon Ms. Dryden, as the liaison, to have

17   provided them with the background

18   briefing as to how the consensus advice

19   emerged.

20   I mean, it seems, to me, that as a

21   decision is about to be taken of great

22   consequence and import to an applicant,

23   that Ms. Dryden, as the liaison for the

24   GAC, might have provided even a brief

25   summary of what had taken place in the

1   process.

2   Or Mr. Chalaby, given, again, the

3   context of these applications, given the

4   first time, this is new, we have a

5   controversial set of circumstances

6   surrounding these applications that

7   everybody knows about, that it might --

8   might've occurred to somebody, Heather,

9   could you please provide us some

10   background on what took place and how is

11   it that we've come to this point?

12   Not very difficult. But we have

13   absolutely no evidence to that effect.

14   All we know is that a perfunctory line is

15   included in a Board minute that says it

16   was considered.

17   HONORABLE JUDGE CAHILL: If that had

18   been done and the Board just said, Okay,

19   I got it, and they list -- that -- that

20   -- that -- we can't second-guess that

21   decision had that been done, right?

22   MR. ALI: I can't tell you what it

23   is that would have subsequently happened.

24   What I can tell you is what you have just

25   inquired about didn't happen. There was

1   no inquiry.

2   The Board had a duty. The Board has

3   a duty. The Board is the curator of this

4   system.

5   If the GAC is not subject to your

6   review, then, somehow within this -- then

7   the Board, as Ms. Dryden tells you, has

8   the power to interpret and implement what

9   the GAC is -- what the GAC's consensus

10   advice is.

11   So thereby exists the control

12   mechanism, which means a duty to

13   investigate, a duty to make inquiries,

14   even some inquiry. And that wasn't done.

15   So you can approach it from two

16   different ways: either it's the GAC

17   review, Article IV and Article III; or it

18   is through the Board mechanism.

19   So just on this issue of -- of --

20   very quickly on the Staff. I would just

21   point you to the fact that the -- that

22   this litigation waiver that is found in

23   AGB Module 6.6 also covers the Staff; it

24   covers consultants; it covers everybody.

25   So I think, for purposes of IRPs,

1   you have to look at the conduct as a

2   whole, everybody that is part of this

3   ICANN system that is administering, that

4   is overseeing, that is implementing, that

5   is caretaking the application of the

6   Bylaws, the Articles and the Applicant

7   Guidebook.

8   If it is a rule book, somebody

9   implements those rules. Those rules are

10   being implemented by ICANN Staff on a

11   day-to-day basis. Hence, the litigation

12   waiver covers everybody, including ICANN

13   affiliates.

14   So I would -- it would suggest that

15   Module 6.6, for purposes of the IRP, at

16   least, would provide a basis for you to

17   consider the action of Staff.

18   It also says that DCA didn't know

19   what was going on between the Geo Names

20   Panel -- the Geographic Names Panel and

21   ICANN Staff. DCA had no way of knowing

22   what was going on in these internal

23   e-mails.

24   But DCA did raise on a number of

25   occasions that their -- that ICANN Staff

 1   was taking actions that were not fair to

 2   DCA, and they raised this with the NGPC.

 3   And we have Ms. Bekele's testimony to --

 4   to that effect.

 5   But the NGPC never made any

 6   inquiries as to what is going on with

 7   respect to Staff's Interactions With

 8   The -- With The -- With The Geo Names

 9   Panel.

10   So I think that Staff has to be

11   covered. They're the very important

12   implementers of the direction of the

13   Board.

14   And if one were to simply say, Well,

15   the Staff can do one thing, but the

16   Board's actions are nonreviewable on the

17   Board -- they're reviewable, but the

18   Board is not responsible for Staff's

19   actions, particularly when the CEO would

20   be Staff and is on the Board, would be a

21   really surprising outcome.

22   Again, on the issue of support, I

23   think the easiest path for you here, as

24   opposed to the debate that we're having

25   as to what was the right support from the

1   beginning, what was the right support at

2   the end, is just to look at the

3   correspondence that was taking place

4   between the Geo Names Panel, a panel that

5   was retained in order to conduct an

6   independent evaluation. Its views, its

7   recommendations and what it was saying

8   was considered to be support.

9   The fact of the matter is that ZACR

10   didn't have 60 percent support when it

11   filed its applications from individual

12   governments. And at the point in time

13   when it entered into contract

14   negotiations and the application was --

15   was -- was approved, it still didn't have

16   60 percent support from the individual

17   governments.

18   What it did have was support from

19   the AUC, which, again, you recall, was

20   initially not considered to be support.

21   It subsequently becomes support.

22   And if that support is applicable, then

23   the support that .africa had -- or DCA

24   has should also be subject to somebody's

25   evaluation and interpretation.

 1   Now, the answer that we're given by

 2   Mr. LeVee to the letter, I think, is

 3   something that perhaps applies as the

 4   capstone to this entire proceeding, at

 5   least from our perspective.

 6   Mr. LeVee said, What's wrong with

 7   helping an entity that is struggling to

 8   figure it out?

 9   I hope you recall him saying that.

10   HONORABLE JUDGE CAHILL: Um-hum.

11   MR. ALI: I just simply say, Let's

12   substitute the word "entity" for what's

13   wrong with helping applicant that is

14   struggling to figure it out?

15   There's everything wrong, because

16   you're helping out one applicant, opening

17   every door all along the way for that

18   applicant but closing the door for the

19   other applicant.

20   So what's wrong with helping out one

21   applicant that is struggling to figure it

22   out?

23   Everything, because it's unfair,

24   it's inequitable, it's discriminatory,

25   and it's a violation of the Articles of

 1   Incorporation, Bylaws, the Applicant

 2   Guidebook, international law and just --

 3   and general principles of good faith and

 4   fairness.

 5   And so, with that, I have nothing

 6   more to add, except that I owe you the

 7   final relief requested, which is being

 8   specified with our client.

 9   So this will be the document.

10   This may be an appropriate time to

11   take a break. I'll finalize it, give to

12   Mr. LeVee and then bring it back.

13   HONORABLE JUDGE CAHILL: Okay.

14   PRESIDENT BARIN: Mr. LeVee, do you

15   want an opportunity to respond to what --

16   MR. LEVEE: Just very quickly on

17   Staff -- the question of whether an IRP

18   covers Staff --

19   PRESIDENT BARIN: I was going to ask

20   you a question.

21   MR. LEVEE: -- I mean, it's a policy

22   argument, right?

23   Mr. Ali's arguing he doesn't think

24   it's right that the Staff should have a

25   litigation waiver, but the language of

1   Article IV is very precise. It says, The

2   Board --

3   PRESIDENT BARIN: But you don't

4   disagree that the Board is ultimately

5   responsible for the conduct of the Staff?

6   I mean, otherwise, who else is?

7   MR. LEVEE: No, no. In any

8   corporate setting, the Board is

9   ultimately responsible. But when a Staff

10   member sends a letter or shows up in

11   Africa to a meeting that may or may not

12   have occurred, the Board may have some

13   legal responsibility, but it's not for

14   conduct --

15   PRESIDENT BARIN: I understand.

16   MR. LEVEE: -- that's the point I'm

17   making. It's only Board conduct that's

18   reviewable in an IRP. And ICANN did not

19   want --

20   HONORABLE JUDGE CAHILL: But if the

21   conduct is not supervising the personnel,

22   isn't that --

23   MR. LEVEE: Well, you could argue

24   that. You could also argue that it was

25   the manager's responsibility.

  1   No board that I'm aware of is

  2   responsible for each event that an

  3   employee does.

  4   HONORABLE JUDGE CAHILL: That's

  5   probably right, but we'd have to have

  6   more facts. So . . .

  7   MR. LEVEE: We would have to have

  8   more facts.

  9   HONORABLE JUDGE CAHILL: Yeah,

 10   right.

 11   PRESIDENT BARIN: Anything else?

 12   MR. LEVEE: No.

 13   PRESIDENT BARIN: Okay.

 14   What I suggest, then, is while we

 15   wait for Mr. Ali and his team --

 16   MR. ALI: It shouldn't take more

 17   than a few minutes.

 18   PRESIDENT BARIN: That's fine. We

 19   can take a break.

 20   We do have a few things.

 21   HONORABLE JUDGE CAHILL: We have

 22   things to talk about.

 23   PRESIDENT BARIN: It's 12:30.

 24   If we were to resume -- I don't

 25   know --

 1   MR. LEVEE: Ten minutes.

 2   PRESIDENT BARIN: -- 10 minutes?

 3   Fifteen minutes? Is that okay?

 4   MR. LEVEE: Ten minutes would be

 5   better.

 6   PRESIDENT BARIN: In 15 minutes, it

 7   will ten to 1:00.

 8   In 15 minutes.

 9   MR. LEVEE: Very good.

10   PRESIDENT BARIN: Thank you.

11   Mr. Ali and Mr. LeVee, I do want to

12   speak to the Panel Members first, but it

13   may be that I would ask you to come and

14   join us again for a few seconds.

15   MR. LEVEE: I'm not going anywhere.

16   (Whereupon, at 12:34 p.m., a

17   luncheon recess was taken.)

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 1    A F T E R N O O N          S E S S I O N

 2                                   (1:03 p.m.)

 3            PRESIDENT BARIN:  We're back on the

 4    record.

 5            Okay.  Mr. Ali, during the break,

 6    you provided the Panel with a copy of

 7    what's entitled the Claimant's Final

 8    Request for Relief.

 9            MR. ALI:  That's right,

10    Mr. President.

11            And we also provided a copy during

12    the break to ICANN.

13            PRESIDENT BARIN:  Okay.  Perfect.

14            What we'll do is we'll just mark

15    this as Exhibit 4 so that it's there as a

16    record.

17            MR. ALI:  Yes.

18            PRESIDENT BARIN:  Hearing Exhibit 4.

19                         -  -  -

20         (Whereupon, Hearing Exhibit Number 4

21          was marked for identification

22          purposes.)

23                         -  -  -

24            MR. ALI:  That's acceptable.

25            PRESIDENT BARIN:  So it's there.
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 1   And I don't have any questions. It

 2   seems clear to me in terms of what you're

 3   asking.

 4   MR. LEVEE: Since it has arrived as

 5   we were about to go on, in the event that

 6   ICANN has anything to say about it, may

 7   we send a very short letter to the Panel

 8   over the next several days?

 9   PRESIDENT BARIN: Sure.

10   MR. LEVEE: I don't know that we

11   will.

12   PRESIDENT BARIN: That's fine. I

13   don't see a problem if you do have

14   something that you want to say. You're

15   just getting it at the hearing, so,

16   that's fine, as long as it's to the point

17   and brief.

18   HONORABLE JUDGE CAHILL: It will be

19   brief.

20   MR. LEVEE: Understood.

21   MR. ALI: As you see, it's

22   effectively the same as what we've

23   previously provided.

24   PRESIDENT BARIN: That's fine.

25   But in all fairness, he's just

 1   getting it now, so he can react to it.

 2   MR. ALI: Yes.

 3   PRESIDENT BARIN: Okay.

 4   So are we done then, now, in terms

 5   of closing arguments?

 6   MS. BEKELE: Mr. Chair, if I could

 7   just address the Panel one last time

 8   before we adjourn, I would appreciate

 9   that.

10   PRESIDENT BARIN: Do you have any

11   objection?

12   MR. LEVEE: I would object.

13   PRESIDENT BARIN: What's the nature

14   of the --

15   MS. BEKELE: I just wanted to thank

16   the Panel for all the work they're doing.

17   MR. LEVEE: I have no objection to

18   that.

19   HONORABLE JUDGE CAHILL: For your

20   side --

21   PRESIDENT BARIN: I just wanted to

22   make sure that I heard what she was going

23   to say first before I --

24   ARBITRATOR KESSEDJIAN: You object

25   before she said anything, just in case.

1   MR. LEVEE: I was envisioning

2   something different.

3   HONORABLE JUDGE CAHILL: Yeah, me,

4   too.

5   I do a lot of arbitrations, and

6   these are as good a lawyers as they get.

7   So whatever -- sorry. Don't tell them

8   that I said that.

9   PRESIDENT BARIN: In terms of house

10   cleaning -- and we'll get to that --

11   we'll get to that, too --

12   HONORABLE JUDGE CAHILL: Housekeeping

13   .

14   PRESIDENT BARIN: -- housekeeping --

15   there's one other -- one last item

16   that -- Mr. LeVee, the Panel would like

17   to request from ICANN, and, that is, we

18   understood yesterday that there are

19   recordings of Board meetings of ICANN

20   that are kept.

21   Now, whether they're available or

22   not is a question that I put to you.

23   To the extent that the recordings

24   are available, the Panel would appreciate

25   getting the recording that relates to the

1   Board meeting of June 4, 2013, that's

2   Exhibit R-1, and the main agenda for

3   which was the Consideration of

4   Nonsafeguard Advice in GAC's Beijing

5   Communiqué and Rationale for Resolution

6   of 2013/06/04. So if that's available.

7   MR. LEVEE: I will respond in the

8   same time that I respond to the Panel's

9   request for the other document relating

10   to the Ethics Panel that we discussed

11   yesterday.

12   PRESIDENT BARIN: Okay.

13   And, of course, you'll have a

14   chance, Mr. Ali, to comment.

15   I note that there was a

16   transcription of this proceeding. So

17   what I suggest is that you will get a --

18   a copy of that transcription, probably.

19   And if counsel can sort of accord on the

20   final text that gets to us.

21   Then you can have a look at it in

22   the period that you do, but as long as we

23   get a copy that we don't have to then be

24   concerned as to whether there are any

25   comments on it or not --

1   MR. ALI: Of course.

2   MR. LEVEE: That's fine.

3   PRESIDENT BARIN: -- in terms of the

4   transcript.

5   MR. LEVEE: Yes.

6   And, yesterday, we discussed that we

7   will not plan on closing briefs.

8   I just wanted to confirm that that

9   remains the Panel's preference.

10   PRESIDENT BARIN: Well, to be

11 perfectly candid, I don't think the Panel

12 had any preference in particular, but --

13 but I don't think one is necessary,

14 unless -- if you want to put one in,

15 we're not going to say no.

16   MR. LEVEE: The parties did not

17 believe that additional briefing was

18 necessary.

19   HONORABLE JUDGE CAHILL: Thank you.

20   PRESIDENT BARIN: But to follow

21 that, what we will do, though, is --

22 because we will have an important job now

23 going forward deliberating on this -- and

24 it will take us as long as it'll take

25 us -- if we do need information,

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 1           documents or anything else, including

 2           submissions, then we will come back to

 3           you, perhaps, put it to you by written

 4           question.  We'll evaluate it as we go

 5           forward.

 6                MR. LEVEE:  We have no objection to

 7           that at all.

 8                PRESIDENT BARIN:  Okay.

 9                ARBITRATOR KESSEDJIAN:  Could we

10           have an idea of the calendar for

11           the -- for the transcript?  When are you

12           going to send the drafts?

13                MR. LEVEE:  We have a draft from

14           last night already.

15                THE COURT REPORTER:  It looks like

16           June 8th and 9th.

17                ARBITRATOR KESSEDJIAN:  Then you

18           will have to work on it?

19                MR. ALI:  Maybe a week or so or to

20           confirm, maybe faster than that.  But as

21           soon as we get the clean from Ms. Sebo,

22           we'll --

23                ARBITRATOR KESSEDJIAN:  So around

24           the 20th of June -- around the 20th of

25           June, approximately, a clean transcript
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1   for us?

2   MR. LEVEE: That's fine.

3   ARBITRATOR KESSEDJIAN: We will be

4   able for us to plan our deliberations?

5   PRESIDENT BARIN: The 20th of June

6   is a Saturday, so maybe the 19th, on or

7   about.

8   How's that?

9   MR. ALI: We'll work it out. We

10   understand why you need it, and we'll try

11   and get it to you as quickly as we can.

12   PRESIDENT BARIN: So on or about

13   June 19th, we'll get a final version of

14   the -- of the transcript.

15   Okay. Any other issues? No?

16   Questions?

17   HONORABLE JUDGE CAHILL: Not me, no.

18   I'm fine.

19   PRESIDENT BARIN: I do have a

20   question for you.

21   And the question to both of you is

22   that I trust you're happy with the way

23   the Hearing went, that you're satisfied

24   with the ability to make your

25   presentations and an opportunity to make

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1          your points known in as full of a manner
2          as you could under the circumstances?
3               ARBITRATOR KESSEDJIAN:  If you're
4          not, it's too late.
5               MR. ALI:  Thank you.
6               And from DCA Trust side, absolutely.
7               Thank you.
8               HONORABLE JUDGE CAHILL:  What are
9          you going to say?
10               MR. LEVEE:  Likewise.
11               PRESIDENT BARIN:  The issue is if
12          there's anything that you want to do that
13          you haven't been able to do, this is the
14          time to do it.
15               HONORABLE JUDGE CAHILL:  The appeals
16          say otherwise, that's fine, because --
17          it's kind of a -- a loaded question.
18               PRESIDENT BARIN:  Then that brings
19          me to two last items, and that is I want
20          to thank our stenographer, Cindy Sebo --
21          I think I pronounced that perfectly
22          well --
23               HONORABLE JUDGE CAHILL:  Perfectly
24          well.
25               PRESIDENT BARIN:  -- from
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1   TransPerfect, who has been sitting here

2   the last one-and-a-half day, long days,

3   for what she's done. So thank you.

4   And then I wanted to personally --

5   and I'm sure my colleagues will

6   definitely have their only words to

7   say -- thank your -- the counsel, both

8   Mr. LeVee and Mr. Ali, for -- and --

9   pardon me -- and your team --

10   MR. ALI: Far more importantly.

11   PRESIDENT BARIN: -- some of whom,

12   you said yesterday, were presenting for

13   the first time. I think the Panel agrees

14   that it was a very good job.

15   Well done.

16   HONORABLE JUDGE CAHILL: You'll

17   probably always remember that, so good

18   job.

19   PRESIDENT BARIN: I particularly

20   want to commend you for -- for being

21   extremely civil.

22   Sometimes these issues are not easy,

23   but in the complete, thorough and, I

24   think, excellent way -- and I say this in

25   your front of your clients, both of your

 1   clients -- the -- the Panel is very

 2   thankful and grateful.

 3   We enjoyed being here, and we will

 4   go into the deliberations for the next

 5   however long it takes. So --

 6   HONORABLE JUDGE CAHILL: Thanks for

 7   choosing the three of us. We get along

 8   very well.

 9   ARBITRATOR KESSEDJIAN: We decided

10   to propose at the end of this that we

11   will form a permanent tribunal.

12   MR. LEVEE: ICANN has been looking

13   for a permanent tribunal.

14   HONORABLE JUDGE CAHILL: Wait till

15   you see what we do, because we don't know

16   what we're going to do. Maybe you will

17   want us back or maybe not.

18   PRESIDENT BARIN: With that, I wish

19   you a good day, and have a great, long

20   weekend.

21   MR. LEVEE: Thank you.

22

23   - - -

24   (Whereupon, the Hearing on the

25   Merits concluded at 1:12 p.m.)

 1   CERTIFICATE OF

 2   CERTIFIED REGISTERED MERIT REAL-TIME COURT REPORTER

 3   I, CINDY L. SEBO, Registered Merit Reporter,

 4   Certified Real-Time Reporter, Registered

 5   Professional Reporter, Certified Shorthand Reporter,

 6   Certified Court Reporter, Certified LiveNote

 7   Reporter, Real-Time Systems Administrator and

 8   LiveDeposition Authorized Reporter, do hereby

 9   certify that the foregoing transcript is a true and

10   correct record of the Hearing on the Merits, that I

11   am neither counsel for, related to, nor am employed

12   by any of the parties to the action; and further,

13   that I am not a relative or employee of any attorney

14   or counsel employed by the parties thereto, nor

15   financially or otherwise interested in the outcome

16   of the action.

17

18

19   Signed this 2nd day of June 2015.

20

21   _____

22   CINDY L. SEBO, RMR, CRR, RPR, CSR,
                  CCR, CLR, RSA, LiveDeposition
23   Authorized Reporter

24

25

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As amended 11 April 2013

TABLE OF CONTENTS

ARTICLE I: MISSION AND CORE (Council of Registrars) VALUES

Section 1. MISSION

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

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are

a. Domain names (forming a system referred to as "DNS (Domain Name System)");

b. Internet protocol ("IP (Internet Protocol or Intellectual Property)") addresses and autonomous system ("AS (Autonomous System ("AS") Numbers)") numbers; and

c. Protocol (Protocol) port and parameter numbers.

2. Coordinates the operation and evolution of the DNS (Domain Name System) root name server system.

3. Coordinates policy development reasonably and appropriately related to these technical functions.

Section 2. CORE (Council of Registrars) VALUES

In performing its mission, the following core values should guide the decisions and actions of ICANN (Internet Corporation for Assigned Names and Numbers):

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

2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN (Internet Corporation for Assigned Names and Numbers)'s activities to those matters within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission requiring or significantly benefiting from global coordination.

3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.

4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.

6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

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

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

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

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

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

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

circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

ARTICLE II: POWERS

Section 1. GENERAL POWERS

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

Section 2. RESTRICTIONS

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

Section 3. NON-DISCRIMINATORY TREATMENT

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

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

ICANN (Internet Corporation for Assigned Names and Numbers) and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

Section 2. WEBSITE

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

Section 3. MANAGER OF PUBLIC PARTICIPATION

There shall be a staff position designated as Manager of Public Participation, or such other title as shall be determined by the President, that shall be responsible, under the direction of the President, for coordinating the various aspects of public participation in ICANN (Internet Corporation for Assigned

Names and Numbers), including the Website and various other means of communicating with and receiving input from the general community of Internet users.

Section 4. MEETING NOTICES AND AGENDAS

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

Section 5. MINUTES AND PRELIMINARY REPORTS

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

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

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

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

Section 6. NOTICE AND COMMENT ON POLICY ACTIONS

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

a. provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one

days (and if practical, earlier) prior to any action by the Board;

b. provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments, prior to any action by the Board; and

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

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

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

Section 7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN (Internet Corporation for Assigned Names and Numbers) budget, ICANN (Internet Corporation for Assigned Names and Numbers) shall facilitate the translation of final published documents into various appropriate languages.

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 1. PURPOSE

In carrying out its mission as set out in these Bylaws, ICANN (Internet Corporation for Assigned Names and Numbers) should be accountable to the community for operating in a manner that is consistent with these

Bylaws, and with due regard for the core values set forth in <u>Article I of these</u>
<u>Bylaws</u>. The provisions of this Article, creating processes for reconsideration
and independent review of ICANN (Internet Corporation for Assigned Names
and Numbers) actions and periodic review of ICANN (Internet Corporation for
Assigned Names and Numbers)'s structure and procedures, are intended to
reinforce the various accountability mechanisms otherwise set forth in these
Bylaws, including the transparency provisions of <u>Article III</u> and the Board and
other selection mechanisms set forth throughout these Bylaws.

Section 2. RECONSIDERATION

1. ICANN (Internet Corporation for Assigned Names and
   Numbers) shall have in place a process by which any person or
   entity materially affected by an action of ICANN (Internet
   Corporation for Assigned Names and Numbers) may request
   review or reconsideration of that action by the Board.

2. Any person or entity may submit a request for reconsideration
   or review of an ICANN (Internet Corporation for Assigned
   Names and Numbers) action or inaction ("Reconsideration
   Request") to the extent that he, she, or it have been adversely
   affected by:

   a. one or more staff actions or inactions that contradict
      established ICANN (Internet Corporation for Assigned
      Names and Numbers) policy(ies); or

   b. one or more actions or inactions of the ICANN (Internet
      Corporation for Assigned Names and Numbers) Board
      that have been taken or refused to be taken without
      consideration of material information, except where the
      party submitting the request could have submitted, but
      did not submit, the information for the Board's
      consideration at the time of action or refusal to act; or

   c. one or more actions or inactions of the ICANN (Internet
      Corporation for Assigned Names and Numbers) Board
      that are taken as a result of the Board's reliance on false
      or inaccurate material information.

