

Reference Material 1.

Internet Corporation for Assigned Names and Numbers

ABOUT US (/EN/ABOUT) › GOVERNANCE (/EN/ABOUT/GOVERNANCE)

ARTICLES OF INCORPORATION OF INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

29

As Revised November 21, 1998

1. The name of this corporation is Internet Corporation for Assigned Names and Numbers (the "Corporation").
2. The name of the Corporation's initial agent for service of process in the State of California, United States of America is C T Corporation System.
3. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable and public purposes. The Corporation is organized, and will be operated, exclusively for charitable, educational, and scientific purposes within the meaning of § 501 (c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), or the corresponding provision of any future United States tax code. Any reference in these Articles to the Code shall include the corresponding provisions of any further United States tax code. In furtherance of the foregoing purposes, and in recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization, the Corporation shall, except as limited by Article 5 hereof, pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by (i) coordinating the assignment of Internet technical parameters as needed to maintain universal connectivity on the Internet; (ii) performing and overseeing functions related to the coordination of the Internet Protocol ("IP (Intellectual Property; or Internet Protocol)") address space; (iii) performing and overseeing functions related to the coordination of the Internet domain name system ("DNS (Domain Name System)"), including the development of policies for determining the circumstances under which new top-level domains are added to the DNS (Domain Name System) root server system; (iv) overseeing operation of the authoritative Internet DNS (Domain Name System) root server system; and (v) engaging in any other related lawful activity in furtherance of items (i) through (iv).
4. The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.
5. Notwithstanding any other provision (other than Article 8) of these Articles:
 - a. The Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from United States income tax under § 501 (c)(3) of the Code or (ii) by a corporation, contributions to which are deductible under § 170 (c)(2) of the Code.
 - b. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall be empowered to make the election under § 501 (h) of the Code.
 - c. The Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.
 - d. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its members, directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and

empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 3 hereof.

e. In no event shall the Corporation be controlled directly or indirectly by one or more "disqualified persons" (as defined in § 4946 of the Code) other than foundation managers and other than one or more organizations described in paragraph (1) or (2) of § 509 (a) of the Code.

6. To the full extent permitted by the California Nonprofit Public Benefit Corporation Law or any other applicable laws presently or hereafter in effect, no director of the Corporation shall be personally liable to the Corporation or its members, should the Corporation elect to have members in the future, for or with respect to any acts or omissions in the performance of his or her duties as a director of the Corporation. Any repeal or modification of this Article 6 shall not adversely affect any right or protection of a director of the Corporation existing immediately prior to such repeal or modification.

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

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

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

[Welcome \(/en/about/welcome\)](/en/about/welcome)

[Learning \(/en/about/learning\)](/en/about/learning)

[Participate \(/en/about/participate\)](/en/about/participate)

[Board \(http://www.icann.org/en/groups/board\)](http://www.icann.org/en/groups/board)

[CEO \(http://www.icann.org/en/about/ceo\)](http://www.icann.org/en/about/ceo)

[Staff \(/en/about/staff\)](/en/about/staff)

[Careers \(https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1 \)](https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1)

[Governance \(/en/about/governance\)](/en/about/governance)

[Guidelines \(/en/about/governance/guidelines\)](/en/about/governance/guidelines)

[Articles of Incorporation \(/en/about/governance/articles\)](/en/about/governance/articles)

[Bylaws \(/en/about/governance/bylaws\)](/en/about/governance/bylaws)

[Board Documents \(http://www.icann.org/en/groups/board/documents\)](http://www.icann.org/en/groups/board/documents)

Board Code of Conduct (<http://www.icann.org/en/groups/board/governance/code-of-conduct>)

Board Conflicts of Interest Policy (<http://www.icann.org/en/groups/board/governance/coi>)

Board Statements of Interest (<http://www.icann.org/en/groups/board/sois>)

Summary of Conflicts of Interest and Ethics Practices Review (</en/about/governance/coi/summary-ethics-review-13may13-en>)

Agreements (</en/about/agreements>)

Accountability & Transparency (<http://www.icann.org/en/news/in-focus/accountability>)

AOC Review (</en/about/aoc-review>)

Annual Report (</en/about/annual-report>)

Financials (</en/about/financials>)

Document Disclosure (</en/about/transparency>)

Planning (</en/about/planning>)

Stay Connected

Your email address please.

News Alerts: HTML Plain Text

Newsletter: HTML Plain Text

Compliance Newsletter: HTML Plain Text

Policy Update: HTML Plain Text

Subscribe

Follow us @icann (<https://twitter.com/#!/icann/>)

Videos (<http://www.youtube.com/icannnews>)

Photos on Flickr (<http://www.flickr.com/photos/icann/>)

Facebook (<http://www.facebook.com/icannorg>)

ICANN Blog (<http://blog.icann.org/>)

Community Wiki (<https://community.icann.org/>)

Planet ICANN (</en/groups/planet-icann>)

RSS Feeds (</en/news/rss>)

© 2014 Internet Corporation For Assigned Names and Numbers. [Press \(/news/press\)](/news/press) | [Site Map \(/sitemap\)](/sitemap) | [Privacy Policy \(/help/privacy\)](/help/privacy)

ICANN Network

myICANN (<http://www.myicann.org/>)

ASO (<http://aso.icann.org>)

ALAC (<http://www.atlarge.icann.org>)

ccNSO (<http://ccnso.icann.org>)

GAC (<http://gac.icann.org>)

GNSO (<http://gnso.icann.org>)

RSSAC (</en/groups/rssac>)

SSAC (</en/groups/ssac>)

[Community Wiki \(http://community.icann.org\)](http://community.icann.org)

[Meetings \(http://meetings.icann.org\)](http://meetings.icann.org)

[New gTLDs \(http://newgtlds.icann.org\)](http://newgtlds.icann.org)

[WHOIS \(http://whois.icann.org\)](http://whois.icann.org)

[Help](#)

[\(/en/help\)](#)

[Acronym Helper](#)

Reference Material 2.

Internet Corporation for Assigned Names and Numbers

ABOUT US (/EN/ABOUT) › GOVERNANCE (/EN/ABOUT/GOVERNANCE)

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

66

Deutsch (/de/about/governance/bylaws) | Español (/es/about/governance/bylaws) | Français (/fr/about/governance/bylaws)

Italiano (/it/about/governance/bylaws) | 日本語 (/ja/about/governance/bylaws) | 한국어 (/ko/about/governance/bylaws)

Português (/pt/about/governance/bylaws) | Русский (/ru/about/governance/bylaws) | العربية (/ar/about/governance/bylaws)

العربية (/ar/about/governance/bylaws)

As amended 11 April 2013

TABLE OF CONTENTS

ARTICLE I: MISSION AND CORE (Council of Registrars) VALUES	
ARTICLE II: POWERS	
ARTICLE III: TRANSPARENCY	
ARTICLE IV: ACCOUNTABILITY AND REVIEW	
ARTICLE V: OMBUDSMAN	
ARTICLE VI: BOARD OF DIRECTORS	
ARTICLE VII: NOMINATING COMMITTEE	
ARTICLE VIII: ADDRESS SUPPORTING ORGANIZATION	
ARTICLE IX: COUNTRY-CODE NAMES SUPPORTING ORGANIZATION	
ARTICLE X: GENERIC NAMES SUPPORTING ORGANIZATION	
ARTICLE XI: ADVISORY COMMITTEES	
ARTICLE XI-A: OTHER ADVISORY MECHANISMS	
ARTICLE XII: BOARD AND TEMPORARY COMMITTEES	
ARTICLE XIII: OFFICERS	
ARTICLE XIV: INDEMNIFICATION OF DIRECTORS, EMPLOYEES, AND OTHER AGENTS	
ARTICLE XV: GENERAL PROVISIONS	
ARTICLE XVI: FISCAL MATTERS	
ARTICLE XVII: MEMBERS	
ARTICLE XVIII: OFFICES AND SEAL	
ARTICLE XIX: AMENDMENTS	
ARTICLE XX: TRANSITION ARTICLE	
ANNEX A: GNSO (Generic Names Supporting Organization) POLICY DEVELOPMENT PROCESS	
ANNEX B: ccNSO (Country Code Names Supporting Organization) POLICY-DEVELOPMENT PROCESS (ccPDP)	
ANNEX C: THE SCOPE OF THE ccNSO (Country Code Names Supporting Organization)	

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 (Intellectual Property; or Internet Protocol)") addresses and autonomous system ("AS") numbers; and
 - c. 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 value 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

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 System Registry or Registrar or Internet 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, and Advisory Committees; (ii) a docket of all pending policy development matters, including their schedule and current status; (iii) specific meeting notices and agendas as described below; (iv) information on ICANN (Internet Corporation for Assigned Names and Numbers)'s budget, annual audit, financial contributors and the amount of the 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 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 (as set forth in Articles VIII - X of these Bylaws) and Advisory Committees (as set forth in Article XI of these Bylaws) informing them that the resolutions have been posted.
3. No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the location of ICANN (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 and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board's request.

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

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

Section 7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN (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) shall be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in Article I of these Bylaws. The provisions of this Article, creating processes for reconsideration and independent review of ICANN (Internet Corporation for Assigned Names and Numbers) actions and periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article III and the Board and other selection mechanisms set forth throughout these Bylaws.