3. The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:

   a. evaluate requests for review or reconsideration;

   b. summarily dismiss insufficient requests;

   c. evaluate requests for urgent consideration;

   d. conduct whatever factual investigation is deemed appropriate;

   e. request additional written submissions from the affected party, or from other parties;

   f. make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and

   g. make a recommendation to the Board of Directors on the merits of the request, as necessary.

4. ICANN (Internet Corporation for Assigned Names and Numbers) shall absorb the normal administrative costs of the reconsideration process. It reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the party seeking reconsideration, who shall then have the option of withdrawing the request or agreeing to bear such costs.

5. All Reconsideration Requests must be submitted to an e-mail address designated by the Board Governance Committee within fifteen days after:

   a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the

resolution is not accompanied by a rationale. In that instance, the request must be submitted within 15 days from the initial posting of the rationale; or

b. for requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or

c. for requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

6. To properly initiate a Reconsideration process, all requestors must review and follow the Reconsideration Request form posted on the ICANN (Internet Corporation for Assigned Names and Numbers) website. at http://www.icann.org/en/groups /board/governance/reconsideration (/en/groups/board /governance/reconsideration). Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.

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

8. The Board Governance Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is the same for all of the requestors. Every requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

9. The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; (ii) it is frivolous, querulous or vexatious; or (iii) the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. The Board Governance Committee's summary dismissal of a Reconsideration Request shall be posted on the Website.

10. For all Reconsideration Requests that are not summarily dismissed, the Board Governance Committee shall promptly proceed to review and consideration.

11. The Board Governance Committee may ask the ICANN (Internet Corporation for Assigned Names and Numbers) staff for its views on the matter, which comments shall be made publicly available on the Website.

12. The Board Governance Committee may request additional information or clarifications from the requestor, and may elect to conduct a meeting with the requestor by telephone, email or, if acceptable to the party requesting reconsideration, in person. A requestor may ask for an opportunity to be heard; the Board Governance Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.

13. The Board Governance Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation. Any information collected from third parties shall be provided to the requestor.

14. The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written

record, including information submitted by the party seeking reconsideration or review, by the ICANN (Internet Corporation for Assigned Names and Numbers) staff, and by any third party.

15. For all Reconsideration Requests brought regarding staff action or inaction, the Board Governance Committee shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.

16. The Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation. The final recommendation shall be posted on ICANN (Internet Corporation for Assigned Names and Numbers)'s website.

17. The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN (Internet Corporation for Assigned Names and Numbers)'s website. The Board's decision on the recommendation is final.

18. If the requestor believes that the Board action or inaction posed for Reconsideration is so urgent that the timing requirements of the Reconsideration process are too long, the requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (calculated at ICANN (Internet Corporation for Assigned Names and Numbers)'s headquarters in Los Angeles, California) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

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

20. The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:

    a. the number and general nature of Reconsideration Requests received, including an identification if the requests were acted upon, summarily dismissed, or remain pending;

    b. for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests

have been pending, and a description of the reasons for
any request pending for more than ninety (90) days;

c. an explanation of any other mechanisms available to
ensure that ICANN (Internet Corporation for Assigned
Names and Numbers) is accountable to persons
materially affected by its decisions; and

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

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in Section
   2 of this Article (/en/about/governance/bylaws#IV-2), ICANN
   (Internet Corporation for Assigned Names and Numbers) shall
   have in place a separate process for independent third-party
   review of Board actions alleged by an affected party to be
   inconsistent with the Articles of Incorporation or Bylaws.

2. Any person materially affected by a decision or action by the
   Board that he or she asserts is inconsistent with the Articles of
   Incorporation or Bylaws may submit a request for independent
   review of that decision or action. In order to be materially
   affected, the person must suffer injury or harm that is directly
   and causally connected to the Board's alleged violation of the
   Bylaws or the Articles of Incorporation, and not as a result of
   third parties acting in line with the Board's action.

3. A request for independent review must be filed within thirty
   days of the posting of the minutes of the Board meeting (and
   the accompanying Board Briefing Materials, if available) that

the requesting party contends demonstrates that ICANN (Internet Corporation for Assigned Names and Numbers) violated its Bylaws or Articles of Incorporation. Consolidated requests may be appropriate when the causal connection between the circumstances of the requests and the harm is the same for each of the requesting parties.

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

   a. did the Board act without conflict of interest in taking its decision?;

   b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and

   c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

5. Requests for independent review shall not exceed 25 pages (double-spaced, 12-point font) of argument. ICANN (Internet Corporation for Assigned Names and Numbers)'s response shall not exceed that same length. Parties may submit documentary evidence supporting their positions without limitation. In the event that parties submit expert evidence, such evidence must be provided in writing and there will be a right of reply to the expert evidence.

6. There shall be an omnibus standing panel of between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and work from which each

specific IRP Panel shall be selected. The panelists shall serve for terms that are staggered to allow for continued review of the size of the panel and the range of expertise. A Chair of the standing panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within the ICANN (Internet Corporation for Assigned Names and Numbers) structure are not eligible to serve on the standing panel. In the event that an omnibus standing panel: (i) is not in place when an IRP Panel must be convened for a given proceeding, the IRP proceeding will be considered by a one- or three-member panel comprised in accordance with the rules of the IRP Provider; or (ii) is in place but does not have the requisite diversity of skill and experience needed for a particular proceeding, the IRP Provider shall identify one or more panelists, as required, from outside the omnibus standing panel to augment the panel members for that proceeding.

7. All IRP proceedings shall be administered by an international dispute resolution provider appointed from time to time by ICANN (Internet Corporation for Assigned Names and Numbers) ("the IRP Provider"). The membership of the standing panel shall be coordinated by the IRP Provider subject to approval by ICANN (Internet Corporation for Assigned Names and Numbers).

8. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this Section 3 (/en/about /governance/bylaws#IV-3).

9. Either party may request that the IRP be considered by a one- or three-member panel; the Chair of the standing panel shall make the final determination of the size of each IRP panel, taking into account the wishes of the parties and the complexity of the issues presented.

10. The IRP Provider shall determine a procedure for assigning members from the standing panel to individual IRP panels.

11. The IRP Panel shall have the authority to:

a. summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious;

b. request additional written submissions from the party seeking review, the Board, the Supporting Organizations (Supporting Organizations), or from other parties;

c. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and

d. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP;

e. consolidate requests for independent review if the facts and circumstances are sufficiently similar; and

f. determine the timing for each proceeding.

12. In order to keep the costs and burdens of independent review as low as possible, the IRP Panel should conduct its proceedings by email and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP Panel may hold meetings by telephone. In the unlikely event that a telephonic or in-person hearing is convened, the hearing shall be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance.

13. All panel members shall adhere to conflicts-of-interest policy stated in the IRP Provider's operating rules and procedures, as approved by the Board.

14. Prior to initiating a request for independent review, the complainant is urged to enter into a period of cooperative engagement with ICANN (Internet Corporation for Assigned Names and Numbers) for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. The cooperative engagement process is published on ICANN (Internet Corporation for Assigned Names and Numbers).org

and is incorporated into this Section 3 of the Bylaws.

15. Upon the filing of a request for an independent review, the parties are urged to participate in a conciliation period for the purpose of narrowing the issues that are stated within the request for independent review. A conciliator will be appointed from the members of the omnibus standing panel by the Chair of that panel. The conciliator shall not be eligible to serve as one of the panelists presiding over that particular IRP. The Chair of the standing panel may deem conciliation unnecessary if cooperative engagement sufficiently narrowed the issues remaining in the independent review.

16. Cooperative engagement and conciliation are both voluntary. However, if the party requesting the independent review does not participate in good faith in the cooperative engagement and the conciliation processes, if applicable, and ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the request for independent review, the IRP Panel must award to ICANN (Internet Corporation for Assigned Names and Numbers) all reasonable fees and costs incurred by ICANN (Internet Corporation for Assigned Names and Numbers) in the proceeding, including legal fees.

17. All matters discussed during the cooperative engagement and conciliation phases are to remain confidential and not subject to discovery or as evidence for any purpose within the IRP, and are without prejudice to either party.

18. The IRP Panel should strive to issue its written declaration no later than six months after the filing of the request for independent review. The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances,

including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.

19. The IRP operating procedures, and all petitions, claims, and declarations, shall be posted on ICANN (Internet Corporation for Assigned Names and Numbers)'s website when they become available.

20. The IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets.

21. Where feasible, the Board shall consider the IRP Panel declaration at the Board's next meeting. The declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value.

Section 4. PERIODIC REVIEW OF ICANN (Internet Corporation for Assigned Names and Numbers) STRUCTURE AND OPERATIONS

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

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

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

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

ARTICLE V: OMBUDSMAN

Section 1. OFFICE OF OMBUDSMAN

1. There shall be an Office of Ombudsman, to be managed by an Ombudsman and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.

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

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

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

Section 2. CHARTER

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

Section 3. OPERATIONS

The Office of Ombudsman shall:

1. facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN (Internet Corporation for Assigned Names and Numbers) community (excluding employees and vendors/suppliers of ICANN (Internet Corporation for Assigned Names and Numbers)) may have with specific actions or failures to act by the Board or ICANN (Internet Corporation for Assigned Names and Numbers) staff which have not otherwise become the subject of either the Reconsideration or Independent Review Policies;

2. exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN (Internet Corporation for Assigned Names and Numbers)'s

interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations;

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

4. heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN (Internet Corporation for Assigned Names and Numbers) community and online availability;

5. maintain neutrality and independence, and have no bias or personal stake in an outcome; and

6. comply with all ICANN (Internet Corporation for Assigned Names and Numbers) conflicts-of-interest and confidentiality policies.

Section 4. INTERACTION WITH ICANN (Internet Corporation for Assigned Names and Numbers) AND OUTSIDE ENTITIES

1. No ICANN (Internet Corporation for Assigned Names and Numbers) employee, Board member, or other participant in Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees) shall prevent or impede the Ombudsman's contact with the ICANN (Internet Corporation for Assigned Names and Numbers) community (including employees of ICANN (Internet Corporation for Assigned Names and Numbers)). ICANN (Internet Corporation for Assigned Names and Numbers) employees and Board members shall direct members of the ICANN (Internet Corporation for

Assigned Names and Numbers) community who voice problems, concerns, or complaints about ICANN (Internet Corporation for Assigned Names and Numbers) to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

2. ICANN (Internet Corporation for Assigned Names and Numbers) staff and other ICANN (Internet Corporation for Assigned Names and Numbers) participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.

3. Contact with the Ombudsman shall not constitute notice to ICANN (Internet Corporation for Assigned Names and Numbers) of any particular action or cause of action.

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

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

Section 5. ANNUAL REPORT

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

posted on the Website.

ARTICLE VI: BOARD OF DIRECTORS

Section 1. COMPOSITION OF THE BOARD

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

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

1. The Directors shall consist of:

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 (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 (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 (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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) Geographic Region ("Diversity Calculation").

For purposes of this sub-section 2 of Article VI, Section 2 of the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Supporting Organizations) and the At-Large Community shall seek to ensure that the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (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 (Internet Corporation for Assigned Names and Numbers) 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 (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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'s mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers) decisions on the global Internet community, and committed to the success of ICANN (Internet Corporation for Assigned Names and Numbers);

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 (generic Top Level Domain) registries and registrars; with ccTLD (Country Code Top Level Domain) registries; with IP (Internet Protocol or Intellectual Property) address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet;

5. Persons who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and

6. Persons who are able to work and communicate in written and spoken English.

Section 4. ADDITIONAL QUALIFICATIONS

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

2. No person who serves in any capacity (including as a liaison) on any Supporting Organization (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 (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 (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 (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 (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 (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 (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 (Internet Corporation for Assigned Names and Numbers). Each Director shall be responsible for disclosing to ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2003 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2003;

b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2004 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2004;

c. The regular terms of Seats 7 and 8 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2005 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2005;

d. The terms of Seats 9 and 12 shall continue until the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2015. The next terms of Seats 9 and 12 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2015 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2015;

e. The terms of Seats 10 and 13 shall continue until the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2013. The next terms of Seats 10 and 13 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2013 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third

year after 2013; and

f. The terms of Seats 11, 14 and 15 shall continue until the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2014. The next terms of Seats 11, 14 and 15 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2014 and each ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (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 (Internet Corporation for Assigned Names and Numbers) 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 (Advisory Committee);

b. One appointed by the Root Server System Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

c. One appointed by the Security (Security – Security, Stability and Resiliency (SSR))and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

d. One appointed by the Technical Liaison Group established by Article XI-A of these Bylaws;

e. One appointed by the Internet Engineering Task Force.

2. Subject to the provisions of the Transition Article of these Bylaws, the non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) written notice of its appointment.

3. Non-voting liaisons shall serve as volunteers, without compensation other than the reimbursement of certain expenses.

4. Each non-voting liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the liaison

resigns or is removed in accordance with these Bylaws.

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

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

Subject to Section 5226 of the CNPBCL, any Director or non-voting liaison may resign at any time, either by oral tender of resignation at any meeting of the Board (followed by prompt written notice to the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers)) or by giving written notice thereof to the President or the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers). 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 (Supporting Organization), notice must be provided to that Supporting Organization (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 (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 (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 (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 (Supporting Organization), in which case that vacancy shall be filled by that Supporting Organization (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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) written notice of their appointments to fill vacancies.

Section 13. ANNUAL MEETINGS

Annual meetings of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers), 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 (Internet Corporation for Assigned Names and Numbers).

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 (Internet Corporation for Assigned Names and Numbers). In the absence of designation, special meetings shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers).

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 (Internet Corporation for Assigned Names and Numbers). 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers). ICANN (Internet Corporation for Assigned Names and Numbers) shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 22. COMPENSATION

1. Except for the President of ICANN (Internet Corporation for Assigned Names and Numbers), 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 (Internet Corporation for Assigned Names and Numbers) for services to ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers); (iii) is qualified to make valuations of the type of services involved in any engagement by and for ICANN (Internet Corporation for Assigned Names and Numbers); (iv) issues to ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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.

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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers), responsible for the selection of all ICANN (Internet Corporation for Assigned Names and Numbers) Directors except the President and those Directors selected by ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (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 (Internet Corporation for Assigned Names and Numbers) Board;

2. A non-voting Chair-Elect, appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Board as a non-voting advisor;

3. A non-voting liaison appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Root Server System Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

4. A non-voting liaison appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Security (Security – Security, Stability and Resiliency (SSR))and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

5. A non-voting liaison appointed by the Governmental Advisory Committee (Advisory Committee);

6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the At-Large Advisory Committee (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 (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 (Supporting Organization) established by Article IX of these Bylaws;

b. The Council of the Address Supporting Organization (Supporting Organization) established by Article VIII of these Bylaws;

c. The Internet Engineering Task Force; and

d. The ICANN (Internet Corporation for Assigned Names and Numbers) Technical Liaison Group established by Article XI-A of these Bylaws;

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

Section 3. TERMS

Subject to the provisions of the Transition Article of these Bylaws:

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

2. The regular term of each voting delegate shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the immediately following ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers);

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 (Internet Corporation for Assigned Names and Numbers)'s mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet

Corporation for Assigned Names and Numbers) Board (and selections to any other ICANN (Internet Corporation for Assigned Names and Numbers) bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the ICANN (Internet Corporation for Assigned Names and Numbers) Board (and such other bodies), and seek to ensure that the persons selected to fill vacancies on the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) body having one or more membership positions that the Nominating Committee is responsible for filling, until the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) (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 (Supporting Organization) (ASO (Address Supporting Organization)) shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.

2. The ASO (Address Supporting Organization) shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN (Internet Corporation for Assigned Names and Numbers) and the Number Resource Organization (NRO (Number Resource Organization)), an organization of the existing regional Internet registries (RIRs).

Section 2. ADDRESS COUNCIL

1. The ASO (Address Supporting Organization) shall have an Address Council, consisting of the members of the NRO (Number Resource Organization) Number Council.

2. The Address Council shall select Directors to those seats on the Board designated to be filled by the ASO (Address Supporting Organization).

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 (Supporting Organization) (ccNSO (Country Code Names Supporting Organization)), 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 (Country Code Names Supporting Organization)'s community, including the name-related activities of ccTLDs; and

3. Coordinating with other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations), committees, and constituencies under ICANN (Internet Corporation for Assigned Names and Numbers).

Policies that apply to ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Top Level Domain) managers, assisting in skills building within the global community of ccTLD (Country Code Top Level Domain) managers, and enhancing operational and technical cooperation among ccTLD (Country Code Top Level Domain) managers.

Section 2. ORGANIZATION

The ccNSO (Country Code Names Supporting Organization) shall consist of (i) ccTLD (Country Code Top Level Domain) managers that have agreed in writing to be members of the ccNSO (Country Code Names Supporting Organization) (see Section 4(2) of this Article) and (ii) a ccNSO (Country Code Names Supporting Organization) Council responsible for managing the policy-development process of the ccNSO (Country Code Names Supporting Organization).

Section 3. ccNSO (Country Code Names Supporting Organization) COUNCIL

1. The ccNSO (Country Code Names Supporting Organization)

Council shall consist of (a) three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each of ICANN (Internet Corporation for Assigned Names and Numbers)'s Geographic Regions in the manner described in Section 4(7) through (9) of this Article; (b) three ccNSO (Country Code Names Supporting Organization) Council members selected by the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Country Code Names Supporting Organization) Council from each of the following organizations, to the extent they choose to appoint such a liaison: (a) the Governmental Advisory Committee (Advisory Committee); (b) the At-Large Advisory Committee (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 (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting Organization) Council. Appointments of liaisons shall be made by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

3. The ccNSO (Country Code Names Supporting Organization) Council may agree with the Council of any other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) to exchange observers. Such observers shall not be members of or entitled to vote on the ccNSO

(Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting Organization) Council. The appointing Council may designate its observer (or revoke or change the designation of its observer) on the ccNSO (Country Code Names Supporting Organization) Council at any time by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

4. Subject to the provisions of the Transition Article of these Bylaws: (a) the regular term of each ccNSO (Country Code Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting thereafter; (b) the regular terms of the three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Country Code Names Supporting Organization) Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council member may resign at any time by giving written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

6. ccNSO (Country Code Names Supporting Organization) Council members may be removed for not attending three consecutive meetings of the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council.

7. A vacancy on the ccNSO (Country Code Names Supporting Organization) Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO (Country Code Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selection, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair. Vacancies in the positions of the ccNSO (Country Code Names Supporting Organization) Council members selected by ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council is to administer and coordinate the affairs of the ccNSO (Country Code Names Supporting Organization) (including coordinating meetings, including an annual meeting, of ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council shall also undertake such other roles as the members of the ccNSO (Country Code Names Supporting Organization) shall decide from time to time.

9. The ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council then in office. Notification of the ccNSO (Country Code Names Supporting Organization) Council's selections shall be given by the ccNSO (Country Code Names Supporting Organization) Council Chair in writing to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, consistent with Article VI, Sections 8(4) and 12(1).

10. The ccNSO (Country Code Names Supporting Organization) Council shall select from among its members the ccNSO (Country Code Names Supporting Organization) Council Chair and such Vice Chair(s) as it deems appropriate. Selections of the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council then in office. The term of office of the ccNSO (Country Code Names Supporting Organization) Council Chair and any Vice Chair(s) shall be as specified by the ccNSO (Country Code Names Supporting Organization) Council at or before the time the selection is made. The ccNSO (Country Code Names Supporting Organization) Council Chair or any Vice Chair(s) may be recalled from office by the same procedure as used for selection.

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

12. Except as provided by paragraphs 9 and 10 of this Section, the ccNSO (Country Code Names Supporting Organization) Council shall act at meetings. The ccNSO (Country Code Names Supporting

Organization) Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO (Country Code Names Supporting Organization) Council, meetings may be held in person or by other means, provided that all ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO (Country Code Names Supporting Organization) Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

13. Notice of time and place (and information about means of participation other than personal attendance) of all meetings of the ccNSO (Country Code Names Supporting Organization) Council shall be provided to each ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council may participate in a meeting of the ccNSO (Country Code Names Supporting Organization) Council through personal attendance or use of electronic communication (such as telephone or video conference), provided that (a) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting can speak to and hear one another, (b) all ccNSO

(Country Code Names Supporting Organization) Council members participating in the meeting are provided the means of fully participating in all matters before the ccNSO (Country Code Names Supporting Organization) Council, and (c) there is a reasonable means of verifying the identity of ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting and their votes. A majority of the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council members present at any meeting at which there is a quorum shall be actions of the ccNSO (Country Code Names Supporting Organization) Council, unless otherwise provided in these Bylaws. The ccNSO (Country Code Names Supporting Organization) Council shall transmit minutes of its meetings to the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Country Code Names Supporting Organization) shall have a membership consisting of ccTLD (Country Code Top Level Domain) managers. Any ccTLD (Country Code Top Level Domain) manager that meets the membership qualifications stated in paragraph 2 of this Section shall be entitled to be members of the ccNSO (Country Code Names Supporting Organization). For purposes of this Article, a ccTLD (Country Code Top Level Domain) manager is the organization or entity responsible for managing an ISO (International Organization for Standardization) 3166 country-code top-level domain and referred to in the IANA (Internet Assigned Numbers Authority) database under the current heading of "Sponsoring Organization", or under any later variant, for that country-code top-level domain.

2. Any ccTLD (Country Code Top Level Domain) manager may become a ccNSO (Country Code Names Supporting Organization)

member by submitting an application to a person designated by the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council. The application shall include the ccTLD (Country Code Top Level Domain) manager's recognition of the role of the ccNSO (Country Code Names Supporting Organization) within the ICANN (Internet Corporation for Assigned Names and Numbers) structure as well as the ccTLD (Country Code Top Level Domain) manager's agreement, for the duration of its membership in the ccNSO (Country Code Names Supporting Organization), (a) to adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (b) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 7(3) of this Article. A ccNSO (Country Code Names Supporting Organization) member may resign from membership at any time by giving written notice to a person designated by the ccNSO (Country Code Names Supporting Organization) Council to receive notices of resignation. Upon resignation the ccTLD (Country Code Top Level Domain) manager ceases to agree to (a) adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (b) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 7(3) of this Article. In the absence of designation by the ccNSO (Country Code Names Supporting Organization) Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, who shall notify the ccNSO (Country Code Names

Supporting Organization) Council of receipt of any such applications and notices.

3. Neither membership in the ccNSO (Country Code Names Supporting Organization) 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 (Internet Assigned Numbers Authority) database. Any individual relationship a ccTLD (Country Code Top Level Domain) manager has with ICANN (Internet Corporation for Assigned Names and Numbers) or the ccTLD (Country Code Top Level Domain) manager's receipt of IANA (Internet Assigned Numbers Authority) services is not in any way contingent upon membership in the ccNSO (Country Code Names Supporting Organization).

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 (Country Code Names Supporting Organization) are referred to as ccNSO (Country Code Names Supporting Organization) members "within" the Geographic Region, regardless of the physical location of the ccTLD (Country Code Top Level Domain) manager. In cases where the Geographic Region of a ccNSO (Country Code Names Supporting Organization) member is unclear, the ccTLD (Country Code Top Level Domain) member should self-select according to procedures adopted by the ccNSO (Country Code Names Supporting Organization) Council.

5. Each ccTLD (Country Code Top Level Domain) manager may designate in writing a person, organization, or entity to represent the ccTLD (Country Code Top Level Domain) manager. In the absence of such a designation, the ccTLD (Country Code Top Level Domain) manager shall be represented by the person, organization, or entity listed as the administrative contact in the IANA (Internet Assigned Numbers Authority) database.

6. There shall be an annual meeting of ccNSO (Country Code Names Supporting Organization) members, which shall be coordinated by the ccNSO (Country Code Names Supporting Organization) Council.

Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD (Country Code Top Level Domain) managers that are not members of the ccNSO (Country Code Names Supporting Organization) as well as other non-members of the ccNSO (Country Code Names Supporting Organization) to address the meeting. To the extent practicable, annual meetings of the ccNSO (Country Code Names Supporting Organization) members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

7. The ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) members within that Geographic Region. At least 90 days before the end of the regular term of any ccNSO (Country Code Names Supporting Organization)-member-selected member of the ccNSO (Country Code Names Supporting Organization) Council, or upon the occurrence of a vacancy in the seat of such a ccNSO (Country Code Names Supporting Organization) Council member, the ccNSO (Country Code Names Supporting Organization) Council shall establish a nomination and election schedule, which shall be sent to all ccNSO (Country Code Names Supporting Organization) members within the Geographic Region and posted on the Website.

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

ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO (Country Code Names Supporting Organization) Council. Otherwise, an election by written ballot (which may be by e-mail) shall be held to select the ccNSO (Country Code Names Supporting Organization) Council members from among those nominated (with seconds and acceptances), with ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) members within the Geographic Region. The ccNSO (Country Code Names Supporting Organization) Council Chair shall provide the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary prompt written notice of the selection of ccNSO (Country Code Names Supporting Organization) Council members under this paragraph.

10. Subject to clause 4(11), ICANN (Internet Corporation for Assigned Names and Numbers) policies shall apply to ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Top Level Domain) manager which shall, at all times, remain paramount. In addition, such policies

shall apply to ICANN (Internet Corporation for Assigned Names and Numbers) in its activities concerning ccTLDs.

11. A ccNSO (Country Code Names Supporting Organization) member shall not be bound if it provides a declaration to the ccNSO (Country Code Names Supporting Organization) 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 (Domain Name System) operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO (Country Code Names Supporting Organization) Council will provide a response to the ccNSO (Country Code Names Supporting Organization) member's declaration. If there is a ccNSO (Country Code Names Supporting Organization) Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's agreement with the declaration. If the ccNSO (Country Code Names Supporting Organization) Council disagrees, the ccNSO (Country Code Names Supporting Organization) Council shall review the situation after a six-month period. At the end of that period, the ccNSO (Country Code Names Supporting Organization) Council shall make findings as to (a) whether the ccNSO (Country Code Names Supporting Organization) 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 (Domain Name System) operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO (Country Code Names Supporting Organization) Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council.

Section 5. REGIONAL ORGANIZATIONS

The ccNSO (Country Code Names Supporting Organization) Council may designate a Regional Organization for each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region, provided that the Regional Organization is open to full membership by all ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council and shall be subject to review according to procedures established by the Board.

Section 6. ccNSO (Country Code Names Supporting Organization) POLICY-DEVELOPMENT PROCESS AND SCOPE

1. The scope of the ccNSO (Country Code Names Supporting Organization)'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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) and recommending them to the Board, the ccNSO (Country Code Names Supporting Organization) shall follow the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council, a member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff may be assigned to support

the ccNSO (Country Code Names Supporting Organization) and shall be designated as the ccNSO (Country Code Names Supporting Organization) Staff Manager. Alternatively, the ccNSO (Country Code Names Supporting Organization) Council may designate, at ccNSO (Country Code Names Supporting Organization) expense, another person to serve as ccNSO (Country Code Names Supporting Organization) Staff Manager. The work of the ccNSO (Country Code Names Supporting Organization) Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO (Country Code Names Supporting Organization) Council, and may include the duties of ccPDP Issue Manager.

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

3. The ccNSO (Country Code Names Supporting Organization) Council shall establish fees to be paid by ccNSO (Country Code Names Supporting Organization) members to defray ccNSO (Country Code Names Supporting Organization) expenses as described in paragraphs 1 and 2 of this Section, as approved by the ccNSO (Country Code Names Supporting Organization) members.

4. Written notices given to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary under this Article shall be permanently retained, and shall be made available for review by the

> ccNSO (Country Code Names Supporting Organization) Council on request. The ICANN (Internet Corporation for Assigned Names and Numbers) Secretary shall also maintain the roll of members of the ccNSO (Country Code Names Supporting Organization), which shall include the name of each ccTLD (Country Code Top Level Domain) 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 (Supporting Organization) (GNSO (Generic Names Supporting Organization)), which shall be responsible for developing and recommending to the ICANN (Internet Corporation for Assigned Names and Numbers) Board substantive policies relating to generic top-level domains.

Section 2. ORGANIZATION

The GNSO (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) Council as described in Section 3(8) of this Article; and
>
> (iv) a GNSO (Generic Names Supporting Organization) Council responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization), 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 (Internet Corporation for Assigned Names and Numbers) Board of Directors.

Section 3. GNSO (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) Nominating Committee, one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the GNSO (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) Council at the same time.

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

There may also be liaisons to the GNSO (Generic Names Supporting Organization) Council from other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and/or Advisory Committees (Advisory Committees), from time to time. The appointing organization shall designate, revoke, or change its liaison on the GNSO (Generic Names Supporting Organization) Council by providing written notice to the Chair of the GNSO (Generic Names Supporting Organization) Council and to the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Generic Names Supporting Organization) Council, but otherwise liaisons shall be entitled to participate on equal footing with members of the GNSO (Generic Names Supporting Organization) Council.

2. Subject to the provisions of the Transition Article XX, and Section 5 of these Bylaws, the regular term of each GNSO (Generic Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) Operating Procedures.

3. A vacancy on the GNSO (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) Secretariat written notice of its selection. Procedures for handling Stakeholder Group-appointed GNSO (Generic Names Supporting Organization) Council member vacancies, resignations, and removals are prescribed in the applicable Stakeholder Group Charter.

A GNSO (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) Board on appeal by the affected GNSO (Generic Names Supporting Organization) Council member.

4. The GNSO (Generic Names Supporting Organization) Council is responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization). It shall adopt such procedures (the "GNSO (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) Council at any given time.

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

a. the Contracted Party House shall select a representative to fill Seat 13; and

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

Election procedures are defined in the GNSO (Generic Names Supporting Organization) Operating Procedures.

Notification of the Board seat selections shall be given by the GNSO (Generic Names Supporting Organization) Chair in writing to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, consistent with Article VI, Sections 8(4) and 12(1).

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

8. Except as otherwise required in these Bylaws, for voting purposes, the GNSO (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned
Names and Numbers) 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 (Generic Names Supporting Organization) Council.

9. Except as otherwise specified in these Bylaws, Annex A hereto, or
the GNSO (Generic Names Supporting Organization) Operating
Procedures, the default threshold to pass a GNSO (Generic Names
Supporting Organization) 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 (Generic Names
Supporting Organization) 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 (Policy
Development Process)") 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 (Policy Development Process) Not Within
Scope: requires an affirmative vote of GNSO (Generic Names
Supporting Organization) Supermajority.

d. Approve a PDP (Policy Development Process) Team Charter
for a PDP (Policy Development Process) 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 (Policy Development Process) Team Charter
for a PDP (Policy Development Process) Not Within Scope:

requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

f. Changes to an Approved PDP (Policy Development Process) Team Charter: For any PDP (Policy Development Process) Team Charter approved under d. or e. above, the GNSO (Generic Names Supporting Organization) Council may approve an amendment to the Charter through a simple majority vote of each House.

g. Terminate a PDP (Policy Development Process): Once initiated, and prior to the publication of a Final Report, the GNSO (Generic Names Supporting Organization) Council may terminate a PDP (Policy Development Process) only for significant cause, upon a motion that passes with a GNSO (Generic Names Supporting Organization) Supermajority Vote in favor of termination.

h. Approve a PDP (Policy Development Process) Recommendation Without a GNSO (Generic Names Supporting Organization) Supermajority: requires an affirmative vote of a majority of each House and further requires that one GNSO (Generic Names Supporting Organization) Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation.

i. Approve a PDP (Policy Development Process) Recommendation With a GNSO (Generic Names Supporting Organization) Supermajority: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority,

j. Approve a PDP (Policy Development Process) Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN (Internet Corporation for Assigned Names and Numbers) contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO (Generic Names Supporting Organization) Supermajority vote threshold will have to be met

or exceeded.

k. Modification of Approved PDP (Policy Development Process) Recommendation: Prior to Final Approval by the ICANN (Internet Corporation for Assigned Names and Numbers) Board, an Approved PDP (Policy Development Process) Recommendation may be modified or amended by the GNSO (Generic Names Supporting Organization) Council with a GNSO (Generic Names Supporting Organization) Supermajority vote.

l. A "GNSO (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) staff shall be assigned to support the GNSO (Generic Names Supporting Organization), whose work on substantive matters shall be assigned by the Chair of the GNSO (Generic Names Supporting Organization) Council, and shall be designated as the GNSO (Generic Names Supporting Organization) Staff Manager (Staff Manager).

2. ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the GNSO (Generic Names Supporting Organization) to carry out its responsibilities. Such support shall not include an obligation for ICANN (Internet Corporation for Assigned Names and Numbers) to fund travel expenses incurred by GNSO (Generic Names Supporting Organization) participants for travel to any meeting of the GNSO (Generic Names Supporting Organization) or for any other purpose. ICANN (Internet Corporation for Assigned Names and Numbers) may, at its discretion, fund travel expenses for GNSO (Generic Names Supporting Organization) 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 (generic Top Level Domain) registries under contract to ICANN (Internet Corporation for Assigned Names and Numbers);

b. Registrars Stakeholder Group representing all registrars accredited by and under contract to ICANN (Internet Corporation for Assigned Names and Numbers);

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 (Internet Corporation for Assigned Names and Numbers) 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 (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers). 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 (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) 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 (Advisory Committees) in addition to those set forth in this Article. Advisory Committee (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 (Advisory Committees) shall have no legal authority to act for ICANN (Internet Corporation for Assigned Names and Numbers), but shall report their findings and recommendations to the Board.

Section 2. SPECIFIC ADVISORY COMMITTEES

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

1. Governmental Advisory Committee (Advisory Committee)

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

   b. Membership in the Governmental Advisory Committee (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 (Advisory Committee) through its Chair.

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

e. Each member of the Governmental Advisory Committee (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 (Advisory Committee) shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee.

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

h. The Board shall notify the Chair of the Governmental Advisory Committee (Advisory Committee) in a timely manner of any proposal raising public policy issues on which it or any of ICANN (Internet Corporation for Assigned Names and Numbers)'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 (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 (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 (Internet Corporation for Assigned Names and Numbers) Board determines to take an action that is not consistent with the Governmental Advisory Committee (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 (Advisory Committee) and the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) Board will state in its final decision the reasons why the Governmental Advisory Committee (Advisory Committee) advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee (Advisory Committee) members with regard to public policy issues falling within their responsibilities.

2. Security (Security – Security, Stability and Resiliency (SSR))and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee)

a. The role of the Security (Security – Security, Stability and Resiliency (SSR))and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) ("SSAC (Security and Stability Advisory Committee)") is to advise the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Domain Name System) 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 (Domain Name System) 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 (Internet Corporation for Assigned Names and Numbers) community accordingly. The Committee shall recommend any necessary audit activity to assess the current status of DNS (Domain Name System) 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 (Internet Engineering Task Force), RSSAC (Root Server System Advisory Committee), 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) community and Board.

b. The SSAC (Security and Stability Advisory Committee)'s chair and members shall be appointed by the Board. SSAC (Security and Stability Advisory Committee) 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 (Security and Stability Advisory Committee) chair may provide recommendations to the Board regarding appointments to the SSAC (Security and Stability Advisory Committee). The SSAC (Security and Stability Advisory Committee) chair shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the SSAC (Security and Stability Advisory Committee) is considered for appointment or re-appointment each year. The Board shall also have to power to remove SSAC (Security and Stability Advisory Committee) appointees as recommended by or in consultation with the SSAC (Security and Stability Advisory Committee). (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 (Security and Stability Advisory Committee) shall be comprised as stated in the Bylaws as amended 25 June 2010, and the SSAC (Security and Stability Advisory Committee) chair shall recommend the re-appointment of all current SSAC (Security and Stability Advisory Committee) members to full or partial terms as appropriate to implement the

provisions of this paragraph.)

c. The SSAC (Security and Stability Advisory Committee) shall annually appoint a non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board according to Section 9 of Article VI.

3. Root Server System Advisory Committee (Advisory Committee)

a. The role of the Root Server System Advisory Committee (Advisory Committee) ("RSSAC (Root Server System Advisory Committee)") is to advise the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Root Servers) and their multiple instances with the Internet technical community and the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Domain Name System) servers.

2. Communicate on matters relating to the administration of the Root Zone (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 (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 (Internet Corporation for Assigned Names and Numbers) Board of Directors.

5. Report periodically to the Board on its activities.

6. Make policy recommendations to the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board.

b. The RSSAC (Root Server System Advisory Committee) shall be led by two co-chairs. The RSSAC (Root Server System Advisory Committee)'s chairs and members shall be appointed by the Board.

1. RSSAC (Root Server System Advisory Committee) 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 (Root Server System Advisory Committee) chairs shall provide recommendations to the Board regarding appointments to the RSSAC (Root Server System Advisory Committee). If the board declines to appoint a person nominated by the RSSAC (Root Server System Advisory Committee) then it will provide the rationale for its decision. The RSSAC (Root Server System Advisory Committee) chairs shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the RSSAC (Root Server System Advisory Committee) is considered for appointment or re-appointment each year. The Board shall also have to power to remove RSSAC (Root Server System Advisory Committee) appointees as recommended by or in consultation with the RSSAC (Root Server System Advisory Committee). (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 (Root Server System Advisory Committee) shall be comprised as stated in the Bylaws as amended 16 March 2012, and the RSSAC (Root Server System Advisory Committee) chairs shall recommend the re-appointment of all current RSSAC (Root Server System Advisory Committee) members to full or partial terms as appropriate to implement the provisions of this paragraph.)

2. The RSSAC (Root Server System Advisory Committee) shall recommend the appointment of the chairs to the board following a nomination process that it devises and documents.

c. The RSSAC (Root Server System Advisory Committee) shall annually appoint a non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board according to Section 9 of Article VI.

4. At-Large Advisory Committee (Advisory Committee)

a. The At-Large Advisory Committee (Advisory Committee) (ALAC (At-Large Advisory Committee)) is the primary organizational home within ICANN (Internet Corporation for Assigned Names and Numbers) for individual Internet users. The role of the ALAC (At-Large Advisory Committee) shall be to consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers), insofar as they relate to the interests of individual Internet users. This includes policies created through ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations), as well as the many other issues for which community input and advice is appropriate. The ALAC (At-Large Advisory Committee), which plays an important role in ICANN (Internet Corporation for Assigned Names and

Numbers)'s accountability mechanisms, also coordinates some of ICANN (Internet Corporation for Assigned Names and Numbers)'s outreach to individual Internet users.

b. The ALAC (At-Large Advisory Committee) 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 (At-Large Advisory Committee) shall be as follows:

1. The term of one member selected by each RALO shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) annual meeting after the term began.

d. The Chair of the ALAC (At-Large Advisory Committee) shall be elected by the members of the ALAC (At-Large Advisory Committee) pursuant to procedures adopted by the Committee.

e. The ALAC (At-Large Advisory Committee) 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 (/en/general/bylaws.htm#VI-5)) to the Nominating Committee.

f. Subject to the provisions of the Transition Article of these Bylaws, the At-Large Advisory Committee (Advisory Committee) may designate non-voting liaisons to each of the ccNSO (Country Code Names Supporting Organization) Council and the GNSO (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) in its Geographic Region and shall be a non-profit organization certified by ICANN (Internet Corporation for Assigned Names and Numbers) according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee (Advisory Committee). An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers) addressing the respective roles and responsibilities of ICANN (Internet Corporation for Assigned Names and Numbers) and the RALO regarding the process for selecting ALAC (At-Large Advisory Committee) 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 (Internet Corporation for Assigned Names and Numbers) according to paragraph 4(i) of this Section. If so provided by its Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers), 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 (At-Large Advisory Committee) and shall be stated in the Memorandum of Understanding between ICANN (Internet Corporation for Assigned Names and Numbers) 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 (/en/general /bylaws.htm#VI-5)) 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 (At-Large Advisory Committee), 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 (At-Large Advisory Committee) in its Rules of Procedure, save always that any changes made to the Rules of Procedure in respect of ALS (At-Large Structure) applications shall be subject to review by the RALOs and by the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (At-Large Advisory Committee) may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.

j. The ALAC (At-Large Advisory Committee) 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 (At-Large Advisory Committee) Chair in writing to the ICANN (Internet Corporation for Assigned Names and

Numbers) 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 (Internet Corporation for Assigned Names and Numbers);

3. Distributing (through posting or otherwise) an updated agenda, news about ICANN (Internet Corporation for Assigned Names and Numbers), and information about items in the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) and its work;

6. Establishing an outreach strategy about ICANN (Internet Corporation for Assigned Names and Numbers) issues in each RALO's Region;

7. Participating in the ICANN (Internet Corporation for Assigned Names and Numbers) policy development processes and providing input and advice that accurately reflects the views of individual Internet users;

8. Making public, and analyzing, ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) decision-making, so interested individuals can share their views on pending ICANN (Internet Corporation for Assigned Names and Numbers) issues.

Section 3. PROCEDURES

Each Advisory Committee (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 (Internet Corporation for Assigned Names and Numbers) to take advantage of existing expertise that resides in the public or private sector but outside of ICANN (Internet Corporation for Assigned Names and Numbers). 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'s mission to a multinational governmental or treaty organization.

3. Process for Seeking Advice-Public Policy Matters.

> a. The Governmental Advisory Committee (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 (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 (Advisory Committee), with the suggestion that the request be transmitted by the Governmental Advisory Committee (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 (Internet Corporation for Assigned Names and Numbers) body in carrying out its responsibilities.

6. Opportunity to Comment. The Governmental Advisory Committee (Advisory Committee), in addition to the Supporting Organizations (Supporting Organizations) and other Advisory Committees (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 (Internet Corporation for Assigned Names and Numbers)'s work depends on access to complete and authoritative information concerning the technical standards that

underlie ICANN (Internet Corporation for Assigned Names and Numbers)'s activities. ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)'s activities.

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

3. Role. The role of the TLG organizations shall be to channel technical information and guidance to the Board and to other ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) actions, and to draw attention to global technical standards issues that affect policy development within

the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission. This component of the TLG role covers circumstances in which ICANN (Internet Corporation for Assigned Names and Numbers) is unaware of a new development, and would therefore otherwise not realize that a question should be asked.

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

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

6. Individual Technical Experts. Each TLG organization shall designate two individual technical experts who are familiar with the technical standards issues that are relevant to ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) when ICANN (Internet Corporation for Assigned Names and Numbers) does not ask a specific TLG organization directly.

7. Board Liaison and Nominating Committee Delegate. Annually, in rotation, one TLG organization shall appoint one non-voting liaison to the Board according to Article VI, Section 9(1)(d). Annually, in rotation,

one TLG organization shall select one voting delegate to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee according to Article VII, Section 2(8)(j). The rotation order for the appointment of the non-voting liaison to the Board shall be ETSI (European Telecommunications Standards Institute), ITU (International Telecommunication Union)-T, and W3C (World Wide Web Consortium). The rotation order for the selection of the Nominating Committee delegate shall be W3C (World Wide Web Consortium), ETSI (European Telecommunications Standards Institute), and ITU (International Telecommunication Union)-T. (IAB (Internet Architecture Board) does not participate in these rotations because the IETF (Internet Engineering Task Force) otherwise appoints a non-voting liaison to the Board and selects a delegate to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee.)

ARTICLE XII: BOARD AND TEMPORARY COMMITTEES

Section 1. BOARD COMMITTEES

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

Section 2. POWERS OF BOARD COMMITTEES

1. The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

a. The filling of vacancies on the Board or on any committee;

b. The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;

c. The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;

d. The appointment of committees of the Board or the members thereof;

e. The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CNPBCL;

f. The approval of the annual budget required by Article XVI; or

g. The compensation of any officer described in Article XIII.

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

Section 3. TEMPORARY COMMITTEES

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

charters adopted by the Board in establishing such committees.

ARTICLE XIII: OFFICERS

Section 1. OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be a President (who shall serve as Chief Executive Officer), a Secretary, and a Chief Financial Officer. ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers).

Section 2. ELECTION OF OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers). 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 (Internet Corporation for Assigned Names and Numbers) and shall keep or cause to be kept, in books belonging to ICANN (Internet Corporation for Assigned Names and Numbers), full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN (Internet Corporation for Assigned Names and Numbers) in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers). The CFO shall be responsible for ICANN (Internet Corporation for Assigned Names and Numbers)'s financial planning and forecasting and shall assist the President in the preparation of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual budget. The CFO shall coordinate and oversee ICANN (Internet Corporation for Assigned Names and Numbers)'s funding, including any audits or other reviews of ICANN

(Internet Corporation for Assigned Names and Numbers) or its Supporting Organizations (Supporting Organizations). The CFO shall be responsible for all other matters relating to the financial operation of ICANN (Internet Corporation for Assigned Names and Numbers).

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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers).

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

ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers), 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 (Internet Corporation

for Assigned Names and Numbers)'s best interests and not criminal. For purposes of this Article, an "agent" of ICANN (Internet Corporation for Assigned Names and Numbers) includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (Internet Corporation for Assigned Names and Numbers) (including a member of any Supporting Organization (Supporting Organization), any Advisory Committee (Advisory Committee), the Nominating Committee, any other ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers), 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 (Internet Corporation for Assigned Names and Numbers) or to render it liable for any debts or obligations.

Section 2. DEPOSITS

All funds of ICANN (Internet Corporation for Assigned Names and Numbers)

not otherwise employed shall be deposited from time to time to the credit of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) shall be signed by such Officer or Officers, agent or agents, of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) to its Directors or Officers.

ARTICLE XVI: FISCAL MATTERS

Section 1. ACCOUNTING

The fiscal year end of ICANN (Internet Corporation for Assigned Names and Numbers) shall be determined by the Board.

Section 2. AUDIT

At the end of the fiscal year, the books of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) to Directors (including reimbursements of expenses). ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers), with the goal of fully recovering the reasonable costs of the operation of ICANN (Internet Corporation for Assigned Names and Numbers) and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN (Internet Corporation for Assigned Names and Numbers). 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) document, or in any action of the ICANN (Internet Corporation for Assigned Names and Numbers) Board or staff.