Section 2. RECONSIDERATION

1. ICANN (Internet Corporation for Assigned Names and Numbers) shall have in place a process by which any person or entity materially affected by an action of ICANN (Internet Corporation for Assigned Names and Numbers) may request review or reconsideration of that action by the Board.
2. Any person or entity may submit a request for reconsideration or review of an ICANN (Internet Corporation for Assigned Names and Numbers) action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:
 - a. one or more staff actions or inactions that contradict established ICANN (Internet Corporation for Assigned Names and Numbers) policy(ies); or
 - b. one or more actions or inactions of the ICANN (Internet Corporation for Assigned Names and Numbers) Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
 - c. one or more actions or inactions of the ICANN (Internet Corporation for Assigned Names and Numbers) Board that are taken as a result of the Board's reliance on false or inaccurate material information.
3. The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:
 - a. evaluate requests for review or reconsideration;
 - b. summarily dismiss insufficient requests;
 - c. evaluate requests for urgent consideration;
 - d. conduct whatever factual investigation is deemed appropriate;
 - e. request additional written submissions from the affected party, or from other parties;
 - f. make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and
 - g. make a recommendation to the Board of Directors on the merits of the request, as necessary.
4. ICANN (Internet Corporation for Assigned Names and Numbers) shall absorb the normal administrative costs of the reconsideration process. It reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the party seeking reconsideration, who shall then have the option of withdrawing the request or agreeing to bear such costs.
5. All Reconsideration Requests must be submitted to an e-mail address designated by the Board Governance Committee within fifteen days after:
 - a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 15 days from the initial posting of the rationale; or
 - b. for requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or
 - c. for requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.
6. To properly initiate a Reconsideration process, all requestors must review and follow the Reconsideration Request form posted on the ICANN (Internet Corporation for Assigned Names and Numbers) website. at <http://www.icann.org/en/groups/board/governance/reconsideration> (/en/groups/board/governance/reconsideration). Requestors must also acknowledge and agree to the terms and conditions set forth in

- the form when filing.
7. Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.
 8. The Board Governance Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is the same for all of the requestors. Every requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.
 9. The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; (ii) it is frivolous, querulous or vexatious; or (iii) the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. The Board Governance Committee's summary dismissal of a Reconsideration Request shall be posted on the Website.
 10. For all Reconsideration Requests that are not summarily dismissed, the Board Governance Committee shall promptly proceed to review and consideration.
 11. The Board Governance Committee may ask the ICANN (Internet Corporation for Assigned Names and Numbers) staff for its views on the matter, which comments shall be made publicly available on the Website.
 12. The Board Governance Committee may request additional information or clarifications from the requestor, and may elect to conduct a meeting with the requestor by telephone, email or, if acceptable to the party requesting reconsideration, in person. A requestor may ask for an opportunity to be heard; the Board Governance Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.
 13. The Board Governance Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation. Any information collected from third parties shall be provided to the requestor.
 14. The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN (Internet Corporation for Assigned Names and Numbers) staff, and by any third party.
 15. For all Reconsideration Requests brought regarding staff action or inaction, the Board Governance Committee shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.
 16. The Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation. The final recommendation shall be posted on ICANN (Internet Corporation for Assigned Names and Numbers)'s website.
 17. The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board

meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN (Internet Corporation for Assigned Names and Numbers)'s website. The Board's decision on the recommendation is final.

18. If the requestor believes that the Board action or inaction posed for Reconsideration is so urgent that the timing requirements of the Reconsideration process are too long, the requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (calculated at ICANN (Internet Corporation for Assigned Names and Numbers)'s headquarters in Los Angeles, California) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.
19. The Board Governance Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Governance Committee agrees to consider the matter with urgency, it will cause notice to be provided to the requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Governance Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Request, or as soon thereafter as feasible. If the Board Governance Committee does not agree to consider the matter with urgency, the requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.
20. The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:
 - a. the number and general nature of Reconsideration Requests received, including an identification if the requests were acted upon, summarily dismissed, or remain pending;
 - b. for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests have been pending, and a description of the reasons for any request pending for more than ninety (90) days;
 - c. an explanation of any other mechanisms available to ensure that ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to persons materially affected by its decisions; and
 - d. whether or not, in the Board Governance Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN (Internet Corporation for Assigned Names and Numbers) decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in Section 2 of this Article (</en/about/governance/bylaws#IV-2>), ICANN (Internet Corporation for Assigned Names and Numbers) shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.
2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.
3. A request for independent review must be filed within thirty days of the posting of the minutes of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrates that ICANN (Internet Corporation for Assigned Names and Numbers) violated its Bylaws or Articles of Incorporation. Consolidated requests may be appropriate when the causal connection between the circumstances of the requests and the harm is the same for each of the requesting parties.
4. Requests for such independent review shall be referred to an Independent Review Process Panel ("IRP Panel"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:
 - a. did the Board act without conflict of interest in taking its decision?;
 - b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
 - c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?
5. Requests for independent review shall not exceed 25 pages (double-spaced, 12-point font) of argument. ICANN (Internet Corporation for Assigned Names and Numbers)'s response shall not exceed that same length. Parties may submit documentary evidence supporting their positions without limitation. In the event that parties submit expert evidence, such evidence must be provided in writing and there will be a right of reply to the expert evidence.
6. There shall be an omnibus standing panel of between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and work from which each specific IRP Panel shall be selected. The panelists shall serve for terms that are staggered to allow for continued review of the size of the panel and the range of expertise. A Chair of the standing panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within the ICANN (Internet Corporation for Assigned Names and Numbers) structure are not eligible to serve on the standing panel. In the event that an omnibus standing panel: (i) is not in place when an IRP Panel must be convened for a given proceeding, the IRP proceeding will be considered by a one- or three-member panel comprised in accordance with the rules of the IRP Provider; or (ii) is in place but does not have the requisite diversity of skill and experience needed for a particular proceeding, the IRP Provider shall identify one or more panelists, as required, from outside the omnibus standing panel to augment the panel members for that proceeding.
7. All IRP proceedings shall be administered by an international dispute resolution provider appointed from time to time by ICANN (Internet Corporation for Assigned Names and Numbers) ("the IRP Provider"). The membership of the standing panel shall be coordinated by the IRP Provider subject to approval by ICANN (Internet Corporation for Assigned Names and Numbers).
8. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this Section 3 (</en/about/governance/bylaws#IV-3>).
9. Either party may request that the IRP be considered by a one- or three-member panel; the Chair of the

- standing panel shall make the final determination of the size of each IRP panel, taking into account the wishes of the parties and the complexity of the issues presented.
10. The IRP Provider shall determine a procedure for assigning members from the standing panel to individual IRP panels.
 11. The IRP Panel shall have the authority to:
 - a. summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious;
 - b. request additional written submissions from the party seeking review, the Board, the Supporting Organizations, 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, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN (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 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 or 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 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 according to the provisions of Article VIII of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 9 and Seat 10.
- c. Two voting members selected by the Country-Code Names Supporting Organization according to the provisions of Article IX of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 11 and Seat 12.
- d. Two voting members selected by the Generic Names Supporting Organization according to the provisions of Article X of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 13 and Seat 14.
- e. One voting member selected by the At-Large Community according to the provisions of Article XI of these Bylaws. This seat on the Board of Directors is referred to in these Bylaws as Seat 15.
- f. The President ex officio, who shall be a voting member.

2. In carrying out its responsibilities to fill Seats 1 through 8, the Nominating Committee shall seek to ensure that the ICANN (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 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 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 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 (Intellectual Property; or Internet Protocol) address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet;
5. Persons who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and
6. Persons who are able to work and communicate in written and spoken English.

Section 4. ADDITIONAL QUALIFICATIONS

1. Notwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director. As used herein, the term "official" means a person (i) who holds an elective governmental office or (ii) who is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental or public policies.
2. No person who serves in any capacity (including as a liaison) on any Supporting Organization Council shall simultaneously serve as a Director or liaison to the Board. If such a person accepts a nomination to be considered for selection by the Supporting Organization Council or the At-Large Community to be a Director, the person shall not, following such nomination, participate in any discussion of, or vote by, the Supporting Organization Council or the committee designated by the At-Large Community relating to the selection of Directors by the Council or Community, until the Council or committee(s) designated by the At-Large Community has selected the full complement of Directors it is responsible for selecting. In the event that a person serving in any capacity on a Supporting Organization Council accepts a nomination to be considered for selection as a Director, the constituency group or other group or entity that selected the person may select a replacement for purposes of the Council's selection process. In the event that a person serving in any capacity on the At-Large Advisory Committee accepts a nomination to be considered for selection by the At-Large Community as a Director, the Regional At-Large Organization or other group or entity that selected the person may select a replacement for purposes of the Community's selection process.
3. Persons serving in any capacity on the Nominating Committee shall be ineligible for selection to positions on the Board as provided by Article VII, Section 8.