ARTICLE XVIII: OFFICES AND SEAL

Section 1. OFFICES

The principal office for the transaction of the business of ICANN (Internet Corporation for Assigned Names and Numbers) shall be in the County of Los Angeles, State of California, United States of America. ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) Bylaws, as amended and restated on 29 October 1999 and amended through 12 February 2002 (the "Old Bylaws (/en/general/archive-bylaws/bylaws-12feb02.htm)"), to the processes and structures defined by the Bylaws of which this Article is a part (the "New

Bylaws (/en/general/bylaws.htm)"). [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 (Internet Corporation for Assigned Names and Numbers) 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 <u>Article VI, Section 8(1)(a)-(c) of the New Bylaws</u>, and shall give the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) in 2003 that begins not less than seven calendar days after the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) Board of Directors. Subject to Section 4 of this Article, the Directors (<u>Article VI, Section 2(1)(a)-(d)</u>) and non-voting liaisons (<u>Article VI, Section 9</u>) as to which the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary has received notice of selection shall, along with the President (<u>Article VI, Section 2(1)(e)</u>), 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 (Internet Corporation for Assigned Names and Numbers) 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 <u>Section 8(5) of Article VI</u>, 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 (Supporting Organization) shall continue in operation according to the provisions of the Memorandum of Understanding originally entered on 18 October 1999 (/aso/aso-mou-26aug99.htm) between ICANN (Internet Corporation for Assigned Names and Numbers) and a group of regional Internet registries (RIRs), and amended in October 2000 (/aso/aso-mou-amend1-25sep00.htm), until a replacement Memorandum of Understanding becomes effective. Promptly after the adoption of this Transition Article, the Address Supporting Organization (Supporting Organization) shall make selections, and give the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Supporting Organization), as called for in Article VII, Section 2(8)(f) of the New Bylaws.

With respect to the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Supporting Organization) may select those Directors from among the persons it previously selected as ICANN (Internet Corporation for Assigned Names and Numbers) Directors pursuant to the Old Bylaws. To the extent the Address Supporting Organization (Supporting Organization) does not provide the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice, on or before 31 March 2003, of its selections for Seat 9 and Seat 10, the Address Supporting Organization (Supporting Organization) shall be deemed to have selected for Seat 9 the person it selected as an

ICANN (Internet Corporation for Assigned Names and Numbers) Director pursuant to the Old Bylaws for a term beginning in 2001 and for Seat 10 the person it selected as an ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Country Code Top Level Domain) managers (with at least four within each Geographic Region) as members of the ccNSO (Country Code Names Supporting Organization), written notice shall be posted on the Website. As soon as feasible after that notice, the members of the initial ccNSO (Country Code Names Supporting Organization) Council to be selected by the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council has been constituted shall be posted on the Website. Three ccNSO (Country Code Names Supporting Organization) Council members shall be selected by the ccNSO (Country Code Names Supporting Organization) members within each Geographic Region, with one member to serve a term that ends upon the conclusion of the first ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted. (The definition of "ccTLD (Country Code Top Level Domain) 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 (Country Code Names Supporting Organization) Council described in Article IX, Section 3(1)(b). In selecting three individuals to serve on the ccNSO (Country Code Names Supporting Organization) Council, the Nominating Committee shall designate one to serve a term that ends upon the conclusion of the first ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted. The three members of the ccNSO (Country Code Names Supporting Organization) Council selected by the Nominating Committee shall not take their seats before the ccNSO (Country Code Names Supporting Organization) Council is constituted.

3. Upon the ccNSO (Country Code Names Supporting Organization) Council being constituted, the At-Large Advisory Committee (Advisory Committee) and the Governmental Advisory Committee (Advisory Committee) may designate one liaison each to the ccNSO (Country Code Names Supporting Organization) Council, as provided by Article IX, Section 3(2)(a) and (b).

4. Upon the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council.

5. Until the ccNSO (Country Code Names Supporting Organization) Council is constituted, Seats 11 and 12 on the New Board shall remain vacant. Promptly after the ccNSO (Country Code Names Supporting

Organization) Council is constituted, the ccNSO (Country Code Names Supporting Organization) shall, through the ccNSO (Country Code Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selections.

6. Until the ccNSO (Country Code Names Supporting Organization) Council is constituted, the delegate to the Nominating Committee established by the New Bylaws designated to be selected by the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Top Level Domain) community. Upon the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council may replace that delegate with one of its choosing within three months after the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Country Code Names Supporting Organization) Council.

Section 5. GENERIC NAMES SUPPORTING ORGANIZATION

1. The Generic Names Supporting Organization (Supporting Organization) ("GNSO (Generic Names Supporting Organization)"), 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 (Generic Names Supporting Organization), subject to ICANN (Internet Corporation for Assigned

Names and Numbers) Board approval of each individual Stakeholder Group Charter:

> a. The gTLD (generic Top Level Domain) 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 (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) Constituency described in paragraph 1 (c-f) shall submit to the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) meeting in October 2009, or another date as the Board may designate by resolution.

3. Prior to the commencement of the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in October 2009, or another

date the Board may designate by resolution, the GNSO (Generic Names Supporting Organization) Council shall consist of its current Constituency structure and officers as described in Article X, Section 3(1) of the Bylaws (/en/general/archive-bylaws/bylaws-20mar09.htm#X-3.1) (as amended and restated on 29 October 1999 and amended through 20 March 2009 (the "Old Bylaws")). Thereafter, the composition of the GNSO (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) Council or ICANN (Internet Corporation for Assigned Names and Numbers) Board.

4. Beginning with the commencement of the ICANN (Internet Corporation for Assigned Names and Numbers) Meeting in October 2009, or another date the Board may designate by resolution (the "Effective Date of the Transition"), the GNSO (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) Council at large.

Representatives on the GNSO (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) Meeting that will permit those representatives to act in their official capacities at the start of said meeting.

5. The GNSO (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) meeting in October 2009, or another date the Board may designate by resolution, the GNSO (Generic Names Supporting Organization) Council shall, in accordance with Article X, Section 3(7) and its GNSO (Generic Names Supporting Organization) Operating Procedures, elect officers and give the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selections.

Section 6. PROTOCOL SUPPORTING ORGANIZATION

The Protocol (Protocol) Supporting Organization (Supporting Organization) referred to in the Old Bylaws (/en/general/archive-bylaws/bylaws-12feb02.htm#VI-C) is discontinued.

Section 7. ADVISORY COMMITTEES AND TECHNICAL LIAISON GROUP

1. Upon the adoption of the New Bylaws, the Governmental Advisory Committee (Advisory Committee) shall continue in operation according to its existing operating principles and practices, until further action of the committee. The Governmental Advisory Committee (Advisory Committee) may designate liaisons to serve with other ICANN (Internet Corporation for Assigned Names and Numbers) bodies as contemplated by the New Bylaws by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary. Promptly upon the adoption of this Transition Article, the Governmental Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Security – Security, Stability and Resiliency (SSR))and Stability (Security, Stability and Resiliency) Advisory Committee (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 (Security – Security, Stability and Resiliency (SSR))and Stability

(Security, Stability and Resiliency) Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (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 (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Advisory Committee)

> a. There shall exist an Interim At-Large Advisory Committee (Advisory Committee) until such time as ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Advisory Committee) shall be composed of (i) ten individuals (two from each ICANN (Internet Corporation for Assigned Names and Numbers) region) selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Board following nominations by the At-Large Organizing Committee and (ii) five additional individuals (one from each ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) annual meeting in 2004 and three of these individuals to serve terms until the conclusion of

the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Advisory Committee) established by Article XI, Section 2(4) of the New Bylaws. Upon the entity's written notification to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of such selections, those persons shall immediately assume the seats held until that notification by the Interim At-Large Advisory Committee (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 (Advisory Committee) shall become the At-Large Advisory Committee (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 (Advisory Committee) by the Nominating Committee shall become members of the At-Large Advisory Committee (Advisory Committee) for the remainder of the terms for which they were selected.

d. Promptly upon its creation, the Interim At-Large Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) officers (as defined in Article XIII of the New Bylaws) shall be elected by the then-existing Board of ICANN (Internet Corporation for Assigned Names and

Numbers) 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 (Internet Corporation for Assigned Names and Numbers) President shall continue unchanged in membership, scope, and operation until changes are made by the President.

Section 10. CONTRACTS WITH ICANN (Internet Corporation for Assigned Names and Numbers)

Notwithstanding the adoption or effectiveness of the New Bylaws, all agreements, including employment and consulting agreements, entered by ICANN (Internet Corporation for Assigned Names and Numbers) shall continue in effect according to their terms.

Annex A: GNSO (Generic Names Supporting Organization) Policy Development Process

The following process shall govern the GNSO (Generic Names Supporting Organization) policy development process ("PDP (Policy Development Process)") until such time as modifications are recommended to and approved by the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors ("Board"). The role of the GNSO (Generic Names Supporting Organization) is outlined in Article X of these Bylaws. If the GNSO (Generic Names Supporting Organization) is conducting activities that are not intended to result in a Consensus (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 (Consensus) Policies as defined within ICANN (Internet Corporation for Assigned Names and Numbers) contracts, and any other policies for which the GNSO (Generic Names Supporting Organization) Council requests application of this Annex A:

a. Final Issue Report requested by the Board, the GNSO (Generic Names Supporting Organization) Council ("Council") or Advisory Committee (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 (Policy Development Process) Recommendations contained in the Final Report, by the required thresholds;

g. PDP (Policy Development Process) Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council]; and

h. Board approval of PDP (Policy Development Process) Recommendations.

Section 2. **Policy Development Process Manual**

The GNSO (Generic Names Supporting Organization) shall maintain a Policy Development Process Manual (PDP (Policy Development Process) Manual) within the operating procedures of the GNSO (Generic Names Supporting Organization) maintained by the GNSO (Generic Names Supporting Organization) Council. The PDP (Policy Development Process) Manual shall contain specific additional guidance on completion of all elements of a PDP (Policy Development Process), including those elements that are not otherwise defined in these Bylaws. The PDP (Policy

Development Process) 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 (Generic Names Supporting Organization) Council ("Council") to begin the process outlined the PDP (Policy Development Process) Manual. In the event the Board makes a request for an Issue Report, the Board should provide a mechanism by which the GNSO (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) 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 (Advisory Committee) Request. An Advisory Committee (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 (Generic Names Supporting Organization) 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 (Generic Names Supporting Organization) Council; or (iii) a properly supported motion from an Advisory Committee (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 (Policy Development Process), if known;

e) The opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers)'s mission, policy process and more specifically the role of the GNSO (Generic Names Supporting Organization) as set forth in the Bylaws.

f) The opinion of ICANN (Internet Corporation for Assigned Names and Numbers) Staff as to whether the Council should initiate the PDP (Policy Development Process) on the issue

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the ICANN (Internet Corporation for Assigned Names and Numbers) website for a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

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 (Generic Names Supporting Organization) Council for consideration for initiation of a PDP (Policy Development Process).

Section 5. **Initiation of the PDP (Policy Development Process)**

The Council may initiate the PDP (Policy Development Process) as follows:

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

the timeframe set forth in the PDP (Policy Development Process) Manual, shall initiate a PDP (Policy Development Process). No vote is required for such action.

GNSO (Generic Names Supporting Organization) Council or Advisory Committee (Advisory Committee) Requests: The Council may only initiate the PDP (Policy Development Process) by a vote of the Council. Initiation of a PDP (Policy Development Process) requires a vote as set forth in Article X, Section 3, paragraph 9(b) and (c) in favor of initiating the PDP (Policy Development Process).

Section 6. **Reports**

An Initial Report should be delivered to the GNSO (Generic Names Supporting Organization) Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), which time may be extended in accordance with the PDP (Policy Development Process) 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 (Policy Development Process) Manual.

The Council approval process is set forth in Article X, Section 3, paragraph 9(d) through (g), as supplemented by the PDP (Policy Development Process) Manual.

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

If the PDP (Policy Development Process) recommendations contained in the Final Report are approved by the GNSO (Generic Names Supporting Organization) Council, a Recommendations Report shall be approved by the GNSO (Generic Names Supporting Organization) Council for delivery to the

ICANN (Internet Corporation for Assigned Names and Numbers) Board.

Section 9. **Board Approval Processes**

The Board will meet to discuss the GNSO (Generic Names Supporting Organization) 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 (Policy Development Process) Recommendations contained within the Recommendations Report shall proceed as follows:

a. Any PDP (Policy Development Process) Recommendations approved by a GNSO (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). If the GNSO (Generic Names Supporting Organization) Council recommendation was approved by less than a GNSO (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO (Generic Names Supporting Organization) Supermajority Vote or less than a GNSO (Generic Names Supporting Organization) Supermajority vote is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers) (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 (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). For any Supplemental Recommendation approved by less than a GNSO (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

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 (Internet Corporation for Assigned Names and Numbers) staff to work with the GNSO (Generic Names Supporting Organization) Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy. The GNSO (Generic Names Supporting Organization) 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 (Policy Development Process), from policy suggestion

to a final decision by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) will maintain on the Website, a status web page detailing the progress of each PDP (Policy Development Process) issue. Such status page will outline the completed and upcoming steps in the PDP (Policy Development Process) process, and contain links to key resources (e.g. Reports, Comments Fora, WG (Working Group) Discussions, etc.).

Section 12. **Additional Definitions**

"Comment Site", "Comment Forum", "Comments For a" and "Website" refer to one or more websites designated by ICANN (Internet Corporation for Assigned Names and Numbers) on which notifications and comments regarding the PDP (Policy Development Process) 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 (Generic Names Supporting Organization) Council.

"Staff Manager" means an ICANN (Internet Corporation for Assigned Names and Numbers) staff person(s) who manages the PDP (Policy Development Process).

"GNSO (Generic Names Supporting Organization) 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 (Policy Development Process). If the Council determines that any ongoing PDP (Policy Development Process) cannot be feasibly transitioned to these updated procedures, the PDP (Policy Development Process) shall be concluded according to the procedures set forth in Annex A in force on 7 December 2011.

Annex B: ccNSO (Country Code Names Supporting Organization) Policy-Development Process (ccPDP)

The following process shall govern the ccNSO (Country Code Names Supporting Organization) policy-development process ("PDP (Policy Development Process)").

1. Request for an Issue Report

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

a. *Council.* The ccNSO (Country Code Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

d. *ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee).* An ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or an ICANN (Internet Corporation for Assigned Names and Numbers) Advisory Committee (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 (Country Code Names Supporting Organization).* The members of the ccNSO (Country Code Names

Supporting Organization) may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO (Country Code Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) (in which case the costs of the Issue Manager shall be borne by ICANN (Internet Corporation for Assigned Names and Numbers)) or such other person or persons selected by the Council (in which case the ccNSO (Country Code Names Supporting Organization) 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 (Policy Development Process);

e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP (Policy Development Process) for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) policy process and within the scope of the ccNSO (Country Code Names Supporting Organization). In coming to his or her opinion, the General Counsel shall examine whether:

> 1) The issue is within the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Country Code Names Supporting Organization);

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 (Internet Corporation for Assigned Names and Numbers) 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 (Country Code Names Supporting Organization) (Annex C) shall be within the scope of ICANN (Internet Corporation for Assigned Names and Numbers) and the ccNSO (Country Code Names Supporting Organization).

In the event that General Counsel is of the opinion the issue is not

properly within the scope of the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) shall inform the Issue Manager accordingly. General Counsel and the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO (Country Code Names Supporting Organization) 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 (Policy Development Process) 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 (Policy Development Process), a proposed time line for conducting each of the stages of PDP (Policy Development Process) outlined herein (PDP (Policy Development Process) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Policy Development Process).

3. Initiation of PDP (Policy Development Process)

The Council shall decide whether to initiate the PDP (Policy Development Process) 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 (Policy Development Process). 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 (Policy Development Process) shall be required to initiate the PDP (Policy Development Process) provided that the Issue Report states that the issue is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) mission statement and the ccNSO (Country Code Names Supporting Organization) Scope.

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

At the meeting of the Council where the PDP (Policy Development Process) 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 (Policy Development Process) 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 (Country Code Names Supporting Organization) and, following formal request for GAC (Governmental Advisory Committee) participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee (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 (Policy Development Process), 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 (Policy Development Process) Time Line.

6. Public Notification of Initiation of the PDP (Policy Development Process) and Comment Period

After initiation of the PDP (Policy Development Process), ICANN (Internet Corporation for Assigned Names and Numbers) shall post a notification of such action to the Website and to the other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees). A comment period (in accordance with the PDP (Policy Development Process) Time Line, and ordinarily at least 21 days long) shall be commenced for the issue.

Comments shall be accepted from ccTLD (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (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 (Country Code Names Supporting Organization) 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 (Policy Development Process) 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 (Policy Development Process);

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 (Policy Development Process) 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 (Country Code Names Supporting Organization) 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 (Policy Development Process) 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 (Country Code Names Supporting Organization) 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 (Policy Development Process) 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 (Policy Development Process) 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 (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (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 (Policy Development Process) 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 (Policy Development Process) Time Line.

b. The Council may, in its discretion, take other steps to assist in the PDP (Policy Development Process), 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 (Policy Development Process) Time Line.

c. The Council shall formally request the Chair of the GAC (Governmental Advisory Committee) 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 (Policy Development Process) 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 (Policy Development Process) 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 (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (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 (Policy Development Process) 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 (Policy Development Process) Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC (Governmental Advisory Committee) Chair an invitation to the GAC (Governmental Advisory Committee) 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 (Policy Development Process) 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 (Policy Development Process) Time Line, the ccNSO (Country Code Names Supporting Organization) 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 (Policy Development Process) Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes within the voting period, the resulting vote will be be employed without further process. In the event that fewer than 50% of the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) members, will be employed if at least 50% of the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Recommendation.

14. Board Report

The Issue Manager shall within seven days after a ccNSO (Country Code Names Supporting Organization) Recommendation being made in accordance with Item 13 incorporate the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or of ICANN (Internet Corporation for Assigned Names and Numbers).

> 1. In the event that the Board determines not to act in accordance with the ccNSO (Country Code Names Supporting Organization) Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO (Country Code Names Supporting

Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Recommendation or ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Policy Development Process) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Country Code Names Supporting Organization)

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 (Country Code Names Supporting Organization)'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 (Country Code Names Supporting Organization)'s authority and responsibilities must recognize the complex relation between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers/registries with regard to policy issues. This annex shall assist the ccNSO (Country Code Names Supporting Organization), the ccNSO (Country Code Names Supporting Organization) Council, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO (Country Code Names Supporting Organization)'s policy role should be based on an analysis of the following functional model of the DNS (Domain Name System):

> 1. Data is registered/maintained to generate a zone file,
>
> 2. A zone file is in turn used in TLD (Top Level Domain) name servers.

Within a TLD (Top Level Domain) 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 (Top Level Domain) (Name Server Function).

These two core functions must be performed at the ccTLD (Country Code Top Level Domain) registry level as well as at a higher level (IANA (Internet Assigned Numbers Authority) function and root servers) and at lower levels of the DNS (Domain Name System) hierarchy. This mechanism, as RFC (Request for Comments) 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 (Top Level Domain) 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 (National Science Foundation (USA)))

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 (Country Code Top Level Domain) 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 (Country Code Top Level Domain) registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC (Request for Comments) 1591.

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

It is in the interest of ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers to ensure the stable and proper functioning of the domain name system. ICANN (Internet Corporation for Assigned Names and Numbers) and the ccTLD (Country Code Top Level Domain) registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO (Country Code Names Supporting Organization) cannot be established without reaching a common understanding of the allocation of authority between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) registries.

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

- Policy role: i.e. the ability and power to define a policy;

- Executive role: i.e. the ability and power to act upon and implement the policy; and

- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

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

The information below offers an aid to:

1. delineate and identify specific policy areas;

2. define and determine roles with regard to these specific policy areas.

This annex defines the scope of the ccNSO (Country Code Names Supporting Organization) with regard to developing policies. The scope is limited to the policy role of the ccNSO (Country Code Names Supporting Organization) 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 (Internet Engineering Task Force), RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers))
> Executive role: Root Server System Operators
> Accountability role: RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers)), (US DoC-ICANN (Internet Corporation for Assigned Names and Numbers) MoU (Memorandum of Understanding))
>
> Level 2: ccTLD (Country Code Top Level Domain) Registry Name Servers in respect to interoperability
> Policy role: ccNSO (Country Code Names Supporting Organization) Policy Development Process (ICANN (Internet Corporation for Assigned Names and Numbers)), for best practices a ccNSO (Country Code Names Supporting Organization) process can be organized
> Executive role: ccTLD (Country Code Top Level Domain) Manager
> Accountability role: part ICANN (Internet Corporation for Assigned Names and Numbers) (IANA (Internet Assigned Numbers Authority)), part Local Internet Community, including local government
>
> Level 3: User's Name Servers
> Policy role: ccTLD (Country Code Top Level Domain) Manager, IETF (Internet Engineering Task Force) (RFC (Request for Comments))
> Executive role: Registrant (Registrant)
> Accountability role: ccTLD (Country Code Top Level Domain) Manager

Data Entry Function (as to ccTLDs)

Level 1: Root Level Registry
Policy role: ccNSO (Country Code Names Supporting Organization)
Policy Development Process (ICANN (Internet Corporation for
Assigned Names and Numbers))
Executive role: ICANN (Internet Corporation for Assigned Names and
Numbers) (IANA (Internet Assigned Numbers Authority))
Accountability role: ICANN (Internet Corporation for Assigned Names
and Numbers) community, ccTLD (Country Code Top Level Domain)
Managers, US DoC, (national authorities in some cases)

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

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

You Tube
(http://www.youtube.com
/icannnews)

Twitter
(https://www.twitter.com
/icann)

LinkedIn
(https://www.linkedin.com
/company/icann)

Flickr (http://www.flickr.com
/photos/icann)

Facebook
(http://www.facebook.com
/icannorg)

RSS Feeds (/en/news/rss)

Community Wiki
(https://community.icann.org)

ICANN Blog (/news/blog)

Who We Are

Get Started
(/get-started)

Learning
(/en/about
/learning)

Participate
(/en/about
/participate)

Groups
(https://www.icann.org
/resources
/pages/groups-
2012-02-06-en)

Board
(/resources
/pages/board-
of-directors-
2014-03-19-en)

President's
Corner
(/presidents-
corner)

Staff (/en/about
/staff)

Careers
(https://icann-
openhire.silkroad.com
/epostings
/index.cfm?fuseaction=app.allpositions&
amp;company_id=16025&
amp;version=1)

Newsletter
(/en/news
/newsletter)

Development
and Public
Responsibility
(https://www.icann.org
/development-
and-public-
responsibility)

Contact Us

Offices
(https://forms.icann.org
/en/contact)

Global Support
(/resources
/pages
/customer-
support-
2015-06-22-en)

Security Team
(/about/staff
/security)

PGP Keys
(/en/contact
/pgp-keys)

Certificate
Authority
(/contact
/certificate-
authority)

Registry Liaison
(/resources
/pages/contact-
f2-2012-02-25-en)

AOC Review
(http://forms.icann.org
/en/about
/aoc-review
/contact)

Organizational
Reviews
(http://forms.icann.org
/en/groups
/reviews
/contact)

Request a
Speaker
(http://forms.icann.org
/en/contact
/speakers)

For Journalists
(/en/news
/press)

Accountability & Transparency

Accountability
Mechanisms
(/en/news
/in-focus
/accountability
/mechanisms)

Independent
Review Process
(/resources
/pages
/irp-2012-02-25-en)

Request for
Reconsideration
(/groups/board
/governance
/reconsideration)

Ombudsman
(/help
/ombudsman)

Governance

Documents
(/en/about
/governance)

Agreements
(/en/about
/agreements)

AOC Review
(/en/about
/aoc-review)

Annual Report
(/about/annual-
report)

Financials
(/en/about
/financials)

Document
Disclosure
(/en/about
/transparency)

Planning
(/en/about
/planning)

Dashboard Beta
(https://www.icann.org
/dashboard)

RFPs (/en/news
/rfps)

Litigation
(/en/news
/litigation)

Correspondence
(/en/news
/correspondence)

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A California Nonprofit Public-Benefit Corporation

As amended effective 29 May 2008

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ARTICLE I: MISSION AND CORE (Council of Registrars) VALUES

Section 1. MISSION

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

1. Coordinates the allocation and assignment of the three sets of
unique identifiers for the Internet, which are

a. Domain names (forming a system referred to as "DNS (Domain Name System)");

b. Internet protocol ("IP (Internet Protocol or Intellectual Property)") addresses and autonomous system ("AS (Autonomous System ("AS") Numbers)") numbers; and

c. Protocol (Protocol) port and parameter numbers.

2. Coordinates the operation and evolution of the DNS (Domain Name System) root name server system.

3. Coordinates policy development reasonably and appropriately related to these technical functions.

Section 2. CORE (Council of Registrars) VALUES

In performing its mission, the following core values should guide the decisions and actions of ICANN (Internet Corporation for Assigned Names and Numbers):

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

2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN (Internet Corporation for Assigned Names and Numbers)'s activities to those matters within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission requiring or significantly benefiting from global coordination.

3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.

4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.

6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

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

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

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

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

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

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

circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

ARTICLE II: POWERS

Section 1. GENERAL POWERS

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

Section 2. RESTRICTIONS

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

Section 3. NON-DISCRIMINATORY TREATMENT

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

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

ICANN (Internet Corporation for Assigned Names and Numbers) and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

Section 2. WEBSITE

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

Section 3. MANAGER OF PUBLIC PARTICIPATION

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

Internet users.

Section 4. MEETING NOTICES AND AGENDAS

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

Section 5. MINUTES AND PRELIMINARY REPORTS

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

2. No later than five (5) business days after each meeting (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the preliminary report made publicly available. 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.

3. No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office, then the next immediately following business day), the minutes shall be made publicly available on the Website; provided, however, that any minutes

relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.

Section 6. NOTICE AND COMMENT ON POLICY ACTIONS

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

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

2. Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be

held for discussion of any proposed policies as described in Section 6(1)(b) of this Article, prior to any final Board action.

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

Section 7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN (Internet Corporation for Assigned Names and Numbers) budget, ICANN (Internet Corporation for Assigned Names and Numbers) shall facilitate the translation of final published documents into various appropriate languages.

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 1. PURPOSE

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

Section 2. RECONSIDERATION

1. ICANN (Internet Corporation for Assigned Names and Numbers) shall have in place a process by which any person or entity materially affected by an action of ICANN (Internet Corporation for Assigned Names and Numbers) may request review or reconsideration of that action by the Board.

2. Any person or entity may submit a request for reconsideration or review of an ICANN (Internet Corporation for Assigned Names and Numbers) action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:

a. one or more staff actions or inactions that contradict established ICANN (Internet Corporation for Assigned Names and Numbers) policy(ies); or

b. one or more actions or inactions of the ICANN (Internet Corporation for Assigned Names and Numbers) Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act.

3. There shall be a Committee of the Board consisting of not less than three directors to review and consider any such requests ("Reconsideration Committee"). The Reconsideration Committee shall have the authority to:

a. evaluate requests for review or reconsideration;

b. determine whether a stay of the contested action pending resolution of the request is appropriate;

c. conduct whatever factual investigation is deemed appropriate;

d. request additional written submissions from the affected party, or from other parties; and

e. make a recommendation to the Board of Directors on the merits of the request.

4. ICANN (Internet Corporation for Assigned Names and Numbers) shall absorb the normal administrative costs of the reconsideration

process. It reserves the right to recover from a party requesting review or reconsideration any costs which are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the party seeking reconsideration, who shall then have the option of withdrawing the request or agreeing to bear such costs.

5. All Reconsideration Requests must be submitted to an e-mail address designated by the Board's Reconsideration Committee within thirty days after:

a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a preliminary report or minutes of the Board's meetings; or

b. for requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or

c. for requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

6. All Reconsideration Requests must include the information required by the Reconsideration Committee, which shall include at least the following information:

a. name, address, and contact information for the requesting party, including postal and e-mail addresses;

b. the specific action or inaction of ICANN (Internet Corporation for Assigned Names and Numbers) for which review or reconsideration is sought;

c. the date of the action or inaction;

d. the manner by which the requesting party will be affected by the action or inaction;

e. the extent to which, in the opinion of the party submitting the Request for Reconsideration, the action or inaction complained of adversely affects others;

f. whether a temporary stay of any action complained of is requested, and if so, the harms that will result if the action is not stayed;

g. in the case of staff action or inaction, a detailed explanation of the facts as presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN (Internet Corporation for Assigned Names and Numbers) policy(ies);

h. in the case of Board action or inaction, a detailed explanation of the material information not considered by the Board and, if the information was not presented to the Board, the reasons the party submitting the request did not submit it to the Board before it acted or failed to act;

i. what specific steps the requesting party asks ICANN (Internet Corporation for Assigned Names and Numbers) to take-i.e., whether and how the action should be reversed, cancelled, or modified, or what specific action should be taken;

j. the grounds on which the requested action should be taken; and

k. any documents the requesting party wishes to submit in support of its request.

7. All Reconsideration Requests shall be posted on the Website.

8. The Reconsideration Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as (i) the requests involve the same general action

or inaction and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction.

9. The Reconsideration Committee shall review Reconsideration Requests promptly upon receipt and announce, within thirty days, its intention to either decline to consider or proceed to consider a Reconsideration Request after receipt of the Request. The announcement shall be posted on the Website.

10. The Reconsideration Committee announcement of a decision not to hear a Reconsideration Request must contain an explanation of the reasons for its decision.

11. The Reconsideration Committee may request additional information or clarifications from the party submitting the Request for Reconsideration.

12. The Reconsideration Committee may ask the ICANN (Internet Corporation for Assigned Names and Numbers) staff for its views on the matter, which comments shall be made publicly available on the Website.

13. If the Reconsideration Committee requires additional information, it may elect to conduct a meeting with the party seeking Reconsideration by telephone, e-mail or, if acceptable to the party requesting reconsideration, in person. To the extent any information gathered in such a meeting is relevant to any recommendation by the Reconsideration Committee, it shall so state in its recommendation.

14. The Reconsideration 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 Reconsideration Committee, it shall so state in its recommendation.

15. The Reconsideration Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN (Internet Corporation for Assigned Names and Numbers) staff, and by any third party.

16. To protect against abuse of the reconsideration process, a request for reconsideration may be dismissed by the Reconsideration Committee where it is repetitive, frivolous, non-substantive, or otherwise abusive, or where the affected party had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. Likewise, the Reconsideration Committee may dismiss a request when the requesting party does not show that it will be affected by ICANN (Internet Corporation for Assigned Names and Numbers)'s action.

17. The Reconsideration Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within ninety days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. The final recommendation shall be posted on the Website.

18. The Board shall not be bound to follow the recommendations of the Reconsideration Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken.

19. The Reconsideration Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:

a. the number and general nature of Reconsideration Requests received;

b. the number of Reconsideration Requests on which the Committee has taken action;

c. the number of Reconsideration Requests that remained pending at the end of the calendar year and the average length of time for which such Reconsideration Requests have been pending;

d. a description of any Reconsideration Requests that were pending at the end of the calendar year for more than ninety (90) days and the reasons that the Committee has not taken action on them;

e. the number and nature of Reconsideration Requests that the Committee declined to consider on the basis that they did not meet the criteria established in this policy;

f. for Reconsideration Requests that were denied, an explanation of any other mechanisms available to ensure that ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to persons materially affected by its decisions; and

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

20. Each annual report shall also aggregate the information on the topics listed in paragraph 19(a)-(e) of this Section for the period beginning 1 January 2003.

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in Section 2 of this Article, ICANN (Internet Corporation for Assigned Names and Numbers) shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.

2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that

decision or action.

3. Requests for such independent review shall be referred to an Independent Review Panel ("IRP"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws.

4. The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN (Internet Corporation for Assigned Names and Numbers) ("the IRP Provider") using arbitrators under contract with or nominated by that provider.

5. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this Section 3.

6. Either party may elect that the request for independent review be considered by a three-member panel; in the absence of any such election, the issue shall be considered by a one-member panel.

7. The IRP Provider shall determine a procedure for assigning members to individual panels; provided that if ICANN (Internet Corporation for Assigned Names and Numbers) so directs, the IRP Provider shall establish a standing panel to hear such claims.

8. The IRP shall have the authority to:

   a. request additional written submissions from the party seeking review, the Board, the Supporting Organizations (Supporting Organizations), or from other parties;

   b. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and

   c. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP.

9. Individuals holding an official position or office within the ICANN (Internet Corporation for Assigned Names and Numbers) structure are not eligible to serve on the IRP.

10. In order to keep the costs and burdens of independent review as low as possible, the IRP should conduct its proceedings by e-mail and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP may hold meetings by telephone.

11. The IRP shall adhere to conflicts-of-interest policy stated in the IRP Provider's operating rules and procedures, as approved by the Board.

12. Declarations of the IRP shall be in writing. The IRP shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.

13. The IRP operating procedures, and all petitions, claims, and declarations, shall be posted on the Website when they become available.

14. The IRP may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets.

15. Where feasible, the Board shall consider the IRP declaration at the Board's next meeting.

Section 4. PERIODIC REVIEW OF ICANN (Internet Corporation for Assigned Names and Numbers) STRUCTURE AND OPERATIONS

1. The Board shall cause a periodic review, if feasible no less frequently than every three years, of the performance and operation of each Supporting Organization (Supporting Organization), each Supporting Organization (Supporting Organization) Council, each Advisory Committee (Advisory Committee) (other than the Governmental Advisory Committee), and the Nominating Committee by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN (Internet Corporation for Assigned Names and Numbers) structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness. The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN (Internet Corporation for Assigned Names and Numbers) being reviewed by a two-thirds vote of all members of the Board.

2. The first of such reviews, to be initiated no later than 15 December 2003 and to be completed in time for Board consideration at ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2004, shall be of the GNSO (Generic Names Supporting Organization) Council and the ICANN (Internet Corporation for Assigned Names and Numbers) Root Server System Advisory Committee (Advisory Committee). The second of such reviews, to be initiated no later than 15 November 2004 and to be completed in time for Board consideration at ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2005, shall be of the ccNSO (Country Code Names Supporting Organization), the ccNSO (Country Code Names Supporting Organization) Council, and such other organizations as the Board may designate.

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

ARTICLE V: OMBUDSMAN

Section 1. OFFICE OF OMBUDSMAN

1. There shall be an Office of Ombudsman, to be managed by an Ombudsman and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.

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

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

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

Section 2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration Policy set forth in Section 2 of Article IV or the Independent Review Policy set forth in Section 3 of Article IV have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN (Internet Corporation for Assigned Names and Numbers) community who believe that the ICANN (Internet Corporation for Assigned Names and Numbers) staff,

Board or an ICANN (Internet Corporation for Assigned Names and Numbers) constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN (Internet Corporation for Assigned Names and Numbers) staff, the Board, or ICANN (Internet Corporation for Assigned Names and Numbers) constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

Section 3. OPERATIONS

The Office of Ombudsman shall:

1. facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN (Internet Corporation for Assigned Names and Numbers) community (excluding employees and vendors/suppliers of ICANN (Internet Corporation for Assigned Names and Numbers)) may have with specific actions or failures to act by the Board or ICANN (Internet Corporation for Assigned Names and Numbers) staff which have not otherwise become the subject of either the Reconsideration or Independent Review Policies;

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

3. have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN (Internet Corporation for Assigned Names and Numbers) staff and constituent bodies to enable an informed evaluation of the complaint

and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN (Internet Corporation for Assigned Names and Numbers));

4. heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN (Internet Corporation for Assigned Names and Numbers) community and online availability;

5. maintain neutrality and independence, and have no bias or personal stake in an outcome; and

6. comply with all ICANN (Internet Corporation for Assigned Names and Numbers) conflicts-of-interest and confidentiality policies.

Section 4. INTERACTION WITH ICANN (Internet Corporation for Assigned Names and Numbers) AND OUTSIDE ENTITIES

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

2. ICANN (Internet Corporation for Assigned Names and Numbers) staff and other ICANN (Internet Corporation for Assigned Names and Numbers) participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.

3. Contact with the Ombudsman shall not constitute notice to ICANN (Internet Corporation for Assigned Names and Numbers) of any particular action or cause of action.

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

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

Section 5. ANNUAL REPORT

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

ARTICLE VI: BOARD OF DIRECTORS

Section 1. COMPOSITION OF THE BOARD

The ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors ("Board") shall consist of fifteen voting members ("Directors"). In addition, six non-voting liaisons ("Liaisons") shall be designated for the purposes set forth in Section 9 of this Article. Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the ICANN (Internet Corporation for Assigned

Names and Numbers) Board.

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

1. The Directors shall consist of:

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 (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 (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 (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. 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 (Internet Corporation for Assigned Names and Numbers) 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 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) who are citizens of countries in any one Geographic Region (as defined in Section 5 of this Article) to exceed five; and the Nominating Committee shall ensure through its selections that at all times the Board includes at least one Director who is a citizen of a country in each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region.

3. In carrying out their responsibilities to fill Seats 9 through 14, the Supporting Organizations (Supporting Organizations) shall seek to ensure that the ICANN (Internet Corporation for Assigned Names and Numbers) 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 of the same country or of countries located in the same Geographic Region.

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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'s mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers) decisions on the global Internet community, and committed to the success of ICANN (Internet Corporation for Assigned Names and Numbers);

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 (generic Top Level Domain) registries and registrars; with ccTLD (Country Code Top Level Domain) registries; with IP (Internet Protocol or Intellectual Property) address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet;

5. Persons who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and

6. Persons who are able to work and communicate in written and spoken English.

Section 4. ADDITIONAL QUALIFICATIONS

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

2. No person who serves in any capacity (including as a liaison) on any Supporting Organization (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 (Supporting Organization) Council to be a Director, the person shall not, following such nomination, participate in any discussion of, or vote by, the Supporting Organization (Supporting Organization) Council relating to the selection of Directors by the

Council, until the Council 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 (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.

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 and each Supporting Organization 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 (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 a committee designated for that purpose, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations which relate in any way to the business and other affiliations of ICANN (Internet Corporation for Assigned Names and Numbers). Each Director shall be responsible for disclosing to ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (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 (Internet Corporation for Assigned Names and Numbers) and not as representatives of the entity that selected them, their employers, or any other organizations or constituencies.

Section 8. TERMS OF DIRECTORS

1. Subject to the provisions of the Transition Article of these Bylaws, the regular term of office of Director Seats 1 through 14 shall begin as follows:

   a. The regular terms of Seats 1 through 3 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2003 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2003;

   b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2004 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2004;

   c. The regular terms of Seats 7 and 8 shall begin at the

conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2005 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2005;

d. The regular terms of Seats 9 and 12 shall begin on the day six months after the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2002 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2002;

e. The regular terms of Seats 10 and 13 shall begin on the day six months after the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2003 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2003; and

f. The regular terms of Seats 11 and 14 shall begin on the day six months after the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2004 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2004.

2. Each Director holding any of Seats 1 through 14, 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 one month before the commencement of each annual meeting, the Nominating Committee shall give the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) written notice of its selection of Directors for seats with terms beginning at the conclusion of the annual meeting.

4. No later than five months after the conclusion of each annual meeting, any Supporting Organization (Supporting Organization) entitled to select a Director for a Seat with a term beginning on the

day six months after the conclusion of the annual meeting shall give the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) 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.

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 (Advisory Committee);

b. One appointed by the Root Server System Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

c. One appointed by the Security (Security – Security, Stability and Resiliency (SSR))and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

d. One appointed by the Technical Liaison Group established by Article XI-A of these Bylaws;

e. One appointed by the At-Large Advisory Committee (Advisory Committee) established by Article XI of these Bylaws; and

f. One appointed by the Internet Engineering Task Force.

2. Subject to the provisions of the Transition Article of these Bylaws,

the non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) written notice of its appointment.

3. Non-voting liaisons shall serve as volunteers, without compensation other than the reimbursement of certain expenses.

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

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

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

Subject to Section 5226 of the CNPBCL, any Director or non-voting liaison may resign at any time, either by oral tender of resignation at any meeting of the Board (followed by prompt written notice to the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers)) or by giving written notice thereof to the President or the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers). 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 and, if selected by a Supporting Organization (Supporting Organization), to that Supporting Organization (Supporting Organization), 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.

2. With the exception of the non-voting liaison appointed by the Governmental Advisory Committee (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 (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 (Supporting Organization), in which case that vacancy shall be filled by that Supporting Organization (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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) written notice of their appointments to fill vacancies.

Section 13. ANNUAL MEETINGS

Annual meetings of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers), 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 (Internet Corporation for Assigned Names and Numbers).

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 (Internet Corporation for Assigned Names and Numbers). In the absence of designation, special meetings shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers).

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 (Internet Corporation for Assigned Names and Numbers). 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers). ICANN (Internet Corporation for Assigned Names and Numbers) shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 22. COMPENSATION

The Directors shall receive no compensation for their services as Directors. The Board may, however, authorize the reimbursement of actual and necessary reasonable expenses incurred by Directors and non-voting liaisons performing their duties as Directors or non-voting liaisons.

Section 23. PRESUMPTION OF ASSENT

A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers), responsible for the selection of all ICANN (Internet Corporation for Assigned Names and Numbers) Directors except the President and those Directors selected by ICANN (Internet Corporation

for Assigned Names and Numbers)'s Supporting Organizations (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 (Internet Corporation for Assigned Names and Numbers) Board;

2. The immediately previous Nominating Committee Chair, as a non-voting advisor;

3. A non-voting liaison appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Root Server System Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

4. A non-voting liaison appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Security (Security – Security, Stability and Resiliency (SSR))and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

5. A non-voting liaison appointed by the Governmental Advisory Committee (Advisory Committee);

6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the At-Large Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

7. Two voting delegates, one representing small business users and one representing large business users, selected by the Business Users Constituency of the Generic Names Supporting Organization (Supporting Organization) established by Article X of these Bylaws;

8. One voting delegate each selected by the following entities:

a. The gTLD (generic Top Level Domain) Registry Constituency of the Generic Names Supporting Organization (Supporting Organization) established by Article X of these Bylaws;

b. The gTLD (generic Top Level Domain) Registrars Constituency of the Generic Names Supporting Organization (Supporting Organization) established by Article X of these Bylaws;

c. The Council of the Country Code Names Supporting Organization established by Article IX of these Bylaws;

d. The Internet Service Providers Constituency of the Generic Names Supporting Organization (Supporting Organization) established by Article X of these Bylaws;

e. The Intellectual Property Constituency of the Generic Names Supporting Organization (Supporting Organization) established by Article X of these Bylaws;

f. The Council of the Address Supporting Organization (Supporting Organization) established by Article VIII of these Bylaws;

g. An entity designated by the Board to represent academic and similar organizations;

h. Consumer and civil society groups, selected by the Non-commercial Users Constituency of the Generic Names Supporting Organization established by Article X of these Bylaws;

i. The Internet Engineering Task Force; and

j. The ICANN (Internet Corporation for Assigned Names and Numbers) Technical Liaison Group established by Article XI-A of these Bylaws; and

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 (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the immediately following ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting.

3. Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the immediately previous Chair serving as an advisor, and any Associate Chair shall serve as such until the conclusion of the next ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting.

4. Vacancies in the positions of delegate, non-voting liaison, or Chair shall be filled by the entity entitled to select the delegate, non-voting liaison, or Chair involved. A vacancy in the position of non-voting advisor (immediately previous Chair) may be filled by the Board from among persons with prior service on the Board or a 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.

5. 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers);

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 (Internet Corporation for Assigned Names and Numbers)'s mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) Board (and selections to any

other ICANN (Internet Corporation for Assigned Names and Numbers) bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the ICANN (Internet Corporation for Assigned Names and Numbers) Board (and such other bodies), and seek to ensure that the persons selected to fill vacancies on the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) body having one or more membership positions that the Nominating Committee is responsible for filling, until the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) (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 (Supporting Organization) (ASO (Address Supporting Organization)) shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.

2. The ASO (Address Supporting Organization) shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN (Internet Corporation for Assigned Names and Numbers) and the Number Resource Organization (NRO (Number Resource Organization)), an organization of the existing regional Internet registries (RIRs).

Section 2. ADDRESS COUNCIL

1. The ASO (Address Supporting Organization) shall have an Address Council, consisting of the members of the NRO (Number Resource Organization) Number Council.

2. The Address Council shall select Directors to those seats on the Board designated to be filled by the ASO (Address Supporting Organization).

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 (Supporting Organization) (ccNSO (Country Code Names Supporting Organization)), 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 (Country Code Names Supporting Organization)'s community, including the name-related activities of ccTLDs; and

3. Coordinating with other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations), committees, and constituencies under ICANN (Internet Corporation for Assigned Names and Numbers).

Policies that apply to ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Top Level Domain) managers, assisting in skills building within the global community of ccTLD (Country Code Top Level Domain) managers, and enhancing operational and technical cooperation among ccTLD (Country Code Top Level Domain) managers.

Section 2. ORGANIZATION

The ccNSO (Country Code Names Supporting Organization) shall consist of (i) ccTLD (Country Code Top Level Domain) managers that have agreed in writing to be members of the ccNSO (Country Code Names Supporting Organization) (see Section 4(2) of this Article) and (ii) a ccNSO (Country Code Names Supporting Organization) Council responsible for managing the policy-development process of the ccNSO (Country Code Names Supporting Organization).

Section 3. ccNSO (Country Code Names Supporting Organization) COUNCIL

1. The ccNSO (Country Code Names Supporting Organization) Council shall consist of (a) three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each

of ICANN (Internet Corporation for Assigned Names and Numbers)'s Geographic Regions in the manner described in Section 4(7) through (9) of this Article; (b) three ccNSO (Country Code Names Supporting Organization) Council members selected by the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Country Code Names Supporting Organization) Council from each of the following organizations, to the extent they choose to appoint such a liaison: (a) the Governmental Advisory Committee (Advisory Committee); (b) the At-Large Advisory Committee (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 (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting Organization) Council. Appointments of liaisons shall be made by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

3. The ccNSO (Country Code Names Supporting Organization) Council may agree with the Council of any other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) to exchange observers. Such observers shall not be members of or entitled to vote on the ccNSO (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting

Organization) Council. The appointing Council may designate its observer (or revoke or change the designation of its observer) on the ccNSO (Country Code Names Supporting Organization) Council at any time by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

4. Subject to the provisions of the Transition Article of these Bylaws: (a) the regular term of each ccNSO (Country Code Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting thereafter; (b) the regular terms of the three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Country Code Names Supporting Organization) Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council member may resign at any time by giving written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

6. ccNSO (Country Code Names Supporting Organization) Council members may be removed for not attending three consecutive

meetings of the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council.

7. A vacancy on the ccNSO (Country Code Names Supporting Organization) Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO (Country Code Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selection, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair. Vacancies in the positions of the ccNSO (Country Code Names Supporting Organization) Council members selected by ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council is to administer and coordinate the affairs of the ccNSO (Country Code Names Supporting Organization) (including coordinating meetings, including an annual meeting, of ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council shall also undertake such other roles as the members of the ccNSO (Country Code Names Supporting Organization) shall decide from time to time.

9. The ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council then in office.

Notification of the ccNSO (Country Code Names Supporting Organization) Council's selections shall be given by the ccNSO (Country Code Names Supporting Organization) Council Chair in writing to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, consistent with Article VI, Sections 8(4) and 12(1).

10. The ccNSO (Country Code Names Supporting Organization) Council shall select from among its members the ccNSO (Country Code Names Supporting Organization) Council Chair and such Vice Chair(s) as it deems appropriate. Selections of the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council then in office. The term of office of the ccNSO (Country Code Names Supporting Organization) Council Chair and any Vice Chair(s) shall be as specified by the ccNSO (Country Code Names Supporting Organization) Council at or before the time the selection is made. The ccNSO (Country Code Names Supporting Organization) Council Chair or any Vice Chair(s) may be recalled from office by the same procedure as used for selection.