Section 5. INTERNATIONAL REPRESENTATION

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

Section 6. DIRECTORS' CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN (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 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 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;
- b. One appointed by the Root Server System Advisory Committee established by Article XI of these Bylaws;
- c. One appointed by the Security and Stability Advisory Committee established by Article XI of these Bylaws;
- d. One appointed by the Technical Liaison Group established by Article XI-A of these Bylaws;
- e. One appointed by the Internet Engineering Task Force.

2. Subject to the provisions of the Transition Article of these Bylaws, the non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of ICANN (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, notice must be provided to that Supporting Organization at the same time notice is provided to the Director. If the Director was selected by the At-Large Community, notice must be provided to the At-Large Advisory Committee at the same time notice is provided to the Director.

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

Section 12. VACANCIES

1. A vacancy or vacancies in the Board of Directors shall be deemed to exist in the case of the death, resignation, or removal of any Director; if the authorized number of Directors is increased; or if a Director has been declared of unsound mind by a final order of court or convicted of a felony or incarcerated for more than 90 days as a result of a criminal conviction or has been found by final order or judgment of any court to have breached a duty under Sections 5230 et seq. of the CNPBCL. Any vacancy occurring on the Board of Directors shall be filled by the Nominating Committee, unless (a) that Director was selected by a Supporting Organization, in which case that vacancy shall be filled by that Supporting Organization, or (b) that Director was the President, in which case the vacancy shall be filled in accordance with the provisions of Article XIII of these Bylaws. The selecting body shall give written notice to the Secretary of ICANN (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 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, 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 established by Article XI of these Bylaws;
4. A non-voting liaison appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Security and Stability Advisory Committee established by Article XI of these Bylaws;
5. A non-voting liaison appointed by the Governmental Advisory Committee;
6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the At-Large Advisory Committee established by Article XI of these Bylaws;
7. Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization, established by Article X of these Bylaws, as follows:

- a. One delegate from the Registries Stakeholder Group;
- b. One delegate from the Registrars Stakeholder Group;
- c. Two delegates from the Business Constituency, one representing small business users and one representing large business users;
- d. One delegate from the Internet Service Providers Constituency;
- e. One delegate from the Intellectual Property Constituency; and
- f. One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.

8. One voting delegate each selected by the following entities:

- a. The Council of the Country Code Names Supporting Organization established by Article IX of these Bylaws;
- b. The Council of the Address Supporting Organization established by Article VIII of these Bylaws;
- c. 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 (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), 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 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 (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, 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 or 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; (b) the At-Large Advisory Committee; and (c) each of the Regional Organizations described in Section 5 of this Article. These liaisons shall not be members of or entitled to vote on the ccNSO (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 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.

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.

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-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) 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 and/or 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 comprising sixty percent (60%) of all the respective voting House members:

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

Election procedures are defined in the GNSO (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 in addition to those set forth in this Article. Advisory Committee membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees shall have no legal authority to act for ICANN (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:

1. Governmental Advisory Committee

- a. The Governmental Advisory Committee should consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers) as they relate to concerns of governments, 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 through its Chair.
- c. The Governmental Advisory Committee may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.
- d. The chair of the Governmental Advisory Committee shall be elected by the members of the Governmental Advisory Committee pursuant to procedures adopted by such members.
- e. Each member of the Governmental Advisory Committee shall appoint one accredited representative to the Committee. The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.
- f. The Governmental Advisory Committee shall annually appoint one non-voting liaison to the ICANN (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 may designate a non-voting liaison to each of the Supporting Organization Councils and Advisory Committees, to the extent the Governmental Advisory Committee deems it appropriate and useful to do so.
- h. The Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues on which it or any of ICANN (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 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 advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN (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 advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

2. Security and Stability Advisory Committee

a. The role of the Security and Stability Advisory Committee ("SSAC (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, 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

a. The role of the Root Server System Advisory Committee ("RSSAC") 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 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 with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the Root Zone File.
3. Engage in ongoing threat assessment and risk analysis of the Root Server System and recommend any necessary audit activity to assess the current status of root servers and the root zone.
4. Respond to requests for information or opinions from the ICANN (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 shall be led by two co-chairs. The RSSAC's chairs and members shall be appointed by the Board.

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

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

4. At-Large Advisory Committee

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

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

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

4. Process for Seeking and Advice-Other Matters. Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with Section 1(2)(a) of this Article shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.

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

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

Section 2. TECHNICAL LIAISON GROUP

1. Purpose. The quality of ICANN (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-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-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-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, 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 Number 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 Number or its 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 CNPBC, 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, any 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 agent 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 reasonable 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 Article VI, Section 8(1)(a)-(c) of the New Bylaws, 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 (Article VI, Section 2(1)(a)-(d)) and non-voting liaisons (Article VI, Section 9) as to which the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary has received notice of selection shall, along with the President (Article VI, Section 2(1)(e)), be seated upon the Effective Date and Time of the New Board, and thereafter any additional Directors and non-voting liaisons shall be seated upon the ICANN (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 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 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, 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 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 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 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 and the Governmental 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 ("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 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 shall continue in operation according to its existing operating principles and practices, until further action of the committee. The Governmental Advisory Committee may designate liaisons to serve with other ICANN (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 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 Advisory Committee shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Security and Stability Advisory Committee shall notify the ICANN (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 shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Root Server Advisory Committee shall notify the ICANN (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

- 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 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 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 members previously selected by the Board from the RALO's region.
- c. Upon the seating of persons selected by all five RALOs, the Interim At-Large Advisory Committee shall become the At-Large Advisory Committee, as established by Article XI, Section 2(4) of the New Bylaws. The five individuals selected to the Interim At-Large Advisory Committee by the Nominating Committee shall become members of the At-Large Advisory Committee for the remainder of the terms for which they were selected.
- d. Promptly upon its creation, the Interim At-Large Advisory Committee shall notify the ICANN (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 ("PDF (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 Policy, the Council may act through other processes.

Section 1. Required Elements of a Policy Development Process

The following elements are required at a minimum to form Consensus Policies as defined within ICANN (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, 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 in 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 least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

Advisory Committee Request. An Advisory Committee may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO (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, 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 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 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 or Advisory Committee*. An ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization or an ICANN (Internet Corporation for Assigned Names and Numbers) 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 that 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 Lines set out in the Issue Report.

5. Composition and Selection of Task Forces

- a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see 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 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 and 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, 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 and Advisory Committees. Each Task Force Report must include:

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

8. Procedure if No Task Force is Formed

- a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP (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, 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 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 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 counterbalance to the executive role, the accountability role needs to be defined and determined.

The information below offers an aid to:

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

This annex defines the scope of the ccNSO (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 \(ICANN \(Internet Corporation for Assigned Names and Numbers\)\)](#)

Executive role: Root Server System Operators

Accountability role: [RSSAC \(ICANN \(Internet Corporation for Assigned Names and Numbers\)\)](#), ([US DoC-ICANN 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

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

Executive role: Registrant

Accountability role: Registrant, users of lower-level domain names

[Welcome \(/en/about/welcome\)](/en/about/welcome)

[Learning \(/en/about/learning\)](/en/about/learning)

[Participate \(/en/about/participate\)](/en/about/participate)

[Board \(http://www.icann.org/en/groups/board\)](http://www.icann.org/en/groups/board)

[CEO \(http://www.icann.org/en/about/ceo\)](http://www.icann.org/en/about/ceo)

[Staff \(/en/about/staff\)](/en/about/staff)

[Careers \(https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1 \)](https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1)

[Governance \(/en/about/governance\)](/en/about/governance)

[Guidelines \(/en/about/governance/guidelines\)](/en/about/governance/guidelines)

[Articles of Incorporation \(/en/about/governance/articles\)](/en/about/governance/articles)

[Bylaws \(/en/about/governance/bylaws\)](/en/about/governance/bylaws)

[Archive \(/en/about/governance/bylaws/archive\)](/en/about/governance/bylaws/archive)

[Board Documents \(http://www.icann.org/en/groups/board/documents\)](http://www.icann.org/en/groups/board/documents)

[Board Code of Conduct \(http://www.icann.org/en/groups/board/governance/code-of-conduct\)](http://www.icann.org/en/groups/board/governance/code-of-conduct)

[Board Conflicts of Interest Policy \(http://www.icann.org/en/groups/board/governance/coi\)](http://www.icann.org/en/groups/board/governance/coi)

[Board Statements of Interest \(http://www.icann.org/en/groups/board/sois\)](http://www.icann.org/en/groups/board/sois)

[Summary of Conflicts of Interest and Ethics Practices Review \(/en/about/governance/coi/summary-ethics-review-13may13-en\)](/en/about/governance/coi/summary-ethics-review-13may13-en)

[Agreements \(/en/about/agreements\)](/en/about/agreements)

[Accountability & Transparency \(http://www.icann.org/en/news/in-focus/accountability\)](http://www.icann.org/en/news/in-focus/accountability)

[AOC Review \(/en/about/aoc-review\)](/en/about/aoc-review)

[Annual Report \(/en/about/annual-report\)](/en/about/annual-report)

[Financials \(/en/about/financials\)](/en/about/financials)

[Document Disclosure \(/en/about/transparency\)](/en/about/transparency)

[Planning \(/en/about/planning\)](/en/about/planning)

Stay Connected

Your email address please.