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

12. Except as provided by paragraphs 9 and 10 of this Section, the ccNSO (Country Code Names Supporting Organization) Council shall act at meetings. The ccNSO (Country Code Names Supporting Organization) Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the

discretion of the ccNSO (Country Code Names Supporting Organization) Council, meetings may be held in person or by other means, provided that all ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO (Country Code Names Supporting Organization) Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

13. Notice of time and place (and information about means of participation other than personal attendance) of all meetings of the ccNSO (Country Code Names Supporting Organization) Council shall be provided to each ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council may participate in a meeting of the ccNSO (Country Code Names Supporting Organization) Council through personal attendance or use of electronic communication (such as telephone or video conference), provided that (a) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting can speak to and hear one another, (b) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting are provided the means of fully

participating in all matters before the ccNSO (Country Code Names Supporting Organization) Council, and (c) there is a reasonable means of verifying the identity of ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting and their votes. A majority of the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council members present at any meeting at which there is a quorum shall be actions of the ccNSO (Country Code Names Supporting Organization) Council, unless otherwise provided in these Bylaws. The ccNSO (Country Code Names Supporting Organization) Council shall transmit minutes of its meetings to the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Country Code Names Supporting Organization) shall have a membership consisting of ccTLD (Country Code Top Level Domain) managers. Any ccTLD (Country Code Top Level Domain) manager that meets the membership qualifications stated in paragraph 2 of this Section shall be entitled to be members of the ccNSO (Country Code Names Supporting Organization). For purposes of this Article, a ccTLD (Country Code Top Level Domain) manager is the organization or entity responsible for managing an ISO (International Organization for Standardization) 3166 country-code top-level domain and referred to in the IANA (Internet Assigned Numbers Authority) database under the current heading of "Sponsoring Organization", or under any later variant, for that country-code top-level domain.

2. Any ccTLD (Country Code Top Level Domain) manager may become a ccNSO (Country Code Names Supporting Organization) member by submitting an application to a person designated by the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council. The application shall include the ccTLD (Country Code Top Level Domain) manager's recognition of the role of the ccNSO (Country Code Names Supporting Organization) within the ICANN (Internet Corporation for Assigned Names and Numbers) structure as well as the ccTLD (Country Code Top Level Domain) manager's agreement, for the duration of its membership in the ccNSO (Country Code Names Supporting Organization), (a) to adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (b) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 7(3) of this Article. A ccNSO (Country Code Names Supporting Organization) member may resign from membership at any time by giving written notice to a person designated by the ccNSO (Country Code Names Supporting Organization) Council to receive notices of resignation. Upon resignation the ccTLD (Country Code Top Level Domain) manager ceases to agree to (a) adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (b) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 7(3) of this Article. In the absence of designation by the ccNSO (Country Code Names Supporting Organization) Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, who shall notify the ccNSO (Country Code Names Supporting Organization) Council of receipt of any such applications and notices.

3. Neither membership in the ccNSO (Country Code Names Supporting Organization) 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 (Internet Assigned Numbers Authority) database. Any individual relationship a ccTLD (Country Code Top Level Domain) manager has with ICANN (Internet Corporation for Assigned Names and Numbers) or the ccTLD (Country Code Top Level Domain) manager's receipt of IANA (Internet Assigned Numbers Authority) services is not in any way contingent upon membership in the ccNSO (Country Code Names Supporting Organization).

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 (Country Code Names Supporting Organization) are referred to as ccNSO (Country Code Names Supporting Organization) members "within" the Geographic Region, regardless of the physical location of the ccTLD (Country Code Top Level Domain) manager. In cases where the Geographic Region of a ccNSO (Country Code Names Supporting Organization) member is unclear, the ccTLD (Country Code Top Level Domain) member should self-select according to procedures adopted by the ccNSO (Country Code Names Supporting Organization) Council.

5. Each ccTLD (Country Code Top Level Domain) manager may designate in writing a person, organization, or entity to represent the ccTLD (Country Code Top Level Domain) manager. In the absence of such a designation, the ccTLD (Country Code Top Level Domain) manager shall be represented by the person, organization, or entity listed as the administrative contact in the IANA (Internet Assigned Numbers Authority) database.

6. There shall be an annual meeting of ccNSO (Country Code Names Supporting Organization) members, which shall be coordinated by the ccNSO (Country Code Names Supporting Organization) Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD (Country Code Top Level

Domain) managers that are not members of the ccNSO (Country Code Names Supporting Organization) as well as other non-members of the ccNSO (Country Code Names Supporting Organization) to address the meeting. To the extent practicable, annual meetings of the ccNSO (Country Code Names Supporting Organization) members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

7. The ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) members within that Geographic Region. At least 90 days before the end of the regular term of any ccNSO (Country Code Names Supporting Organization)-member-selected member of the ccNSO (Country Code Names Supporting Organization) Council, or upon the occurrence of a vacancy in the seat of such a ccNSO (Country Code Names Supporting Organization) Council member, the ccNSO (Country Code Names Supporting Organization) Council shall establish a nomination and election schedule, which shall be sent to all ccNSO (Country Code Names Supporting Organization) members within the Geographic Region and posted on the Website.

8. Any ccNSO (Country Code Names Supporting Organization) member may nominate an individual to serve as a ccNSO (Country Code Names Supporting Organization) Council member representing the ccNSO (Country Code Names Supporting Organization) member's Geographic Region. Nominations must be seconded by another ccNSO (Country Code Names Supporting Organization) member from the same Geographic Region. By accepting their nomination, individuals nominated to the ccNSO (Country Code Names Supporting Organization) Council agree to support the policies committed to by ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO (Country Code Names Supporting Organization) Council. Otherwise, an election by written ballot (which may be by e-mail) shall be held to select the ccNSO (Country Code Names Supporting Organization) Council members from among those nominated (with seconds and acceptances), with ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) members within the Geographic Region. The ccNSO (Country Code Names Supporting Organization) Council Chair shall provide the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary prompt written notice of the selection of ccNSO (Country Code Names Supporting Organization) Council members under this paragraph.

10. Subject to clause 4(11), ICANN (Internet Corporation for Assigned Names and Numbers) policies shall apply to ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Top Level Domain) manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN (Internet Corporation for Assigned Names and Numbers) in its activities concerning ccTLDs.

11. A ccNSO (Country Code Names Supporting Organization) member shall not be bound if it provides a declaration to the ccNSO (Country Code Names Supporting Organization) 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 (Domain Name System) operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO (Country Code Names Supporting Organization) Council will provide a response to the ccNSO (Country Code Names Supporting Organization) member's declaration. If there is a ccNSO (Country Code Names Supporting Organization) Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's agreement with the declaration. If the ccNSO (Country Code Names Supporting Organization) Council disagrees, the ccNSO (Country Code Names Supporting Organization) Council shall review the situation after a six-month period. At the end of that period, the ccNSO (Country Code Names Supporting Organization) Council shall make findings as to (a) whether the ccNSO (Country Code Names Supporting Organization) 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 (Domain Name System) operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO (Country Code Names Supporting Organization) Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council.

Section 5. REGIONAL ORGANIZATIONS

The ccNSO (Country Code Names Supporting Organization) Council may designate a Regional Organization for each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region, provided that the Regional Organization is open to full membership by all ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council and shall be subject to review according to procedures established by the Board.

Section 6. ccNSO (Country Code Names Supporting Organization) POLICY-DEVELOPMENT PROCESS AND SCOPE

1. The scope of the ccNSO (Country Code Names Supporting Organization)'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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) and recommending them to the Board, the ccNSO (Country Code Names Supporting Organization) shall follow the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council, a member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff may be assigned to support the ccNSO (Country Code Names Supporting Organization) and shall be designated as the ccNSO (Country Code Names Supporting

Organization) Staff Manager. Alternatively, the ccNSO (Country Code Names Supporting Organization) Council may designate, at ccNSO (Country Code Names Supporting Organization) expense, another person to serve as ccNSO (Country Code Names Supporting Organization) Staff Manager. The work of the ccNSO (Country Code Names Supporting Organization) Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO (Country Code Names Supporting Organization) Council, and may include the duties of ccPDP Issue Manager.

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

3. The ccNSO (Country Code Names Supporting Organization) Council shall establish fees to be paid by ccNSO (Country Code Names Supporting Organization) members to defray ccNSO (Country Code Names Supporting Organization) expenses as described in paragraphs 1 and 2 of this Section, as approved by the ccNSO (Country Code Names Supporting Organization) members.

4. Written notices given to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary under this Article shall be permanently retained, and shall be made available for review by the ccNSO (Country Code Names Supporting Organization) Council on request. The ICANN (Internet Corporation for Assigned Names and

Numbers) Secretary shall also maintain the roll of members of the ccNSO (Country Code Names Supporting Organization), which shall include the name of each ccTLD (Country Code Top Level Domain) 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 (Generic Names Supporting Organization)), which shall be responsible for developing and recommending to the ICANN (Internet Corporation for Assigned Names and Numbers) Board substantive policies relating to generic top-level domains.

Section 2. ORGANIZATION

The GNSO (Generic Names Supporting Organization) shall consist of (i) various Constituencies representing particular groups of stakeholders, as described in Section 5 of this Article and (ii) a GNSO (Generic Names Supporting Organization) Council responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization).

Section 3. GNSO (Generic Names Supporting Organization) COUNCIL

1. Subject to the provisions of the Transition Article of these Bylaws, the GNSO (Generic Names Supporting Organization) Council shall consist of three representatives selected by each of the Constituencies described in Section 5 of this Article, and three persons selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee. No two representatives selected by a Constituency shall be citizens of the same country or of countries located in the same Geographic Region. There may also be two liaisons to the GNSO (Generic Names Supporting Organization) Council, one appointed by each of the Governmental Advisory Committee (Advisory Committee) and the At-Large Advisory Committee

from time to time, who shall not be members of or entitled to vote on the GNSO (Generic Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the GNSO (Generic Names Supporting Organization) Council. The appointing Advisory Committee shall designate its liaison (or revoke or change the designation of its liaison) on the GNSO (Generic Names Supporting Organization) Council by providing written notice to the Chair of the GNSO (Generic Names Supporting Organization) Council and to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary. The GNSO (Generic Names Supporting Organization) Council may also have observers as described in paragraph 9 of this Section.

2. Subject to the provisions of the Transition Article of these Bylaws: (a) the regular term of each GNSO (Generic Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting thereafter; (b) the regular term of one representative selected by each Constituency shall begin in an even-numbered year and the regular term of the other representative selected by the Constituency shall begin in an odd-numbered year; and (c) 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 (Generic Names Supporting Organization) 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.

3. A GNSO (Generic Names Supporting Organization) Council member may resign at any time by giving written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary. A GNSO (Generic Names Supporting Organization) Council member selected by a Constituency may be removed by that Constituency according to its published procedures. A GNSO (Generic Names

Supporting Organization) Council member selected by the Nominating Committee may be removed for cause stated by a three-fourths (3/4) vote (see Section 5(2) of this Article) of all members of the GNSO (Generic Names Supporting Organization) Council (excluding the member to be removed), subject to approval by the ICANN (Internet Corporation for Assigned Names and Numbers) Board. A vacancy on the GNSO (Generic Names Supporting Organization) 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 involved by the Nominating Committee giving the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selection, unless the member holding the position before the vacancy occurred was selected by a Constituency, in which case that Constituency shall fill the unexpired term by giving the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selection.

4. The GNSO (Generic Names Supporting Organization) Council is responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization). It shall adopt such procedures as it sees fit to carry out that responsibility, provided that such procedures are approved by the Board, and further provided that, until any modifications are recommended by the GNSO (Generic Names Supporting Organization) Council and approved by the Board, the applicable procedures shall be as set forth in Section 6 of this Article. In addition, the GNSO (Generic Names Supporting Organization) Council is responsible for managing open forums, in the form of mailing lists or otherwise, for the participation of all who are willing to contribute to the work of the GNSO (Generic Names Supporting Organization); such forums shall be appropriately moderated to ensure maximum focus on the business of the GNSO (Generic Names Supporting Organization) and to minimize non-substantive and abusive postings.

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 (Generic Names Supporting Organization) Council at any given time.

6. The GNSO (Generic Names Supporting Organization) Council shall make selections to fill Seats 13 and 14 on the ICANN (Internet Corporation for Assigned Names and Numbers) Board by written ballot or by action at a meeting; any such selection must have affirmative votes comprising a majority of the votes of all the members of the GNSO (Generic Names Supporting Organization) Council. Notification of the GNSO (Generic Names Supporting Organization) Council's selections shall be given by the GNSO (Generic Names Supporting Organization) Chair in writing to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, consistent with Article VI, Sections 8(4) and 12(1).

7. The GNSO (Generic Names Supporting Organization) Council shall select the GNSO (Generic Names Supporting Organization) Chair, for a term the GNSO (Generic Names Supporting Organization) Council specifies but not longer than one year, by written ballot or by action at a meeting. Any such selection must have affirmative votes comprising a majority of the votes of all the members of the GNSO (Generic Names Supporting Organization) Council.

8. Except as provided by paragraph 6 of this Section, the GNSO (Generic Names Supporting Organization) Council shall act at meetings.

> a. Members of the GNSO (Generic Names Supporting Organization) Council may participate in a meeting of the GNSO (Generic Names Supporting Organization) Council through use of (i) conference telephone or similar communications equipment, provided that all members 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 members participating in such a meeting can speak to and hear one another, (b) all members are provided the means of fully participating in all matters before the GNSO (Generic Names Supporting Organization) Council, and (c) ICANN (Internet Corporation for Assigned Names and Numbers) adopts and implements means of verifying that (x) a person participating in such a meeting is a

member of the GNSO (Generic Names Supporting
Organization) Council or other person entitled to participate in
the meeting and (y) all actions of, or votes by, the GNSO
(Generic Names Supporting Organization) Council are taken or
cast only by the members of the GNSO (Generic Names
Supporting Organization) Council and not persons who are not
members.

b. Members entitled to cast a majority of the total number of
votes of GNSO (Generic Names Supporting Organization)
Council members then in office shall constitute a quorum for the
transaction of business, and acts by a majority vote of the
GNSO (Generic Names Supporting Organization) Council
members present at any meeting at which there is a quorum
shall be acts of the GNSO (Generic Names Supporting
Organization) Council, unless otherwise provided herein. (See
Section 5(2) of this Article concerning the number of votes that
GNSO (Generic Names Supporting Organization) Council
members may cast.)

c. Absentee voting. Members that are absent from a meeting at
the time of a vote on whether to initiate a PDP (Policy
Development Process), forward a policy recommendation to the
Board, or fill a position open for election may vote by absentee
ballot. The GNSO (Generic Names Supporting Organization)
Secretariat will provide reasonable means for transmitting and
authenticating absentee ballots, which could include voting by
telephone, e- mail, or web-based interface. Absentee ballots
must be submitted within 72 hours following the start of the
meeting in which a vote is initiated, except that in exceptional
circumstances announced at the time of the vote the Chair may
reduce this time to 24 hours or extend the time to 7 days.

d. Advance notice of such meetings shall be posted on the
Website, if reasonably practicable, at least 7 days in advance of
the meeting.

e. Except where determined by a majority vote (see Section 5(2)
of this Article) of members of the GNSO (Generic Names

Supporting Organization) Council present that a closed session is appropriate, meetings shall be open to physical or electronic attendance by all interested persons.

f. The GNSO (Generic Names Supporting Organization) Council shall transmit minutes of its meetings to the ICANN (Internet Corporation for Assigned Names and Numbers) 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.

9. The GNSO (Generic Names Supporting Organization) Council may agree with the Council of any other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) to exchange observers. Such observers shall not be members of or entitled to vote on the GNSO (Generic Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the GNSO (Generic Names Supporting Organization) Council. The appointing Council shall designate its observer (or revoke or change the designation of its observer) on the GNSO (Generic Names Supporting Organization) Council by providing written notice to the Chair of the GNSO (Generic Names Supporting Organization) Council and to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary.

Section 4. STAFF SUPPORT AND FUNDING

1. A member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff shall be assigned to support the GNSO (Generic Names Supporting Organization), whose work on substantive matters shall be assigned by the Chair of the GNSO (Generic Names Supporting Organization) Council, and shall be designated as the GNSO (Generic Names Supporting Organization) Staff Manager (Staff Manager).

2. ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the

GNSO (Generic Names Supporting Organization) to carry out its responsibilities. Such support shall not include an obligation for ICANN (Internet Corporation for Assigned Names and Numbers) to fund travel expenses incurred by GNSO (Generic Names Supporting Organization) participants for travel to any meeting of the GNSO (Generic Names Supporting Organization) or for any other purpose.

Section 5. CONSTITUENCIES

1. The following self-organized Constituencies are hereby recognized as representative of a specific and significant group of stakeholders and, subject to the provisions of the Transition Article of these Bylaws, shall each select two representatives to the GNSO (Generic Names Supporting Organization) Council:

a. gTLD (generic Top Level Domain) Registries (representing all gTLD (generic Top Level Domain) registries under contract to ICANN (Internet Corporation for Assigned Names and Numbers));

b. Registrars (representing all registrars accredited by and under contract to ICANN (Internet Corporation for Assigned Names and Numbers));

c. Internet Service and Connectivity Providers (representing all entities providing Internet service and connectivity to Internet users);

d. Commercial and Business Users (representing both large and small commercial entity users of the Internet);

e. Non-Commercial Users (representing the full range of non-commercial entity users of the Internet); and

f. Intellectual Property Interests (representing the full range of trademark and other intellectual property interests relating to the DNS (Domain Name System)).

2. The number of votes that members of the GNSO (Generic Names Supporting Organization) Council may cast shall be equalized so that the aggregate number of votes of representatives selected by the Constituencies (currently the gTLD (generic Top Level Domain) Registries and Registrars) that are under contract with ICANN (Internet Corporation for Assigned Names and Numbers) obligating them to implement ICANN (Internet Corporation for Assigned Names and Numbers)-adopted policies is equal to the number of votes of representatives selected by other Constituencies. Initially, each member of the GNSO (Generic Names Supporting Organization) Council selected by the gTLD (generic Top Level Domain) Registries Constituency or the Registrars Constituency shall be entitled to cast two votes and all other members (including those selected by the Nominating Committee) shall be entitled to cast one vote. In the event that there is a change in the Constituencies that are entitled to select voting members of the GNSO (Generic Names Supporting Organization) Council, the Board shall review the change in circumstances and by resolution revise the procedure for equalization of votes in a manner consistent with this paragraph 2.

3. Each Constituency identified in paragraph 1 of this Section shall maintain its recognition, and thus its ability to select GNSO (Generic Names Supporting Organization) Council representatives, only so long as it in fact represents the interests globally of the stakeholder communities it purports to represent, and shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. No individual or entity shall be excluded from participation in a Constituency merely because of participation in another Constituency.

4. Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency. Any such petition shall contain a detailed explanation of:

a. Why the addition of such a Constituency will improve the ability of the GNSO (Generic Names Supporting Organization) to carry out its policy-development responsibilities; and

> b. Why the proposed new Constituency would adequately represent, on a global basis, the stakeholders it seeks to represent.

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

5. The Board may create new Constituencies in response to such a petition, or on its own motion, if it determines that such action would serve the purposes of ICANN (Internet Corporation for Assigned Names and Numbers). 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, it shall notify the GNSO (Generic Names Supporting Organization) Council and shall consider any response to that notification prior to taking action.

Section 6. POLICY DEVELOPMENT PROCESS

Initially, the policy-development procedures to be followed by the GNSO (Generic Names Supporting Organization) 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 (Advisory Committees) in addition to those set forth in this Article. Advisory Committee (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 (Advisory Committees) shall have no legal authority to act for ICANN (Internet Corporation for Assigned Names and Numbers), but shall report their findings and recommendations to the

Board.

Section 2. SPECIFIC ADVISORY COMMITTEES

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

1. Governmental Advisory Committee (Advisory Committee)

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

   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 (Advisory Committee) through its Chair.

   c. The Governmental Advisory Committee (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 (Advisory Committee) shall be elected by the members of the Governmental Advisory Committee (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 (Advisory Committee) shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee.

g. The Governmental Advisory Committee (Advisory Committee) may designate a non-voting liaison to each of the Supporting Organization (Supporting Organization) Councils and Advisory Committees (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 (Advisory Committee) in a timely manner of any proposal raising public policy issues on which it or any of ICANN (Internet Corporation for Assigned Names and Numbers)'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 (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 (Internet Corporation for Assigned Names and Numbers) Board determines to take an action that is not consistent with the Governmental Advisory Committee (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 (Advisory Committee) and the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) Board will state in its final decision the reasons why the Governmental Advisory Committee (Advisory Committee) advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee (Advisory Committee) members with regard to public policy issues falling within their responsibilities.

2. Security (Security – Security, Stability and Resiliency (SSR))and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee)

a. The role of the Security (Security – Security, Stability and Resiliency (SSR))and Stability (Security, Stability and Resiliency) Advisory Committee ("SAC") is to advise the ICANN (Internet Corporation for Assigned Names and Numbers) 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 develop a security framework for Internet naming and address allocation services that defines the key focus areas, and identifies where the responsibilities for each area lie. The committee shall focus on the operational considerations of critical naming infrastructure.

2. To communicate on security matters with the Internet technical community and the operators and managers of critical DNS (Domain Name System) 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 (Domain Name System) and address allocation and those engaged in operations planning.

3. 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 (Internet Corporation for Assigned Names and Numbers) community accordingly. The Committee shall recommend any necessary audit activity to assess the current status of DNS (Domain Name System) and address allocation security in relation to identified risks and threats.

4. To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF (Internet Engineering Task Force), RSSAC (Root Server System Advisory Committee), 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 (Internet Corporation for Assigned Names and Numbers) community and Board on their progress, as appropriate.

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

6. To make policy recommendations to the ICANN (Internet Corporation for Assigned Names and Numbers)

community and Board.

b. The SAC's chair and members shall be appointed by the Board.

c. The SAC shall annually appoint a non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board according to Section 9 of Article VI.

3. Root Server System Advisory Committee (Advisory Committee)

a. The role of the Root Server System Advisory Committee ("RSSAC (Root Server System Advisory Committee)") shall be to advise the Board about the operation of the root name servers of the domain name system. The RSSAC (Root Server System Advisory Committee) shall consider and provide advice on the operational requirements of root name servers, including host hardware capacities, operating systems and name server software versions, network connectivity and physical environment. The RSSAC (Root Server System Advisory Committee) shall examine and advise on the security aspects of the root name server system. Further, the RSSAC (Root Server System Advisory Committee) shall review the number, location, and distribution of root name servers considering the total system performance, robustness, and reliability.

b. Membership in the RSSAC (Root Server System Advisory Committee) shall consist of (i) each operator of an authoritative root name server (as listed at <ftp://ftp.internic.net/domain /named.root>), and (ii) such other persons as are appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

c. The initial chairman of the DNS (Domain Name System) Root Server System Advisory Committee (Advisory Committee) shall be appointed by the Board; subsequent chairs shall be elected by the members of the DNS (Domain Name System) Root

Server System Advisory Committee (Advisory Committee) pursuant to procedures adopted by the members.

d. The Root Server System Advisory Committee (Advisory Committee) shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors, without limitation on re-appointment, and shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee.