News Alerts: HTML Plain Text

Newsletter: HTML Plain Text

Compliance Newsletter: HTML Plain Text

Policy Update: HTML Plain Text

Subscribe

Follow us @icann (<https://twitter.com/#!/icann/>)

Videos (<http://www.youtube.com/icannnews>)

Photos on Flickr (<http://www.flickr.com/photos/icann/>)

Facebook (<http://www.facebook.com/icannorg>)

ICANN Blog (<http://blog.icann.org/>)

Community Wiki (<https://community.icann.org/>)

Planet ICANN (</en/groups/planet-icann>)

RSS Feeds (</en/news/rss>)

- [myICANN \(http://www.mycann.org/\)](http://www.mycann.org/)
- [ASO \(http://aso.icann.org\)](http://aso.icann.org)
- [ALAC \(http://www.atlarge.icann.org\)](http://www.atlarge.icann.org)
- [ccNSO \(http://ccnso.icann.org\)](http://ccnso.icann.org)
- [GAC \(http://gac.icann.org\)](http://gac.icann.org)
- [GNSO \(http://gnso.icann.org\)](http://gnso.icann.org)
- [RSSAC \(/en/groups/rssac\)](/en/groups/rssac)
- [SSAC \(/en/groups/ssac\)](/en/groups/ssac)
- [Community Wiki \(http://community.icann.org\)](http://community.icann.org)
- [Meetings \(http://meetings.icann.org\)](http://meetings.icann.org)
- [New gTLDs \(http://newgtlds.icann.org\)](http://newgtlds.icann.org)
- [WHOIS \(http://whois.icann.org\)](http://whois.icann.org)
- Help

[\(/en/help\)](/en/help)

Acronym Helper

Reference Material 3.

Internet Corporation for Assigned Names and Numbers

[ABOUT US \(/EN/ABOUT\)](#) › [GOVERNANCE \(/EN/ABOUT/GOVERNANCE\)](#) › [BYLAWS \(/EN/ABOUT/GOVERNANCE/BYLAWS\)](#)

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

As amended 16 March 2012

TABLE OF CONTENTS

ARTICLE I: MISSION AND <u>CORE (Council of Registrars)</u> VALUES
ARTICLE II: POWERS
ARTICLE III: TRANSPARENCY
ARTICLE IV: ACCOUNTABILITY AND REVIEW
ARTICLE V: OMBUDSMAN
ARTICLE VI: BOARD OF DIRECTORS
ARTICLE VII: NOMINATING COMMITTEE
ARTICLE VIII: ADDRESS SUPPORTING ORGANIZATION
ARTICLE IX: COUNTRY-CODE NAMES SUPPORTING ORGANIZATION
ARTICLE X: GENERIC NAMES SUPPORTING ORGANIZATION
ARTICLE XI: ADVISORY COMMITTEES
ARTICLE XI-A: OTHER ADVISORY MECHANISMS
ARTICLE XII: BOARD AND TEMPORARY COMMITTEES
ARTICLE XIII: OFFICERS
ARTICLE XIV: INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS
ARTICLE XV: GENERAL PROVISIONS
ARTICLE XVI: FISCAL MATTERS
ARTICLE XVII: MEMBERS
ARTICLE XVIII: OFFICES AND SEAL
ARTICLE XIX: AMENDMENTS
ARTICLE XX: TRANSITION ARTICLE
ANNEX A: <u>GNSO (Generic Names Supporting Organization)</u> POLICY DEVELOPMENT PROCESS
ANNEX B: <u>ccNSO (Country Code Names Supporting Organization)</u> POLICY-DEVELOPMENT PROCESS (ccPDP)
ANNEX C: THE SCOPE OF THE <u>ccNSO (Country Code Names Supporting Organization)</u>

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 (Intellectual Property; or Internet Protocol)") addresses and autonomous system ("AS") numbers; and
 - c. 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 value 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

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 System Registry or Registrar or Internet 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, and Advisory Committees; (ii) a docket of all pending policy development matters, including their schedule and current status; (iii) specific meeting notices and agendas as described below; (iv) information on ICANN (Internet Corporation for Assigned Names and Numbers)'s budget, annual audit, financial contributors and the amount of the 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 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 (as set forth in Articles VIII - X of these Bylaws) and Advisory Committees (as set forth in Article XI of these Bylaws) informing them that the resolutions have been posted.
3. No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the location of ICANN (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 and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board's request.

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

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

Section 7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN (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) shall 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 of 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. The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:

a. evaluate requests for review or reconsideration;

b. determine whether a stay of the contested action pending resolution of the request is appropriate;

c. conduct whatever factual investigation is deemed appropriate;

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

e. make a recommendation to the Board of Directors on the merits of the request.

4. ICANN (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 Governance Committee within thirty days after:

a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a preliminary report or minutes of the Board's meetings; or

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

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

6. All Reconsideration Requests must include the information required by the Board Governance Committee, which shall include at least the following information:

- a. name, address, and contact information for the requesting party, including postal and e-mail addresses;
- b. the specific action or inaction of ICANN (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 Board Governance Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as (i) the requests involve the same general action or inaction and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction.

9. The Board Governance Committee shall review Reconsideration Requests promptly upon receipt and announce, within thirty days, its intention to either decline to consider or proceed to consider a Reconsideration Request after receipt of the Request. The announcement shall be posted on the Website.

10. The Board Governance Committee announcement of a decision not to hear a Reconsideration Request must contain an explanation of the reasons for its decision.

11. The Board Governance Committee may request additional information or clarifications from the party submitting the Request for Reconsideration.

12. The Board Governance Committee may ask the ICANN (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 Board Governance Committee requires additional information, it may elect to conduct a meeting with the party seeking Reconsideration by telephone, e-mail or, if acceptable to the party requesting reconsideration, in person. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.

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

15. The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN (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 Board Governance Committee where it is repetitive, frivolous, non-substantive, or otherwise abusive, or where the affected party had notice and opportunity to, but did not, participate in the public comment period

relating to the contested action, if applicable. Likewise, the Board Governance Committee may dismiss a request when the requesting party does not show that it will be affected by ICANN (Internet Corporation for Assigned Names and Numbers)'s action.

17. The Board Governance Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within ninety days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. The final recommendation shall be posted on the Website.

18. The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken.

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

- a. the number and general nature of Reconsideration Requests received;
- b. the number of Reconsideration Requests on which the Board Governance Committee has taken action;
- c. the number of Reconsideration Requests that remained pending at the end of the calendar year and the average length of time for which such Reconsideration Requests have been pending;
- d. a description of any Reconsideration Requests that were pending at the end of the calendar year for more than ninety (90) days and the reasons that the Board Governance Committee has not taken action on them;
- e. the number and nature of Reconsideration Requests that the Board Governance Committee declined to consider on the basis that they did not meet the criteria established in this policy;
- f. for Reconsideration Requests that were denied, an explanation of any other mechanisms available to ensure that ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to persons materially affected by its decisions; and
- g. whether or not, in the Board Governance Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN (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, 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 of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN (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 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 or 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 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 according to the provisions of Article VIII of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 9 and Seat 10.
- c. Two voting members selected by the Country-Code Names Supporting Organization according to the provisions of Article IX of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 11 and Seat 12.
- d. Two voting members selected by the Generic Names Supporting Organization according to the provisions of Article X of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 13 and Seat 14.
- e. One voting member selected by the At-Large Community according to the provisions of Article XI of these Bylaws. This seat on the Board of Directors is referred to in these Bylaws as Seat 15.
- f. The President ex officio, who shall be a voting member.

2. In carrying out its responsibilities to fill Seats 1 through 8, the Nominating Committee shall seek to ensure that the ICANN (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 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 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 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 (Intellectual Property; or Internet Protocol) address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet;
5. Persons who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and
6. Persons who are able to work and communicate in written and spoken English.

Section 4. ADDITIONAL QUALIFICATIONS

1. Notwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director. As used herein, the term "official" means a person (i) who holds an elective governmental office or (ii) who is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental or public policies.
2. No person who serves in any capacity (including as a liaison) on any Supporting Organization Council shall simultaneously serve as a Director or liaison to the Board. If such a person accepts a nomination to be considered for selection by the Supporting Organization Council or the At-Large Community to be a Director, the person shall not, following such nomination, participate in any discussion of, or vote by, the Supporting Organization Council or the committee designated by the At-Large Community relating to the selection of Directors by the Council or Community, until the Council or committee(s) designated by the At-Large Community has selected the full complement of Directors it is responsible for selecting. In the event that a person serving in any capacity on a Supporting Organization Council accepts a nomination to be considered for selection as a Director, the constituency group or other group or entity that selected the person may select a replacement for purposes of the Council's selection process. In the event that a person serving in any capacity on the At-Large Advisory Committee accepts a nomination to be considered for selection by the At-Large Community as a Director, the Regional At-Large Organization or other group or entity that selected the person may select a replacement for purposes of the Community's selection process.
3. Persons serving in any capacity on the Nominating Committee shall be ineligible for selection to positions on the Board as provided by Article VII, Section 8.

Section 5. INTERNATIONAL REPRESENTATION

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

Section 6. DIRECTORS' CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN (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 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 Mid-year Meeting after ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2011. The next terms of Seats 9 and 12 shall begin at the conclusion of the Mid-year Meeting occurring after the 2011 ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2011;
- e. The terms of Seats 10 and 13 shall continue until the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s Mid-year Meeting after the 2012 ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting. The next terms of Seats 10 and 13 shall begin at the conclusion of the Mid-year Meeting occurring after the 2012 ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2012; and
- f. The terms of Seats 11 and 14 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s Mid-year Meeting after the 2010 ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting, and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2010.
- g. The first regular term of Seat 15 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s Mid-year Meeting after the 2010 ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2010. (Note: In the period prior to the beginning of the regular term of Seat 15, Seat 15 is deemed vacant. Through a process coordinated by the At Large Advisory Committee, the At-Large Community made the selection of a Director to fill the vacant Seat 15 and provided the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selection. The vacant Seat 15 was filled at the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2010, with a term to conclude upon the commencement of the first regular term specified for Seat 15 in accordance with this Section of the Bylaws. Until the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2010, there was a non-voting Liaison appointed by the At Large Advisory Committee who participated as specified at Sections 9(3) and 9(5) of this Article.)
- h. For the purposes of this Section, the term "Mid-year Meeting" refers to the first ICANN (Internet Corporation for Assigned Names and Numbers) Public Meeting occurring no sooner than six and no later than eight months after the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual general meeting. In the event that a Mid-year Meeting is scheduled and subsequently cancelled within six months prior to the date of its commencement, the term of any seat scheduled to begin at the conclusion of the Mid-year Meeting shall begin on the date the Mid-year Meeting was previously scheduled to conclude.

In the event that no Public Meeting is scheduled during the time defined for the Mid-year Meeting, the term of any seat set to begin at the conclusion of the Mid-year Meeting shall instead begin on the day six months after the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting.

2. Each Director holding any of Seats 1 through 15, including a Director selected to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been selected and qualified or until that Director resigns or is removed in accordance with these Bylaws.
3. At least two months before the commencement of each annual meeting, the Nominating Committee shall give the Secretary of ICANN (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 two months before the date specified for the commencement of the term as specified in paragraphs 1.d-g above, any Supporting Organization or the At-Large community entitled to select a Director for a Seat with a term beginning that year shall give the Secretary of ICANN (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. Any prior service in Seats 9, 10, 11, 12, 13 and 14 as such terms were defined in the Bylaws as of [insert date before amendment effective], so long as such service was not to fill a vacancy, shall be included in the calculation of consecutive terms under this paragraph.
6. The term as Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.

Section 9. NON-VOTING LIAISONS

1. The non-voting liaisons shall include:

- a. One appointed by the Governmental Advisory Committee;
- b. One appointed by the Root Server System Advisory Committee established by Article XI of these Bylaws;
- c. One appointed by the Security and Stability Advisory Committee established by Article XI of these Bylaws;
- d. One appointed by the Technical Liaison Group established by Article XI-A of these Bylaws;
- e. One appointed by the Internet Engineering Task Force.

2. Subject to the provisions of the Transition Article of these Bylaws, the non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of ICANN (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))

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

Section 12. VACANCIES

1. A vacancy or vacancies in the Board of Directors shall be deemed to exist in the case of the death, resignation, or removal of any Director; if the authorized number of Directors is increased; or if a Director has been declared of unsound mind by a final order of court or convicted of a felony or incarcerated for more than 90 days as a result of a criminal conviction or has been found by final order or judgment of any court to have breached a duty under Sections 5230 et seq. of the CNPBCL. Any vacancy occurring on the Board of Directors shall be filled by the Nominating Committee, unless (a) that Director was selected by a Supporting Organization, in which case that vacancy shall be filled by that Supporting Organization, or (b) that Director was the President, in which case the vacancy shall be filled in accordance with the provisions of Article XIII of these Bylaws. The selecting body shall give written notice to the Secretary of ICANN (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 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, 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 established by Article XI of these Bylaws;
4. A non-voting liaison appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Security and Stability Advisory Committee established by Article XI of these Bylaws;
5. A non-voting liaison appointed by the Governmental Advisory Committee;
6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the At-Large Advisory Committee established by Article XI of these Bylaws;
7. Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization, established by Article X of these Bylaws, as follows:

- a. One delegate from the Registries Stakeholder Group;
- b. One delegate from the Registrars Stakeholder Group;
- c. Two delegates from the Business Constituency, one representing small business users and one representing large business users;
- d. One delegate from the Internet Service Providers Constituency;
- e. One delegate from the Intellectual Property Constituency; and
- f. One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.

8. One voting delegate each selected by the following entities:

- a. The Council of the Country Code Names Supporting Organization established by Article IX of these Bylaws;
- b. The Council of the Address Supporting Organization established by Article VIII of these Bylaws;
- c. 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 (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), 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 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 (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, 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 or 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; (b) the At-Large Advisory Committee; and (c) each of the Regional Organizations described in Section 5 of this Article. These liaisons shall not be members of or entitled to vote on the ccNSO (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 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.

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.

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-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) 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 and/or 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 comprising sixty percent (60%) of all the respective voting House members:

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

Election procedures are defined in the GNSO (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 in addition to those set forth in this Article. Advisory Committee membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees shall have no legal authority to act for ICANN (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:

1. Governmental Advisory Committee

- a. The Governmental Advisory Committee should consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers) as they relate to concerns of governments, 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 through its Chair.
- c. The Governmental Advisory Committee may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.
- d. The chair of the Governmental Advisory Committee shall be elected by the members of the Governmental Advisory Committee pursuant to procedures adopted by such members.
- e. Each member of the Governmental Advisory Committee shall appoint one accredited representative to the Committee. The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.
- f. The Governmental Advisory Committee shall annually appoint one non-voting liaison to the ICANN (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 may designate a non-voting liaison to each of the Supporting Organization Councils and Advisory Committees, to the extent the Governmental Advisory Committee deems it appropriate and useful to do so.
- h. The Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues on which it or any of ICANN (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 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 advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN (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 advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

2. Security and Stability Advisory Committee

a. The role of the Security and Stability Advisory Committee ("SSAC (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, 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

a. The role of the Root Server System Advisory Committee ("RSSAC") shall be to advise the Board about the operation of the root name servers of the domain name system. The RSSAC shall consider and provide advice on the operational requirements of root name servers, including host hardware capacities, operating systems and name server software versions, network connectivity and physical environment. The RSSAC shall examine and advise on the security aspects of the root name server system. Further, the RSSAC shall review the number, location, and distribution of root name servers considering the total system performance, robustness, and reliability.

b. Membership in the RSSAC shall consist of (i) each operator of an authoritative root name server (as listed at <ftp://ftp.internic.net/domain/named.root>), and (ii) such other persons as are appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

c. The initial chairman of the DNS (Domain Name System) Root Server System 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 pursuant to procedures adopted by the members.

d. The Root Server System 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

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

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

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

4. Process for Seeking and Advice-Other Matters. Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with Section 1(2)(a) of this Article shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.

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

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

Section 2. TECHNICAL LIAISON GROUP

1. Purpose. The quality of ICANN (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-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-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-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, 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 Number 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. 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 CNPBC, 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, any 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 agent 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 Article VI, Section 8(1)(a)-(c) of the New Bylaws, 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 (Article VI, Section 2(1)(a)-(d)) and non-voting liaisons (Article VI, Section 9) as to which the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary has received notice of selection shall, along with the President (Article VI, Section 2(1)(e)), be seated upon the Effective Date and Time of the New Board, and thereafter any additional Directors and non-voting liaisons shall be seated upon the ICANN (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 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 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, 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 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 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 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 and the Governmental 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 ("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 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 shall continue in operation according to its existing operating principles and practices, until further action of the committee. The Governmental Advisory Committee may designate liaisons to serve with other ICANN (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 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 Advisory Committee shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Security and Stability Advisory Committee shall notify the ICANN (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 shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Root Server Advisory Committee shall notify the ICANN (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

- 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 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 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 members previously selected by the Board from the RALO's region.
- c. Upon the seating of persons selected by all five RALOs, the Interim At-Large Advisory Committee shall become the At-Large Advisory Committee, as established by Article XI, Section 2(4) of the New Bylaws. The five individuals selected to the Interim At-Large Advisory Committee by the Nominating Committee shall become members of the At-Large Advisory Committee for the remainder of the terms for which they were selected.
- d. Promptly upon its creation, the Interim At-Large Advisory Committee shall notify the ICANN (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 ("PDF (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 Policy, the Council may act through other processes.

Section 1. Required Elements of a Policy Development Process

The following elements are required at a minimum to form Consensus Policies as defined within ICANN (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, 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 least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

Advisory Committee Request. An Advisory Committee may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO (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, 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 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 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 or Advisory Committee.* An ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization or an ICANN (Internet Corporation for Assigned Names and Numbers) 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 that 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 Lines set out in the Issue Report.

5. Composition and Selection of Task Forces

- a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see 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 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 and 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, 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 and Advisory Committees. Each Task Force Report must include:

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

8. Procedure if No Task Force is Formed

- a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP (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, 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 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 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 counterbalance to the executive role, the accountability role needs to be defined and determined.