4. At-Large Advisory Committee (Advisory Committee)

a. The role of the At-Large Advisory Committee (Advisory Committee) ("ALAC (At-Large Advisory Committee)") shall be to consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers), insofar as they relate to the interests of individual Internet users.

b. The ALAC (At-Large Advisory Committee) 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 (At-Large Advisory Committee) shall be as follows:

1. The term of one member selected by each RALO shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) annual meeting after the term began.

d. The Chair of the ALAC (At-Large Advisory Committee) shall be elected by the members of the ALAC (At-Large Advisory Committee) pursuant to procedures adopted by the Committee.

e. The ALAC (At-Large Advisory Committee) shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors, without limitation on re-appointment, and 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 (Advisory Committee) may designate non-voting liaisons to each of the ccNSO (Country Code Names Supporting Organization) Council and the GNSO (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) in its Geographic Region and shall be a non-profit organization certified by ICANN (Internet Corporation for Assigned Names and Numbers) according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee (Advisory Committee). An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers) addressing the respective roles and responsibilities of ICANN (Internet Corporation for Assigned Names and Numbers) and the RALO regarding the process for selecting ALAC (At-Large Advisory Committee) 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 (Internet Corporation for Assigned Names and Numbers) according to paragraph 4(i) of this Section. If so provided by its Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers), 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 (At-Large Advisory Committee) and shall be stated in the Memorandum of Understanding between ICANN (Internet Corporation for Assigned Names and Numbers) 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 (/general /bylaws.htm#VI-5)) 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 (At-Large Advisory Committee), 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 (At-Large Advisory Committee) in its Rules of Procedure, save always that any changes made to the Rules of Procedure in respect of ALS (At-Large Structure) applications shall be subject to review by the RALOs and by the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (At-Large Advisory Committee) may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.

j. The ALAC (At-Large Advisory Committee) is also responsible, working in conjunction with the RALOs, for coordinating the following activities:

1. Keeping the community of individual Internet users informed about the significant news from ICANN (Internet Corporation for Assigned Names and Numbers);

2. Distributing (through posting or otherwise) an updated agenda, news about ICANN (Internet Corporation for Assigned Names and Numbers), and information about items in the ICANN (Internet Corporation for Assigned Names and Numbers) policy-development process;

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

4. Developing and maintaining on-going information and education programs, regarding ICANN (Internet Corporation for Assigned Names and Numbers) and its work;

5 Establishing an outreach strategy about ICANN (Internet Corporation for Assigned Names and Numbers) issues in each RALO's Region;

6. Making public, and analyzing, ICANN (Internet Corporation for Assigned Names and Numbers)'s proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the

region;

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

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

Section 3. PROCEDURES

Each Advisory Committee (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 (Internet Corporation for Assigned Names and Numbers) to take advantage of existing expertise that resides in the public or private sector but outside of ICANN (Internet Corporation for Assigned Names and Numbers). 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'s mission to a multinational governmental or treaty organization.

3. Process for Seeking Advice-Public Policy Matters.

a. The Governmental Advisory Committee (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 (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 (Advisory Committee), with the suggestion that the request be transmitted by the Governmental Advisory Committee (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 (Internet Corporation for Assigned Names and Numbers) body in carrying out its responsibilities.

6. Opportunity to Comment. The Governmental Advisory Committee (Advisory Committee), in addition to the Supporting Organizations (Supporting Organizations) and other Advisory Committees (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 (Internet Corporation for Assigned Names and Numbers)'s work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN (Internet Corporation for Assigned Names and Numbers)'s activities. ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)'s activities.

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

3. Role. The role of the TLG organizations shall be to channel technical information and guidance to the Board and to other ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission. This component of the TLG role covers circumstances in which ICANN (Internet Corporation for Assigned Names and Numbers) is unaware of a new development, and would therefore otherwise not realize that a question should be asked.

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

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

6. Individual Technical Experts. Each TLG organization shall designate two individual technical experts who are familiar with the technical standards issues that are relevant to ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) when ICANN (Internet Corporation for Assigned Names and Numbers) does not ask a

specific TLG organization directly.

7. Board Liaison and Nominating Committee Delegate. Annually, in rotation, one TLG organization shall appoint one non-voting liaison to the Board according to Article VI, Section 9(1)(d). Annually, in rotation, one TLG organization shall select one voting delegate to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee according to Article VII, Section 2(8)(j). The rotation order for the appointment of the non-voting liaison to the Board shall be ETSI (European Telecommunications Standards Institute), ITU (International Telecommunication Union)-T, and W3C (World Wide Web Consortium). The rotation order for the selection of the Nominating Committee delegate shall be W3C (World Wide Web Consortium), ETSI (European Telecommunications Standards Institute), and ITU (International Telecommunication Union)-T. (IAB (Internet Architecture Board) does not participate in these rotations because the IETF (Internet Engineering Task Force) otherwise appoints a non-voting liaison to the Board and selects a delegate to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee.)

ARTICLE XII: BOARD AND TEMPORARY COMMITTEES

Section 1. BOARD COMMITTEES

The Board may establish one or more committees of the Board, which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all members of the Board; provided, however, that any Director or Directors which are the subject of the removal action shall not be entitled to vote on such an action or be counted as a member of the Board when calculating the required two-thirds (2/3) vote; and, provided

further, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all members of the Board.

Section 2. POWERS OF BOARD COMMITTEES

1. The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

a. The filling of vacancies on the Board or on any committee;

b. The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;

c. The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;

d. The appointment of committees of the Board or the members thereof;

e. The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CNPBCL;

f. The approval of the annual budget required by Article XVI; or

g. The compensation of any officer described in Article XIII.

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

Section 3. TEMPORARY COMMITTEES

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

ARTICLE XIII: OFFICERS

Section 1. OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be a President (who shall serve as Chief Executive Officer), a Secretary, and a Chief Financial Officer. ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers).

Section 2. ELECTION OF OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers). 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 (Internet Corporation for Assigned Names and Numbers) and shall keep or cause to be kept, in books belonging to ICANN (Internet Corporation for Assigned Names and Numbers), full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN (Internet Corporation for Assigned Names and Numbers) in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers). The CFO shall be responsible for ICANN (Internet Corporation for

Assigned Names and Numbers)'s financial planning and forecasting and shall assist the President in the preparation of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual budget. The CFO shall coordinate and oversee ICANN (Internet Corporation for Assigned Names and Numbers)'s funding, including any audits or other reviews of ICANN (Internet Corporation for Assigned Names and Numbers) or its Supporting Organizations (Supporting Organizations). The CFO shall be responsible for all other matters relating to the financial operation of ICANN (Internet Corporation for Assigned Names and Numbers).

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 (Internet Corporation for Assigned Names and Numbers) 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 a committee designated for that purpose, shall establish a policy requiring a statement from each Officer not less frequently than once a year setting forth all business and other affiliations which relate in any way to the business and other affiliations of ICANN (Internet Corporation for Assigned Names and Numbers).

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

ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers), 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 (Internet Corporation for Assigned Names and Numbers)'s best interests and not criminal. For purposes of this Article, an "agent" of ICANN (Internet Corporation for Assigned Names and Numbers) includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (Internet Corporation for Assigned Names and Numbers) (including a member of any Supporting Organization (Supporting Organization), any Advisory Committee (Advisory Committee), the Nominating Committee, any other ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers), 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 (Internet Corporation for Assigned Names and Numbers) or to render it liable for any

debts or obligations.

Section 2. DEPOSITS

All funds of ICANN (Internet Corporation for Assigned Names and Numbers) not otherwise employed shall be deposited from time to time to the credit of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) shall be signed by such Officer or Officers, agent or agents, of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) to its Directors or Officers.

ARTICLE XVI: FISCAL MATTERS

Section 1. ACCOUNTING

The fiscal year end of ICANN (Internet Corporation for Assigned Names and Numbers) shall be determined by the Board.

Section 2. AUDIT

At the end of the fiscal year, the books of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) to Directors (including reimbursements of expenses). ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers), with the goal of fully recovering the reasonable costs of the operation of ICANN (Internet Corporation for Assigned Names and Numbers) and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN (Internet Corporation for Assigned Names and Numbers). 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) document, or in any action of the ICANN (Internet Corporation for Assigned Names and Numbers) Board or staff.

ARTICLE XVIII: OFFICES AND SEAL

Section 1. OFFICES

The principal office for the transaction of the business of ICANN (Internet Corporation for Assigned Names and Numbers) shall be in the County of Los Angeles, State of California, United States of America. ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for

Assigned Names and Numbers) Bylaws, as amended and restated on 29 October 1999 and amended through 12 February 2002 (the "Old Bylaws (/general/archive-bylaws/bylaws-12feb02.htm)"), to the processes and structures defined by the Bylaws of which this Article is a part (the "New Bylaws").

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 (Internet Corporation for Assigned Names and Numbers) 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 <u>Article VI, Section 8(1)(a)-(c) of the New Bylaws</u>, and shall give the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) in 2003 that begins not less than seven calendar days after the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) Board of Directors. Subject to Section 4 of this Article, the Directors (<u>Article VI, Section 2(1)(a)-(d)</u>) and non-voting liaisons (<u>Article VI, Section 9</u>) as to which the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary has received notice of selection shall, along with the President (<u>Article VI, Section 2(1)(e)</u>), 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 (Internet Corporation for Assigned Names and Numbers) 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 (Supporting Organization) shall continue in operation according to the provisions of the Memorandum of Understanding originally entered on 18 October 1999 (/aso/aso-mou-26aug99.htm) between ICANN (Internet Corporation for Assigned Names and Numbers) and a group of regional Internet registries (RIRs), and amended in October 2000 (/aso/aso-mou-amend1-25sep00.htm), until a replacement Memorandum of Understanding becomes effective. Promptly after the adoption of this Transition Article, the Address Supporting Organization (Supporting Organization) shall make selections, and give the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Supporting Organization), as called for in Article VII, Section 2(8)(f) of the New Bylaws.

With respect to the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Supporting Organization) may select those Directors from among the persons it previously selected as ICANN (Internet Corporation for Assigned Names and Numbers) Directors pursuant to the Old Bylaws. To the extent the Address Supporting Organization (Supporting Organization) does not provide the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice, on or before 31 March 2003, of its selections for Seat 9 and

Seat 10, the Address Supporting Organization (Supporting Organization) shall be deemed to have selected for Seat 9 the person it selected as an ICANN (Internet Corporation for Assigned Names and Numbers) Director pursuant to the Old Bylaws for a term beginning in 2001 and for Seat 10 the person it selected as an ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Country Code Top Level Domain) managers (with at least four within each Geographic Region) as members of the ccNSO (Country Code Names Supporting Organization), written notice shall be posted on the Website. As soon as feasible after that notice, the members of the initial ccNSO (Country Code Names Supporting Organization) Council to be selected by the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council has been constituted shall be posted on the Website. Three ccNSO (Country Code Names Supporting Organization) Council members shall be selected by the ccNSO (Country Code Names Supporting Organization) members within each Geographic Region, with one member to serve a term that ends upon the conclusion of the first ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted. (The definition of "ccTLD (Country Code Top Level Domain) 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 (Country Code Names Supporting Organization) Council described in Article IX, Section 3(1)(b). In selecting three individuals to serve on the ccNSO (Country Code Names Supporting Organization) Council, the Nominating Committee shall designate one to serve a term that ends upon the conclusion of the first ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted. The three members of the ccNSO (Country Code Names Supporting Organization) Council selected by the Nominating Committee shall not take their seats before the ccNSO (Country Code Names Supporting Organization) Council is constituted.

3. Upon the ccNSO (Country Code Names Supporting Organization) Council being constituted, the At-Large Advisory Committee (Advisory Committee) and the Governmental Advisory Committee (Advisory Committee) may designate one liaison each to the ccNSO (Country Code Names Supporting Organization) Council, as provided by Article IX, Section 3(2)(a) and (b).

4. Upon the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council.

5. Until the ccNSO (Country Code Names Supporting Organization) Council is constituted, Seats 11 and 12 on the New Board shall remain

vacant. Promptly after the ccNSO (Country Code Names Supporting Organization) Council is constituted, the ccNSO (Country Code Names Supporting Organization) shall, through the ccNSO (Country Code Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selections.

6. Until the ccNSO (Country Code Names Supporting Organization) Council is constituted, the delegate to the Nominating Committee established by the New Bylaws designated to be selected by the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Top Level Domain) community. Upon the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Council may replace that delegate with one of its choosing within three months after the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Country Code Names Supporting Organization) Council.

Section 5. GENERIC NAMES SUPPORTING ORGANIZATION

1. The Domain Name Supporting Organization (Supporting Organization) (/general/archive-bylaws/bylaws-12feb02.htm#VI-B) shall cease operations upon the adoption of this Transition Article, except that the Names Council (/general/archive-bylaws/bylaws-12feb02.htm#VI-B-2) of the Domain Name (Domain Name) Supporting Organization (Supporting Organization) may act for the limited

purpose of authorizing the transfer of any funds it has collected to the benefit of the Generic Names Supporting Organization (Supporting Organization).

2. The Generic Names Supporting Organization (Supporting Organization) ("GNSO (Generic Names Supporting Organization)") shall commence operations upon the adoption of this Transition Article, and the following six DNSO (Domain Name Supporting Organisation) constituencies shall automatically become constituencies of the GNSO (Generic Names Supporting Organization), initially under their existing charter:

a. The commercial and business entities constituency of the DNSO (Domain Name Supporting Organisation) (/general /archive-bylaws/bylaws-12feb02.htm#VI-B-3b2) shall become the Commercial and Business Users constituency of the GNSO (Generic Names Supporting Organization).

b. The gTLD (generic Top Level Domain) registries constituency of the DNSO (Domain Name Supporting Organisation) (/general /archive-bylaws/bylaws-12feb02.htm#VI-B-3b3) shall become the gTLD (generic Top Level Domain) Registries constituency of the GNSO (Generic Names Supporting Organization).

c. The ISP (Internet Service Provider) and connectivity providers constituency of the DNSO (Domain Name Supporting Organisation) (/general/archive-bylaws/bylaws-12feb02.htm#VI-B-3b4) shall become the Internet Service and Connectivity Providers constituency of the GNSO (Generic Names Supporting Organization).

d. The non-commercial domain name holders constituency of the DNSO (Domain Name Supporting Organisation) (/general /archive-bylaws/bylaws-12feb02.htm#VI-B-3b5) shall become the Non-Commercial Users constituency of the GNSO (Generic Names Supporting Organization).

e. The registrars constituency of the DNSO (Domain Name

Supporting Organisation) (/general/archive-bylaws/bylaws-12feb02.htm#VI-B-3b6) shall become the Registrars constituency of the GNSO (Generic Names Supporting Organization).

f. The trademark, other intellectual property and anti-counterfeiting interests constituency of the DNSO (Domain Name Supporting Organisation) (/general/archive-bylaws /bylaws-12feb02.htm#VI-B-3b7) shall become the Intellectual Property Interests constituency of the GNSO (Generic Names Supporting Organization).

3. Notwithstanding the adoption or effectiveness of the New Bylaws, each GNSO (Generic Names Supporting Organization) constituency described in paragraph 2 of this Section 5 shall continue operating as before and no constituency official, task force, or other activity shall be changed until further action of the constituency, provided that each GNSO (Generic Names Supporting Organization) constituency shall submit to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary a new charter and statement of operating procedures, adopted according to the constituency's processes and consistent with the New Bylaws, no later than 15 July 2003.

4. Until the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2003, the GNSO (Generic Names Supporting Organization) Council shall consist of three representatives of each constituency of the GNSO (Generic Names Supporting Organization) plus, upon their selection by the Nominating Committee, three persons selected by that committee. It may also have liaisons appointed by the Governmental Advisory Committee (Advisory Committee) and (Interim) At-Large Advisory Committee (Advisory Committee), as provided in Article X, Section 3(1) of the New Bylaws. Thereafter, the composition of the GNSO (Generic Names Supporting Organization) Council shall be as provided in the New Bylaws, as they may be amended from time to time, without regard to this Transition Article. All committees, task forces, working groups, drafting committees, and similar groups established by the DNSO (Domain Name Supporting Organisation) Names Council and in

existence immediately before the adoption of this Transition Article shall continue in existence as groups of the GNSO (Generic Names Supporting Organization) Council with the same charters, membership, and activities, subject to any change by action of the GNSO (Generic Names Supporting Organization) Council.

5. Upon the adoption of this Transition Article, the three representatives on the Domain Name (Domain Name) Supporting Organization (Supporting Organization) ("DNSO (Domain Name Supporting Organisation)") Names Council from each of six DNSO (Domain Name Supporting Organisation) constituencies shall be seated as representatives of constituencies on the GNSO (Generic Names Supporting Organization) Council, as follows:

> a. The three representatives of the commercial and business entities constituency of the DNSO (Domain Name Supporting Organisation) shall be seated as representatives of the Commercial and Business Users constituency of the GNSO (Generic Names Supporting Organization).

> b. The three representatives of the gTLD (generic Top Level Domain) registries constituency of the DNSO (Domain Name Supporting Organisation) shall be seated as representatives of the gTLD (generic Top Level Domain) Registries constituency of the GNSO (Generic Names Supporting Organization).

> c. The three representatives of the ISP (Internet Service Provider) and connectivity providers constituency of the DNSO (Domain Name Supporting Organisation) shall be seated as representatives of the Internet Service and Connectivity Providers constituency of the GNSO (Generic Names Supporting Organization).

> d. The three representatives of the non-commercial domain name holders constituency of the DNSO (Domain Name Supporting Organisation) shall be seated as representatives of the Non-Commercial Users constituency of the GNSO (Generic Names Supporting Organization).

e. The three representatives of the registrars constituency of the DNSO (Domain Name Supporting Organisation) shall be seated as representatives of the Registrars constituency of the GNSO (Generic Names Supporting Organization).

f. The three representatives of the trademark, other intellectual property and anti-counterfeiting interests constituency of the DNSO (Domain Name Supporting Organisation) shall be seated as representatives of the Intellectual Property Interests constituency of the GNSO (Generic Names Supporting Organization).

6. The terms of the GNSO (Generic Names Supporting Organization) Council members described in paragraph 5 of this Section 5 shall last for the remainder of their terms under the Old Bylaws, except that the terms of all of those GNSO (Generic Names Supporting Organization) Council members shall end at the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2003. Any vacancy occurring before that time in a position on the GNSO (Generic Names Supporting Organization) Council described in paragraph 5 of this Section 5 shall be filled by the constituency that the vacant position represents for the remainder of the term lasting until the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2003. In selecting three persons to serve on the GNSO (Generic Names Supporting Organization) Council, the initial Nominating Committee shall designate one to serve a term until the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2004 and the other two to serve terms until the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2005.

7. Promptly after the adoption of this Transition Article, the Generic Names Supporting Organization (Supporting Organization) shall, through the GNSO (Generic Names Supporting Organization) Council, make selections of Directors to fill Seats 13 and 14 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 shall give the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selections.

8. In the absence of further action on the topic by the New Board, each of the GNSO (Generic Names Supporting Organization) constituencies shall select two representatives to the GNSO (Generic Names Supporting Organization) Council no later than 1 October 2003, and shall provide the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selections. Each constituency shall designate one of those representatives to serve a one-year term, and one to serve a two year-term. Each successor to those representatives shall serve a two-year term.

9. Upon the adoption of this Transition Article, and until further action by the ICANN (Internet Corporation for Assigned Names and Numbers) Board, the GNSO (Generic Names Supporting Organization) Council shall assume responsibility for the DNSO (Domain Name Supporting Organisation) General Assembly e-mail announcement and discussion lists.

10. Each of the constituencies identified in paragraph 5 of this Section 5 that are designated to select a delegate to the Nominating Committee under Article VII, Section 2 of the New Bylaws shall promptly, upon adoption of this Transition Article, notify the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of the person(s) selected to serve as delegates.

Section 6. PROTOCOL SUPPORTING ORGANIZATION

The Protocol (Protocol) Supporting Organization (Supporting Organization) referred to in the Old Bylaws (/general/archive-bylaws/bylaws-12feb02.htm#VI-C) is discontinued.

Section 7. ADVISORY COMMITTEES AND TECHNICAL LIAISON GROUP

1. Upon the adoption of the New Bylaws, the Governmental Advisory Committee (Advisory Committee) shall continue in operation according

to its existing operating principles and practices, until further action of the committee. The Governmental Advisory Committee (Advisory Committee) may designate liaisons to serve with other ICANN (Internet Corporation for Assigned Names and Numbers) bodies as contemplated by the New Bylaws by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary. Promptly upon the adoption of this Transition Article, the Governmental Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Security, Stability and Resiliency) Advisory Committee (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 (Security – Security, Stability and Resiliency (SSR))and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (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 (Advisory

Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Advisory Committee)

a. There shall exist an Interim At-Large Advisory Committee until such time as ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Advisory Committee) shall be composed of (i) ten individuals (two from each ICANN (Internet Corporation for Assigned Names and Numbers) region) selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Board following nominations by the At-Large Organizing Committee and (ii) five additional individuals (one from each ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) annual meeting in 2004 and three of these individuals to serve terms until the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Advisory Committee) established by Article XI, Section 2(4) of the New Bylaws. Upon the entity's written notification to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of such selections, those persons shall immediately assume the seats held until that notification by the Interim

At-Large Advisory Committee (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 (Advisory Committee) shall become the At-Large Advisory Committee (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 (Advisory Committee) by the Nominating Committee shall become members of the At-Large Advisory Committee (Advisory Committee) for the remainder of the terms for which they were selected.

d. Promptly upon its creation, the Interim At-Large Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) officers (as defined in Article XIII of the New Bylaws) shall be elected by the then-existing Board of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) President shall continue unchanged in membership, scope, and operation until changes are made by the President.

Section 10. CONTRACTS WITH ICANN (Internet Corporation for Assigned Names and Numbers)

Notwithstanding the adoption or effectiveness of the New Bylaws, all agreements, including employment and consulting agreements, entered by ICANN (Internet Corporation for Assigned Names and Numbers) shall continue in effect according to their terms.

Annex A: GNSO (Generic Names Supporting Organization) Policy-Development Process

The following process shall govern the GNSO (Generic Names Supporting Organization) policy development process ("PDP (Policy Development Process)") until such time as modifications are recommended to and approved by the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors ("Board").

1. Raising an Issue

An issue may be raised for consideration as part of the PDP (Policy Development Process) by any of the following:

a. *Board Initiation.* The Board may initiate the PDP (Policy Development Process) by instructing the GNSO (Generic Names Supporting Organization) Council ("Council") to begin the process outlined in this Annex.

b. *Council Initiation.* The GNSO (Generic Names Supporting Organization) Council may initiate the PDP (Policy Development Process) by a vote of at least twenty-five percent (25%) of the members of the Council present at any meeting in which a motion to initiate the PDP (Policy Development Process) is made.

c. *Advisory Committee (Advisory Committee) Initiation.* An Advisory Committee (Advisory Committee) may raise an issue for policy development by action of such committee to commence the PDP (Policy Development Process), and transmission of that request to the GNSO (Generic Names Supporting Organization) Council.

2. Creation of the Issue Report

Within fifteen (15) calendar days after receiving either (i) an instruction from the Board; (ii) a properly supported motion from a Council member; or (iii) a properly supported motion from an Advisory Committee (Advisory Committee), the Staff Manager will create a report (an "Issue Report"). Each Issue Report shall contain at least the following:

a. The proposed issue raised for consideration;

b. The identity of the party submitting the issue;

c. How that party is affected by the issue;

d. Support for the issue to initiate the PDP (Policy Development Process);

e. A recommendation from the Staff Manager as to whether the Council should initiate the PDP (Policy Development Process) for this issue (the "Staff Recommendation"). Each Staff Recommendation shall include the opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue proposed to initiate the PDP (Policy Development Process) is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) policy process and within the scope of the GNSO (Generic Names Supporting Organization). In determining whether the issue is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) policy process, the General Counsel shall examine whether such issue:

1. is within the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission statement;

2. is broadly applicable to multiple situations or organizations;

3. is likely to have lasting value or applicability, albeit with the need for occasional updates;

4. will establish a guide or framework for future decision-making; or

> 5. implicates or affects an existing ICANN (Internet Corporation for Assigned Names and Numbers) policy.

f. On or before the fifteen (15) day deadline, the Staff Manager shall distribute the Issue Report to the full Council for a vote on whether to initiate the PDP (Policy Development Process), as discussed below.