The information below offers an aid to:

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

This annex defines the scope of the ccNSO (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 \(ICANN \(Internet Corporation for Assigned Names and Numbers\)\)](#)

Executive role: Root Server System Operators

Accountability role: [RSSAC \(ICANN \(Internet Corporation for Assigned Names and Numbers\)\)](#), ([US DoC-ICANN 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

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

Executive role: Registrant

Accountability role: Registrant, users of lower-level domain names

[Welcome \(/en/about/welcome\)](/en/about/welcome)

[Learning \(/en/about/learning\)](/en/about/learning)

[Participate \(/en/about/participate\)](/en/about/participate)

[Board \(http://www.icann.org/en/groups/board\)](http://www.icann.org/en/groups/board)

[CEO \(http://www.icann.org/en/about/ceo\)](http://www.icann.org/en/about/ceo)

[Staff \(/en/about/staff\)](/en/about/staff)

[Careers \(https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1 \)](https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1)

[Governance \(/en/about/governance\)](/en/about/governance)

[Guidelines \(/en/about/governance/guidelines\)](/en/about/governance/guidelines)

[Articles of Incorporation \(/en/about/governance/articles\)](/en/about/governance/articles)

[Bylaws \(/en/about/governance/bylaws\)](/en/about/governance/bylaws)

[Archive \(/en/about/governance/bylaws/archive\)](/en/about/governance/bylaws/archive)

[Board Documents \(http://www.icann.org/en/groups/board/documents\)](http://www.icann.org/en/groups/board/documents)

[Board Code of Conduct \(http://www.icann.org/en/groups/board/governance/code-of-conduct\)](http://www.icann.org/en/groups/board/governance/code-of-conduct)

[Board Conflicts of Interest Policy \(http://www.icann.org/en/groups/board/governance/coi\)](http://www.icann.org/en/groups/board/governance/coi)

[Board Statements of Interest \(http://www.icann.org/en/groups/board/sois\)](http://www.icann.org/en/groups/board/sois)

[Summary of Conflicts of Interest and Ethics Practices Review \(/en/about/governance/coi/summary-ethics-review-13may13-en\)](/en/about/governance/coi/summary-ethics-review-13may13-en)

[Agreements \(/en/about/agreements\)](/en/about/agreements)

[Accountability & Transparency \(http://www.icann.org/en/news/in-focus/accountability\)](http://www.icann.org/en/news/in-focus/accountability)

[AOC Review \(/en/about/aoc-review\)](/en/about/aoc-review)

[Annual Report \(/en/about/annual-report\)](/en/about/annual-report)

[Financials \(/en/about/financials\)](/en/about/financials)

[Document Disclosure \(/en/about/transparency\)](/en/about/transparency)

[Planning \(/en/about/planning\)](/en/about/planning)

Stay Connected

Your email address please.

News Alerts: HTML Plain Text

Newsletter: HTML Plain Text

Compliance Newsletter: HTML Plain Text

Policy Update: HTML Plain Text

Subscribe

Follow us @icann (<https://twitter.com/#!/icann/>)

Videos (<http://www.youtube.com/icannnews>)

Photos on Flickr (<http://www.flickr.com/photos/icann/>)

Facebook (<http://www.facebook.com/icannorg>)

ICANN Blog (<http://blog.icann.org/>)

Community Wiki (<https://community.icann.org/>)

Planet ICANN (</en/groups/planet-icann>)

RSS Feeds (</en/news/rss>)

- [myICANN \(http://www.myicann.org/\)](http://www.myicann.org/)
- [ASO \(http://aso.icann.org\)](http://aso.icann.org)
- [ALAC \(http://www.atlarge.icann.org\)](http://www.atlarge.icann.org)
- [ccNSO \(http://ccnso.icann.org\)](http://ccnso.icann.org)
- [GAC \(http://gac.icann.org\)](http://gac.icann.org)
- [GNSO \(http://gnso.icann.org\)](http://gnso.icann.org)
- [RSSAC \(/en/groups/rssac\)](/en/groups/rssac)
- [SSAC \(/en/groups/ssac\)](/en/groups/ssac)
- [Community Wiki \(http://community.icann.org\)](http://community.icann.org)
- [Meetings \(http://meetings.icann.org\)](http://meetings.icann.org)
- [New gTLDs \(http://newgtlds.icann.org\)](http://newgtlds.icann.org)
- [WHOIS \(http://whois.icann.org\)](http://whois.icann.org)
- Help

[\(/en/help\)](/en/help)
Acronym Helper

Reference Material 4.

**AFFIRMATION OF COMMITMENTS BY THE UNITED STATES
DEPARTMENT OF COMMERCE AND THE INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS**

1. This document constitutes an Affirmation of Commitments (Affirmation) by the United States Department of Commerce (“DOC”) and the Internet Corporation for Assigned Names and Numbers (“ICANN”), a not-for-profit corporation. In recognition of the conclusion of the Joint Project Agreement and to institutionalize and memorialize the technical coordination of the Internet’s domain name and addressing system (DNS)¹, globally by a private sector led organization, the parties agree as follows:

2. The Internet is a transformative technology that will continue to empower people around the globe, spur innovation, facilitate trade and commerce, and enable the free and unfettered flow of information. One of the elements of the Internet’s success is a highly decentralized network that enables and encourages decision-making at a local level. Notwithstanding this decentralization, global technical coordination of the Internet’s underlying infrastructure - the DNS - is required to ensure interoperability.

3. This document affirms key commitments by DOC and ICANN, including commitments to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination.

4. DOC affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. ICANN and DOC recognize that there is a group of participants that engage in ICANN’s processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.

5. DOC recognizes the importance of global Internet users being able to use the Internet in their local languages and character sets, and endorses the rapid introduction of internationalized country code top level domain names (ccTLDs), provided related security, stability and resiliency issues are first addressed. Nothing in this document is an expression of support by DOC of any specific plan or proposal for the implementation of

¹ For the purposes of this Affirmation the Internet’s domain name and addressing system (DNS) is defined as: domain names; Internet protocol addresses and autonomous system numbers; protocol port and parameter numbers. ICANN coordinates these identifiers at the overall level, consistent with its mission.

new generic top level domain names (gTLDs) or is an expression by DOC of a view that the potential consumer benefits of new gTLDs outweigh the potential costs.

6. DOC also affirms the United States Government's commitment to ongoing participation in ICANN's Governmental Advisory Committee (GAC). DOC recognizes the important role of the GAC with respect to ICANN decision-making and execution of tasks and of the effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the Internet DNS.

7. ICANN commits to adhere to transparent and accountable budgeting processes, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's bylaws, responsibilities, and strategic and operating plans. In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.

8. ICANN affirms its commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet; (b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act. ICANN is a private organization and nothing in this Affirmation should be construed as control by any one entity.

9. Recognizing that ICANN will evolve and adapt to fulfill its limited, but important technical mission of coordinating the DNS, ICANN further commits to take the following specific actions together with ongoing commitment reviews specified below:

9.1 Ensuring accountability, transparency and the interests of global Internet users:

ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by: (a) continually assessing and improving ICANN Board of Directors (Board) governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions; (b) assessing the role and effectiveness of the GAC and its interaction with the Board and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS; (c) continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and

(e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development. ICANN will organize a review of its execution of the above commitments no less frequently than every three years, with the first such review concluding no later than December 31, 2010. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the Chair of the Board of ICANN, the Assistant Secretary for Communications and Information of the DOC, representatives of the relevant ICANN Advisory Committees and Supporting Organizations and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the Chair of the Board of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations. Each of the foregoing reviews shall consider the extent to which the assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for its decision-making, and acts in the public interest. Integral to the foregoing reviews will be assessments of the extent to which the Board and staff have implemented the recommendations arising out of the other commitment reviews enumerated below.

9.2 Preserving security, stability and resiliency: ICANN has developed a plan to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS, which will be regularly updated by ICANN to reflect emerging threats to the DNS. ICANN will organize a review of its execution of the above commitments no less frequently than every three years. The first such review shall commence one year from the effective date of this Affirmation. Particular attention will be paid to: (a) security, stability and resiliency matters, both physical and network, relating to the secure and stable coordination of the Internet DNS; (b) ensuring appropriate contingency planning; and (c) maintaining clear processes. Each of the reviews conducted under this section will assess the extent to which ICANN has successfully implemented the security plan, the effectiveness of the plan to deal with actual and potential challenges and threats, and the extent to which the security plan is sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the Internet DNS, consistent with ICANN's limited technical mission. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

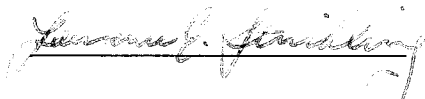
9.3 Promoting competition, consumer trust, and consumer choice: ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation. If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion. ICANN will organize a further review of its execution of the above commitments two years after the first review, and then no less frequently than every four years. The reviews will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

9.3.1 ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information. One year from the effective date of this document and then no less frequently than every three years thereafter, ICANN will organize a review of WHOIS policy and its implementation to assess the extent to which WHOIS policy is effective and its implementation meets the legitimate needs of law enforcement and promotes consumer trust. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, as well as experts, and representatives of the global law enforcement community, and global privacy experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

10. To facilitate transparency and openness in ICANN's deliberations and operations, the terms and output of each of the reviews will be published for public comment. Each review team will consider such public comment and amend the review as it deems appropriate before it issues its final report to the Board.