3. Initiation of PDP (Policy Development Process)

The Council shall initiate the PDP (Policy Development Process) as follows:

a. *Issue Raised by the Board.* If the Board directs the Council to initiate the PDP (Policy Development Process), then the Council shall meet and do so within fifteen (15) calendar days after receipt of the Issue Report, with no intermediate vote of the Council.

b. *Issue Raised by Other than by the Board.* If a policy issue is presented to the Council for consideration via an Issue Report, then the Council shall meet within fifteen (15) calendar days after receipt of such Report to vote on whether to initiate the PDP (Policy Development Process). Such meeting may be convened in any manner deemed appropriate by the Council, including in person, via conference call or via electronic mail.

c. *Vote of the Council.* A vote of more than 33% of the Council members present in favor of initiating the PDP (Policy Development Process) will suffice to initiate the PDP (Policy Development Process); unless the Staff Recommendation stated that the issue is not properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) policy process or the GNSO (Generic Names Supporting Organization), in which case a Supermajority Vote of the Council members present in favor of initiating the PDP (Policy Development Process) will be required to initiate the PDP (Policy Development Process).

4. Commencement of the PDP (Policy Development Process)

At the meeting of the Council initiating the PDP (Policy Development Process), the Council shall decide, by a majority vote of members present at the meeting, whether to appoint a task force to address the issue. If the Council votes:

> a. In favor of convening a task force, it shall do so in accordance with the provisions of Item 7 below.

> b. Against convening a task force, then it will collect information on the policy issue in accordance with the provisions of Item 8 below.

5. Composition and Selection of Task Forces

> a. Upon voting to appoint a task force, the Council shall invite each of the constituencies of the GNSO (Generic Names Supporting Organization) to appoint one individual to participate in the task force. Additionally, the Council may appoint up to three outside advisors to sit on the task force. (Each task force member is referred to in this Annex as a "Representative" and collectively, the "Representatives"). The Council may increase the number of Representatives per constituency that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.

> b. Any constituency wishing to appoint a Representative to the task force must submit the name of the constituency designee to the Staff Manager within ten (10) calendar days after such request in order to be included on the task force. Such designee need not be a member of the Council, but must be an individual who has an interest, and ideally knowledge and expertise, in the area to be developed, coupled with the ability to devote a substantial amount of time to task force activities.

> c. The Council may also pursue other options that it deems appropriate to assist in the PDP (Policy Development Process), including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Staff Manager

within thirty-five (35) calendar days after initiation of the PDP (Policy Development Process).

6. Public Notification of Initiation of the PDP (Policy Development Process)

After initiation of the PDP (Policy Development Process), ICANN (Internet Corporation for Assigned Names and Numbers) shall post a notification of such action to the Website. A public comment period shall be commenced for the issue for a period of twenty (20) calendar days after initiation of the PDP (Policy Development Process). The Staff Manager, or some other designated representative of ICANN (Internet Corporation for Assigned Names and Numbers) shall review the public comments and incorporate them into a report (the "Public Comment Report") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

7. Task Forces

a. *Role of Task Force.* If a task force is created, its role will generally be to (i) gather information detailing the positions of formal constituencies and provisional constituencies, if any, within the GNSO (Generic Names Supporting Organization); and (ii) otherwise obtain relevant information that will enable the Task Force Report to be as complete and informative as possible.

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

b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Staff Manager, shall develop a charter or terms of reference for the task force (the "Charter") within ten (10) calendar days after initiation of the PDP (Policy Development Process). Such Charter will include:

1. the issue to be addressed by the task force, as such issue

was articulated for the vote before the Council that commenced the PDP (Policy Development Process);

2. the specific timeline that the task force must adhere to, as set forth below, unless the Board determines that there is a compelling reason to extend the timeline; and

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

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present.

c. *Appointment of Task Force Chair.* The Staff Manager shall convene the first meeting of the task force within five (5) calendar days after receipt of the Charter. At the initial meeting, the task force members will, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. *Collection of Information.*

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

(i) If a Supermajority Vote was reached, a clear statement

of the constituency's position on the issue;

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

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

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

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

2. *Outside Advisors.* The task force, should it deem it appropriate or helpful, may solicit the opinions of outside advisors, experts, or other members of the public, in addition to those of constituency members. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (A) qualifications and relevant experience; and (B) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within thirty-five (35) calendar days after initiation of the PDP (Policy Development Process).

e. *Task Force Report.* The chair of the task force, working with the Staff Manager, shall compile the Constituency Statements, Public Comment Report, and other information or reports, as applicable, into a single document ("Preliminary Task Force Report") and distribute the Preliminary Task Force Report to the full task force within forty (40) calendar days after initiation of the PDP (Policy Development

Process). The task force shall have a final task force meeting within five (5) days after the date of distribution of the Preliminary Task Force Report to deliberate the issues and try and reach a Supermajority Vote. Within five (5) calendar days after the final task force meeting, the chair of the task force and the Staff Manager shall create the final task force report (the "Task Force Report") and post it on the Comment Site. Each Task Force Report must include:

1. A clear statement of any Supermajority Vote position of the task force on the issue;

2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the twenty-day timeline for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the constituency(ies) that held the position;

3. An analysis of how the issue would affect each constituency of the task force, including any financial impact on the constituency;

4. An analysis of the period of time that would likely be necessary to implement the policy; and

5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience; and (ii) potential conflicts of interest.

8. Procedure if No Task Force is Formed

a. If the Council decides not to convene a task force, the Council will request that, within ten (10) calendar days thereafter, each constituency appoint a representative to solicit the constituency's views on the issue. Each such representative shall be asked to submit

a Constituency Statement to the Staff Manager within thirty-five (35) calendar days after initiation of the PDP (Policy Development Process).

b. The Council may also pursue other options that it deems appropriate to assist in the PDP (Policy Development Process), including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Staff Manager within thirty-five (35) calendar days after initiation of the PDP (Policy Development Process).

c. The Staff Manager will take all Constituency Statements, Public Comment Statements, and other information and compile (and post on the Comment Site) an Initial Report within fifty (50) calendar days after initiation of the PDP (Policy Development Process). Thereafter, the PDP (Policy Development Process) shall follow the provisions of Item 9 below in creating a Final Report.

9. Public Comments to the Task Force Report or Initial Report

a. The public comment period will last for twenty (20) calendar days after posting of the Task Force Report or Initial Report. Any individual or organization may submit comments during the public comment period, including any constituency that did not participate in the task force. All comments shall be accompanied by the name of the author of the comments, the author's relevant experience, and the author's interest in the issue.

b. At the end of the twenty (20) day period, the Staff Manager will be responsible for reviewing the comments received and adding those deemed appropriate for inclusion in the Staff Manager's reasonable discretion to the Task Force Report or Initial Report (collectively, the "Final Report"). The Staff Manager shall not be obligated to include all comments made during the comment period, including each comment made by any one individual or organization.

c. The Staff Manager shall prepare the Final Report and submit it to

the Council chair within ten (10) calendar days after the end of the public comment period.

10. Council Deliberation

a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for a Council meeting within ten (10) calendar days thereafter. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions or any other means the Council may choose. The deliberation process shall culminate in a formal Council meeting either in person or via teleconference, wherein the Council will work towards achieving a Supermajority Vote to present to the Board.

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

11. Council Report to the Board

The Staff Manager will be present at the final meeting of the Council, and will have five (5) calendar days after the meeting to incorporate the views of the Council into a report to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:

a. A clear statement of any Supermajority Vote recommendation of the Council;

b. If a Supermajority Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the

constituency(ies) that held the position;

c. An analysis of how the issue would affect each constituency, including any financial impact on the constituency;

d. An analysis of the period of time that would likely be necessary to implement the policy;

e. The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and relevant experience; and (ii) potential conflicts of interest;

f. The Final Report submitted to the Council; and

g. A copy of the minutes of the Council deliberation on the policy issue, including the all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

12. Agreement of the Council

A Supermajority Vote of the Council members will be deemed to reflect the view of the Council, and may be conveyed to the Board as the Council's recommendation. Abstentions shall not be permitted; thus all Council members must cast a vote unless they identify a financial interest in the outcome of the policy issue. Notwithstanding the foregoing, as set forth above, all viewpoints expressed by Council members during the PDP (Policy Development Process) must be included in the Board Report.

13. Board Vote

a. The Board will meet to discuss the GNSO (Generic Names Supporting Organization) Council recommendation as soon as feasible after receipt of the Board Report from the Staff Manager.

b. In the event that the Council reached a Supermajority Vote, the Board shall adopt the policy according to the Council Supermajority Vote recommendation unless by a vote of more than sixty-six (66%) percent of the Board determines that such policy is not in the best

interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

c. In the event that the Board determines not to act in accordance with the Council Supermajority Vote recommendation, the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

d. The Council shall review the Board Statement for discussion with the Board within twenty (20) calendar days after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

e. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for its current recommendation. In the event that the Council is able to reach a Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than sixty-six (66%) percent of the Board determines that such policy is not in the interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

f. In any case in which the Council is not able to reach Supermajority, a majority vote of the Board will be sufficient to act.

g. When a final decision on a GNSO (Generic Names Supporting Organization) Council Recommendation or Supplemental Recommendation is timely, the Board shall take a preliminary vote and, where practicable, will publish a tentative decision that allows for a ten (10) day period of public comment prior to a final decision by the Board.

14. Implementation of the Policy

Upon a final decision of the Board, the Board shall, as appropriate, give authorization or direction to the ICANN (Internet Corporation for Assigned Names and Numbers) staff to take all necessary steps to implement the policy.

15. Maintenance of Records

Throughout the PDP (Policy Development Process), from policy suggestion to a final decision by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) will maintain on the Website, a status web page detailing the progress of each PDP (Policy Development Process) issue, which will describe:

> a. The initial suggestion for a policy;
>
> b. A list of all suggestions that do not result in the creation of an Issue Report;
>
> c. The timeline to be followed for each policy;
>
> d. All discussions among the Council regarding the policy;
>
> e. All reports from task forces, the Staff Manager, the Council and the Board; and
>
> f. All public comments submitted.

16. Additional Definitions

"Comment Site" and "Website" refer to one or more web sites designated by ICANN (Internet Corporation for Assigned Names and Numbers) on which notifications and comments regarding the PDP (Policy Development Process) will be posted.

"Staff Manager" means an ICANN (Internet Corporation for Assigned Names and Numbers) staff person(s) who manages the PDP (Policy Development Process).

"Supermajority Vote" means a vote of more than sixty-six (66) percent of the

members present at a meeting of the applicable body.

Annex B: ccNSO (Country Code Names Supporting Organization) Policy-Development Process (ccPDP)

The following process shall govern the ccNSO (Country Code Names Supporting Organization) policy-development process ("PDP (Policy Development Process)").

1. Request for an Issue Report

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

a. *Council.* The ccNSO (Country Code Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

d. *ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee).* An ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or an ICANN (Internet Corporation for Assigned Names and Numbers) Advisory Committee (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 (Country Code Names Supporting Organization).* The members of the ccNSO (Country Code Names Supporting Organization) may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO (Country Code Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) (in which case the costs of the Issue Manager shall be borne by ICANN (Internet Corporation for Assigned Names and Numbers)) or such other person or persons selected by the Council (in which case the ccNSO (Country Code Names Supporting Organization) 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 (Policy Development Process);

e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP (Policy Development Process) for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) policy process and within the scope of the ccNSO (Country Code Names Supporting Organization). In coming to his or her opinion, the General Counsel shall examine whether:

> 1) The issue is within the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Country Code Names Supporting Organization);

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 (Internet Corporation for Assigned Names and Numbers) 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 (Country Code Names Supporting Organization) (Annex C) shall be within the scope of ICANN (Internet Corporation for Assigned Names and Numbers) and the ccNSO

(Country Code Names Supporting Organization).

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) shall inform the Issue Manager accordingly. General Counsel and the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO (Country Code Names Supporting Organization) 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 (Policy Development Process) 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 (Policy Development Process), a proposed time line for conducting each of the stages of PDP (Policy Development Process) outlined herein (PDP (Policy Development Process) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Policy Development Process).

3. Initiation of PDP (Policy Development Process)

The Council shall decide whether to initiate the PDP (Policy Development Process) 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 (Policy Development Process). 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 (Policy Development Process) shall be required to initiate the PDP (Policy Development Process) provided that the Issue Report states that the issue is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) mission statement and the ccNSO (Country Code Names Supporting Organization) Scope.

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

At the meeting of the Council where the PDP (Policy Development Process) 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 (Policy Development Process) 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 (Country Code Names Supporting Organization) and, following formal request for GAC (Governmental Advisory Committee) participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee (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 (Policy Development Process), 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 (Policy Development Process) Time Line.

6. Public Notification of Initiation of the PDP (Policy Development Process) and Comment Period

After initiation of the PDP (Policy Development Process), ICANN (Internet Corporation for Assigned Names and Numbers) shall post a notification of such action to the Website and to the other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees). A comment

period (in accordance with the PDP (Policy Development Process) Time Line, and ordinarily at least 21 days long) shall be commenced for the issue. Comments shall be accepted from ccTLD (Country Code Top Level Domain) managers, other Supporting Organizations, Advisory Committees (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 (Country Code Names Supporting Organization) 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 (Policy Development Process) 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 (Policy Development Process);

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 (Policy Development Process) 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 (Country Code Names Supporting Organization) 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 (Policy Development Process) 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 (Country Code Names Supporting Organization) 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 (Policy Development Process) 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 (Policy Development Process) 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 (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (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 (Policy Development Process) 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 (Policy Development Process) Time Line.

b. The Council may, in its discretion, take other steps to assist in the PDP (Policy Development Process), 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 (Policy Development Process) Time Line.

c. The Council shall formally request the Chair of the GAC (Governmental Advisory Committee) 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 (Policy Development Process) 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 (Policy Development Process) 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 (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (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 (Policy Development Process) 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 (Policy Development Process) Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC (Governmental Advisory Committee) Chair an invitation to the GAC (Governmental Advisory Committee) 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 (Policy Development Process) 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 (Policy Development Process) Time Line, the ccNSO (Country Code Names Supporting Organization) 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 (Policy Development Process) Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes within the voting period, the resulting vote will be be employed without further process. In the event that fewer than 50% of the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) members, will be employed if at least 50% of the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Recommendation.

14. Board Report

The Issue Manager shall within seven days after a ccNSO (Country Code Names Supporting Organization) Recommendation being made in accordance with Item 13 incorporate the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or of ICANN (Internet Corporation for Assigned Names and Numbers).

1. In the event that the Board determines not to act in accordance with the ccNSO (Country Code Names Supporting Organization) Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO (Country Code Names Supporting Organization) 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 (Country Code Names Supporting Organization) Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO (Country Code Names Supporting

> Organization) 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 (Country
Code Names Supporting Organization) 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 (Country
Code Names Supporting Organization) 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 (Country Code Names
Supporting Organization) 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 (Country Code Names Supporting
Organization) Recommendation or ccNSO (Country Code Names Supporting
Organization) Supplemental Recommendation, the Board shall, as
appropriate, direct or authorize ICANN (Internet Corporation for Assigned
Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)
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 (Policy Development Process) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Country Code Names Supporting Organization)

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 (Country Code Names Supporting Organization)'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 (Country Code Names Supporting Organization)'s

authority and responsibilities must recognize the complex relation between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers/registries with regard to policy issues. This annex shall assist the ccNSO (Country Code Names Supporting Organization), the ccNSO (Country Code Names Supporting Organization) Council, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO (Country Code Names Supporting Organization)'s policy role should be based on an analysis of the following functional model of the DNS (Domain Name System):

> 1. Data is registered/maintained to generate a zone file,
>
> 2. A zone file is in turn used in TLD (Top Level Domain) name servers.

Within a TLD (Top Level Domain) 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 (Top Level Domain) (Name Server Function).

These two core functions must be performed at the ccTLD (Country Code Top Level Domain) registry level as well as at a higher level (IANA (Internet Assigned Numbers Authority) function and root servers) and at lower levels of the DNS (Domain Name System) hierarchy. This mechanism, as RFC (Request for Comments) 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 (Top Level Domain) 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 (National Science Foundation (USA)))

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 (Country Code Top Level Domain) 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 (Country Code Top Level Domain) registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC (Request for Comments) 1591.

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

It is in the interest of ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers to ensure the stable and proper functioning of the domain name system. ICANN (Internet Corporation for Assigned Names and Numbers) and the ccTLD (Country Code Top Level Domain) registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO (Country Code Names Supporting Organization) cannot be established without reaching a common understanding of the allocation of authority between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) registries.

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

- Policy role: i.e. the ability and power to define a policy;

- Executive role: i.e. the ability and power to act upon and implement the policy; and

- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

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

The information below offers an aid to:

1. delineate and identify specific policy areas;

2. define and determine roles with regard to these specific policy areas.

This annex defines the scope of the ccNSO (Country Code Names Supporting Organization) with regard to developing policies. The scope is

limited to the policy role of the ccNSO (Country Code Names Supporting Organization) 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 (Internet Engineering Task Force), RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers))
Executive role: Root Server System Operators
Accountability role: RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers)), (US DoC-ICANN (Internet Corporation for Assigned Names and Numbers) MoU (Memorandum of Understanding))

Level 2: ccTLD (Country Code Top Level Domain) Registry Name Servers in respect to interoperability
Policy role: ccNSO (Country Code Names Supporting Organization) Policy Development Process (ICANN (Internet Corporation for Assigned Names and Numbers)), for best practices a ccNSO (Country Code Names Supporting Organization) process can be organized
Executive role: ccTLD (Country Code Top Level Domain) Manager
Accountability role: part ICANN (Internet Corporation for Assigned Names and Numbers) (IANA (Internet Assigned Numbers Authority)), part Local Internet Community, including local government
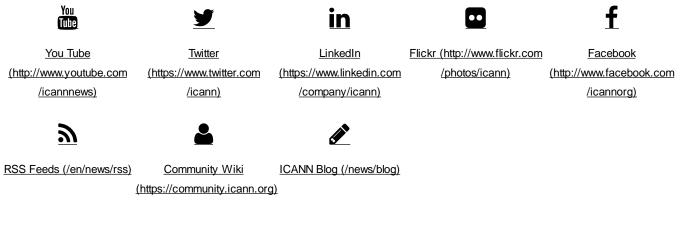
Level 3: User's Name Servers
Policy role: ccTLD (Country Code Top Level Domain) Manager, IETF (Internet Engineering Task Force) (RFC (Request for Comments))
Executive role: Registrant (Registrant)
Accountability role: ccTLD (Country Code Top Level Domain) Manager

Data Entry Function (as to ccTLDs)

Level 1: Root Level Registry
Policy role: ccNSO (Country Code Names Supporting Organization)
Policy Development Process (ICANN (Internet Corporation for
Assigned Names and Numbers))
Executive role: ICANN (Internet Corporation for Assigned Names and
Numbers) (IANA (Internet Assigned Numbers Authority))
Accountability role: ICANN (Internet Corporation for Assigned Names
and Numbers) community, ccTLD (Country Code Top Level Domain)
Managers, US DoC, (national authorities in some cases)

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

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

You Tube
(http://www.youtube.com
/icannnews)

Twitter
(https://www.twitter.com
/icann)

LinkedIn
(https://www.linkedin.com
/company/icann)

Flickr (http://www.flickr.com
/photos/icann)

Facebook
(http://www.facebook.com
/icannorg)

RSS Feeds (/en/news/rss)

Community Wiki
(https://community.icann.org)

ICANN Blog (/news/blog)

Who We Are

Get Started
(/get-started)

Learning
(/en/about
/learning)

Participate
(/en/about
/participate)

Groups
(https://www.icann.org
/resources
/pages/groups-
2012-02-06-en)

Board
(/resources
/pages/board-
of-directors-
2014-03-19-en)

President's
Corner
(/presidents-
corner)

Staff (/en/about
/staff)

Careers
(https://icann-
openhire.silkroad.com
/epostings
/index.cfm?fuseaction=app.allpositions&
amp;company_id=16025&
amp;version=1)

Newsletter
(/en/news
/newsletter)

Development
and Public
Responsibility
(https://www.icann.org
/development-
and-public-
responsibility)

Contact Us

Offices
(https://forms.icann.org
/en/contact)

Global Support
(/resources
/pages
/customer-
support-
2015-06-22-en)

Security Team
(/about/staff
/security)

PGP Keys
(/en/contact
/pgp-keys)

Certificate
Authority
(/contact
/certificate-
authority)

Registry Liaison
(/resources
/pages/contact-
f2-2012-02-25-en)

AOC Review
(http://forms.icann.org
/en/about
/aoc-review
/contact)

Organizational
Reviews
(http://forms.icann.org
/en/groups
/reviews
/contact)

Request a
Speaker
(http://forms.icann.org
/en/contact
/speakers)

For Journalists
(/en/news
/press)

Accountability & Transparency

Accountability
Mechanisms
(/en/news
/in-focus
/accountability
/mechanisms)

Independent
Review Process
(/resources
/pages
/irp-2012-02-25-en)

Request for
Reconsideration
(/groups/board
/governance
/reconsideration)

Ombudsman
(/help
/ombudsman)

Governance

Documents
(/en/about
/governance)

Agreements
(/en/about
/agreements)

AOC Review
(/en/about
/aoc-review)

Annual Report
(/about/annual-
report)

Financials
(/en/about
/financials)

Document
Disclosure
(/en/about
/transparency)

Planning
(/en/about
/planning)

Dashboard Beta
(https://www.icann.org
/dashboard)

RFPs (/en/news
/rfps)

Litigation
(/en/news
/litigation)

Correspondence
(/en/news
/correspondence)

Help

Dispute
Resolution
(/en/help
/dispute-
resolution)

Domain Name
Dispute
Resolution
(/en/help/dndr)

Name Collision
(/en/help/name-
collision)

Registrar
Problems
(/en/news
/announcements
/announcement-
06mar07-
en.htm)

WHOIS
(http://whois.icann.org/)

Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process

Table of Contents

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:

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.

ICANN refers to the Internet Corporation for Assigned Names and Numbers.

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.

INDEPENDENT REVIEW PANEL (IRP) refers to the neutral(s) appointed to decide the issue(s) presented.

INDEPENDENT REVIEW 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.

DECLARATION refers to the decisions/opinions of the IRP.

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: in absence of any such election, the issue shall be considered by a one-member panel.

4. Conduct of the Independent Review

The IRP should conduct its proceedings by electronic means to the extent feasible. Where necessary, the IRP may conduct telephone conferences

5. Written Statements

The IRP may request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties.

6. Interim Measures of Protection

An IRP 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.

7. Declarations

Where there is more than one IRP member, any DECLARATION of the IRP shall by made by a majority of the IRP members. If any IRP member fails to sign the DECLARATION, it shall be accompanied by a statement of the reason for the absence of such signature.

8. Form and Effect of an IRP Declaration

a. DECLARATIONS shall be made in writing, promptly by the IRP, 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.

9. Costs

The IRP 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 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.

10. Emergency Measures of Protection

Article 37 of the RULES will not apply.