11. The DOC enters into this Affirmation of Commitments pursuant to its authority under 15 U.S.C. 1512 and 47 U.S.C. 902. ICANN commits to this Affirmation according to its Articles of Incorporation and its Bylaws. This agreement will become effective October 1, 2009. The agreement is intended to be long-standing, but may be amended at any time by mutual consent of the parties. Any party may terminate this Affirmation of Commitments by providing 120 days written notice to the other party. This Affirmation contemplates no transfer of funds between the parties. In the event this Affirmation of Commitments is terminated, each party shall be solely responsible for the payment of any expenses it has incurred. All obligations of the DOC under this Affirmation of Commitments are subject to the availability of funds.

FOR THE NATIONAL
TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION:



Name: Lawrence E. Strickling
Title: Assistant Secretary for
Communications and Information

Date: September 30, 2009

FOR THE INTERNET CORPORATION
FOR ASSIGNED NAMES AND
NUMBERS:



Name: Rod Beckstrom
Title: President and CEO

Date: September 30, 2009

Reference Material 5.

gTLD Applicant Guidebook

Version 2012-06-04



4 June 2012

Preamble

New gTLD Program Background

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

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

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

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

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



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 1

4 June 2012

Module 1

Introduction to the gTLD Application Process

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

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

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

For the complete set of the supporting documentation and more about the origins, history and details of the policy development background to the New gTLD Program, please see <http://gns0.icann.org/issues/new-gtlds/>.

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

1.1 Application Life Cycle and Timelines

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

1.1.1 Application Submission Dates

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

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

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

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

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

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

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

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

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

1.1.2 Application Processing Stages

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

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

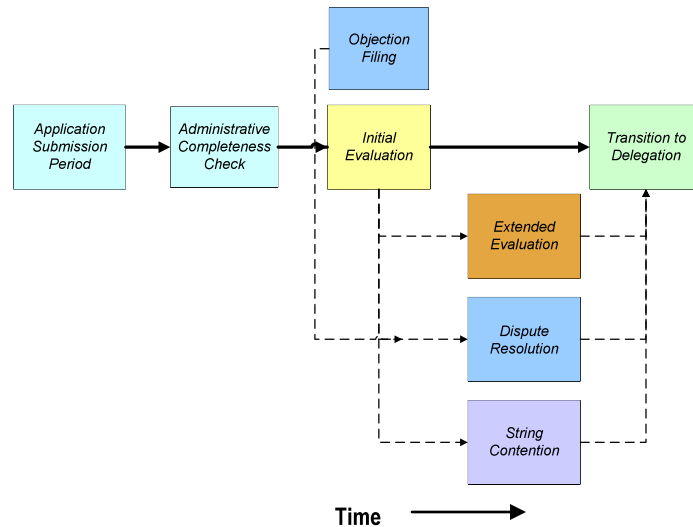


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

1.1.2.1 Application Submission Period

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

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

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

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

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

1.1.2.2 Administrative Completeness Check

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

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

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

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

1.1.2.3 Comment Period

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

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

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

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

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

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

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

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

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

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

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

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

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

1.1.2.4 GAC Early Warning

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

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

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

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

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

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

1.1.2.5 Initial Evaluation

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

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

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

There are two main elements of the Initial Evaluation:

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

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

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

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

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

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

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

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

1.1.2.6 *Objection Filing*

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

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

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

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

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

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

1.1.2.7 Receipt of GAC Advice on New gTLDs

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

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

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

1.1.2.8 Extended Evaluation

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

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

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

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

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

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

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

1.1.2.9 Dispute Resolution

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

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

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

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

1.1.2.10 String Contention

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

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

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

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

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

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

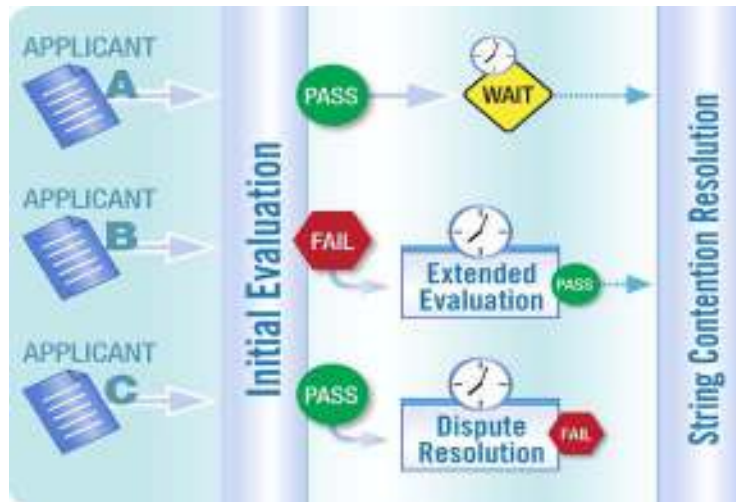


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

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

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

1.1.2.11 Transition to Delegation

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

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

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

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

1.1.3 Lifecycle Timelines

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

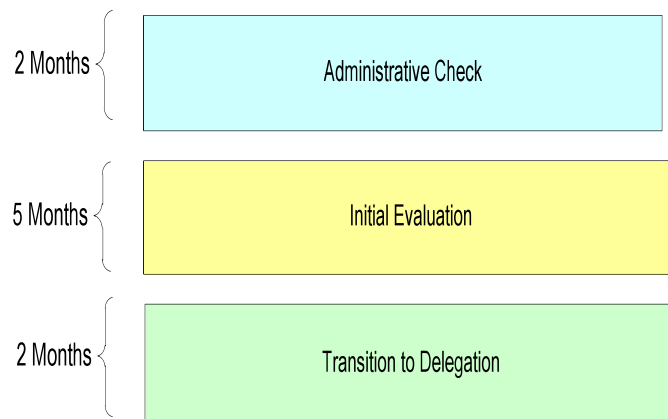


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

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

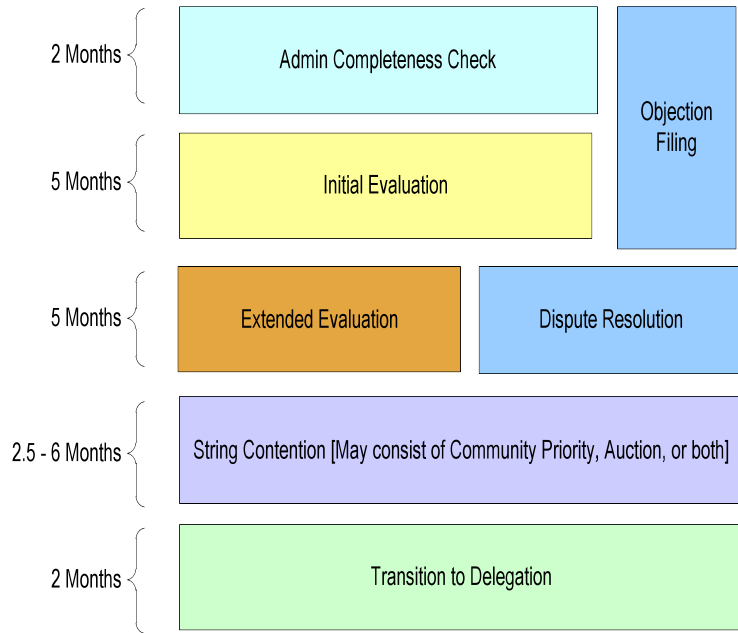


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

1.1.4 Posting Periods

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

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

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

1.1.5 Sample Application Scenarios

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

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

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

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

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

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

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

Scenario 3 – Pass Initial Evaluation, No Objection,

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

Scenario 4 – Pass Initial Evaluation, Win Objection, No

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

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

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

Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation

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

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

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

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

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

1.1.6 Subsequent Application Rounds

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

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

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

1.2 Information for All Applicants

1.2.1 Eligibility

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

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

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

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

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

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

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

elderly, or individuals with disabilities;

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

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

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

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

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

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

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

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

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

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

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

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

1.2.2 Required Documents

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

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

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

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

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

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

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

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

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

1.2.3 Community-Based Designation

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

1.2.3.1 Definitions

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

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

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

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

1.2.3.2 Implications of Application Designation

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

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

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

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

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

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

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

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

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

1.2.3.3 Changes to Application Designation

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

1.2.4 Notice concerning Technical Acceptance Issues with New gTLDs

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

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

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

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

1.2.5 Notice concerning TLD Delegations

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

1.2.6 Terms and Conditions

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

1.2.7 Notice of Changes to Information

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

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

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

1.2.8 Voluntary Designation for High Security Zones

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

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

1.2.9 Security and Stability

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

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

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

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

1.2.10 Resources for Applicant Assistance

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

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

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

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

1.2.11 Updates to the Applicant Guidebook

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

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

1.3 Information for Internationalized Domain Name Applicants

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

1.3.1 IDN-Specific Requirements

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

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

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

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

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

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

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

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

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

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

1.3.2 IDN Tables

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

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

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

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

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

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

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

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

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

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

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

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

1.3.3 IDN Variant TLDs

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

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

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

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

The following scenarios are possible during the gTLD evaluation process:

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

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

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

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

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

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

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

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

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

1.4 Submitting an Application

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

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

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

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

1.4.1 Accessing the TLD Application System

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

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

1.4.1.1 User Registration

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

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

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

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

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

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

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

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

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

1.4.1.2 Application Form

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

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

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

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

1.4.2 Customer Service during the Application Process

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

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

1.4.3 Backup Application Process

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

1.5 Fees and Payments

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

1.5.1 gTLD Evaluation Fee

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

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

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

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

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

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

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

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

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

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

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

1.5.2 Fees Required in Some Cases

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

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

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

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

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

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

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

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

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

1.5.3 Payment Methods

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

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

1.5.4 Requesting a Remittance Form

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

1.6 Questions about this Applicant Guidebook

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

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

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

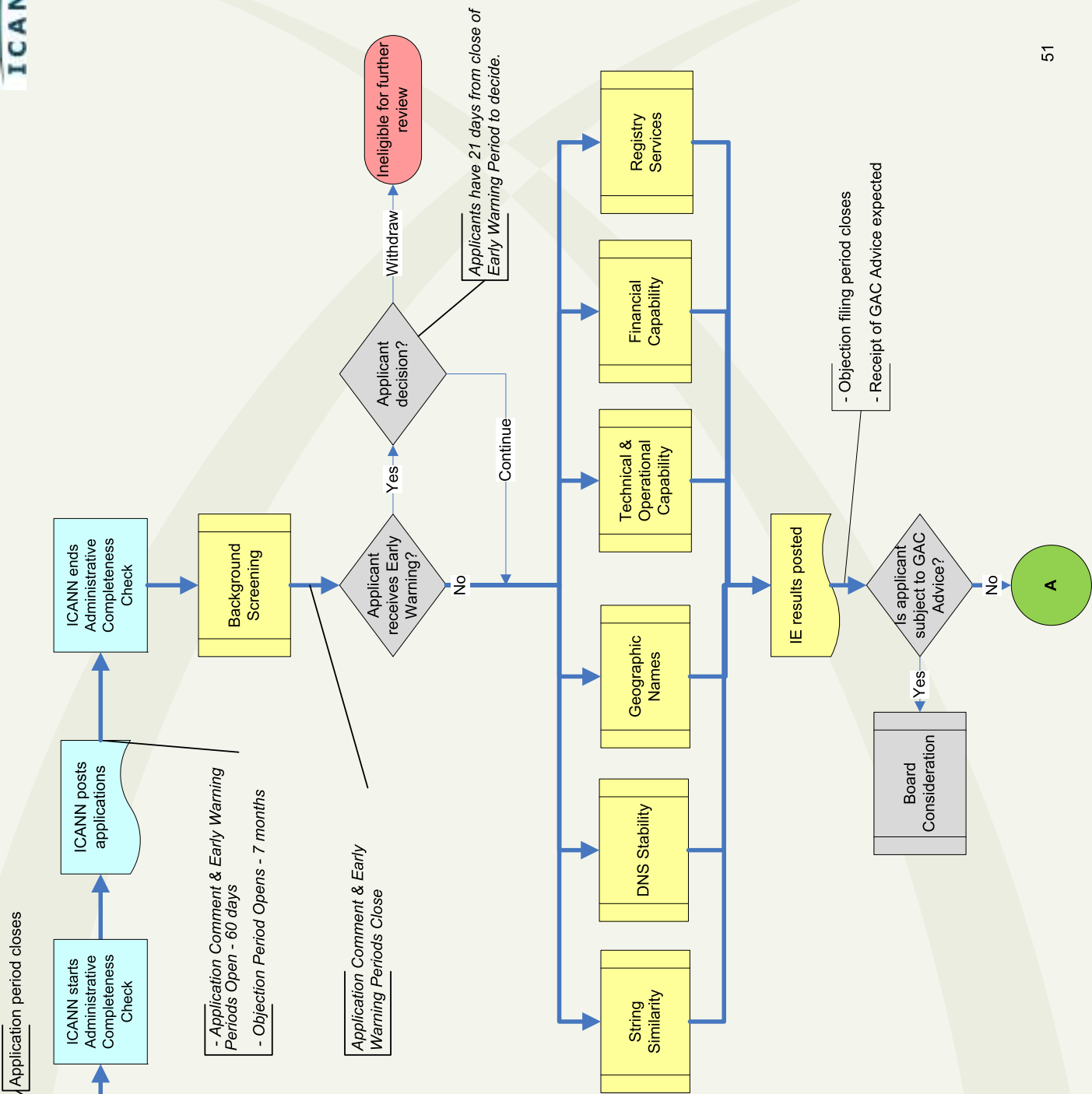
Currently, questions may be submitted via <newgtld@icann.org>. To provide all applicants equitable access to information, ICANN will make all questions and answers publicly available.

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

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



DRAFT - New gTLD Program - Evaluation Process

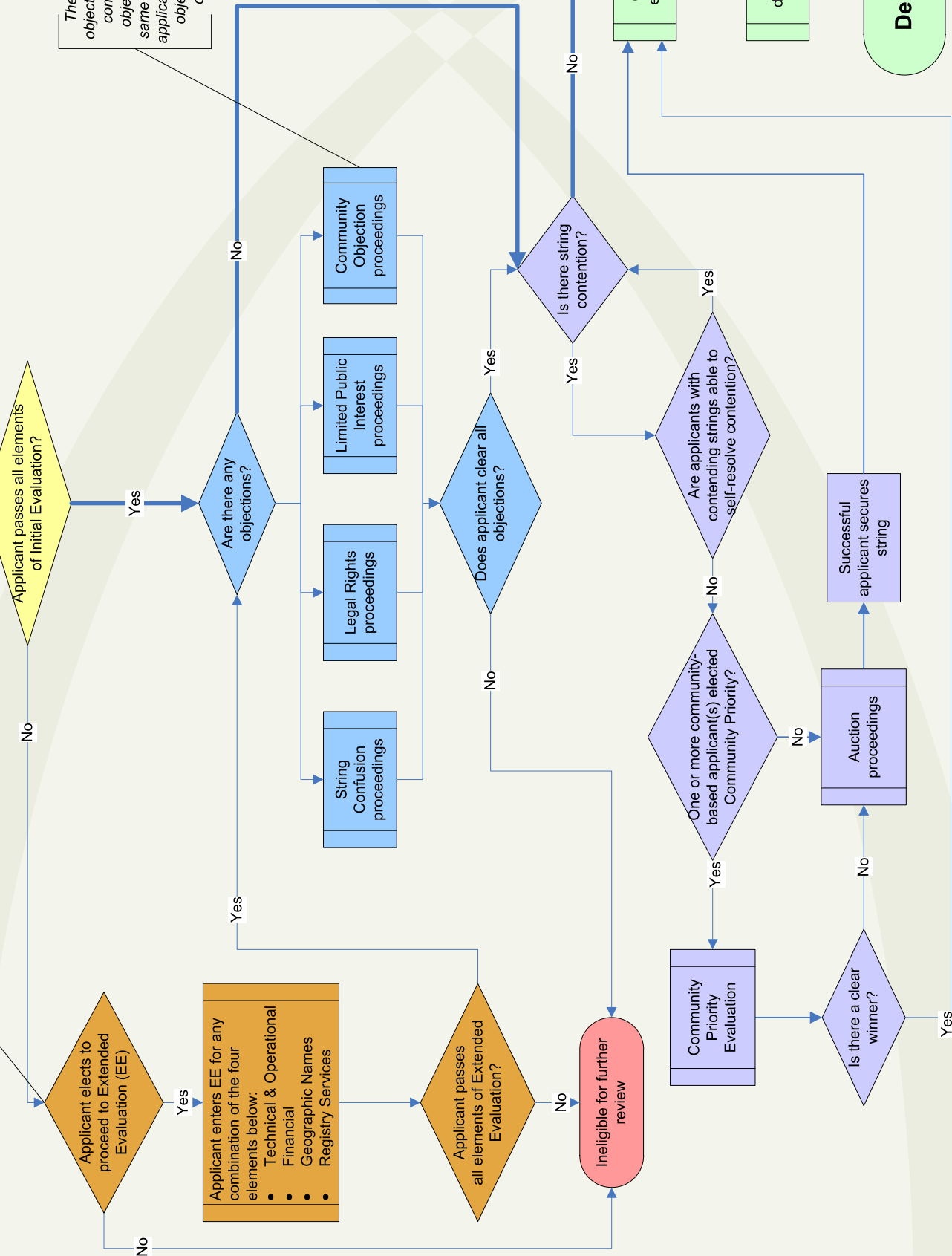


Key	
	Application - Module 1
	Initial Evaluation - Module 2
	Extended Evaluation - Module 2
	Dispute Resolution Proceedings - Module 3
	String Contention - Module 4
	Transition to Delegation - Module 5
	Indicates quickest path to delegation

A

Extended Evaluation and Dispute Resolution will run concurrently

The application can be objected to based upon any combination of the four objection grounds at the same time. Additionally, the application may face multiple objections on the same objection ground.





gTLD Applicant Guidebook

(v. 2012-06-04)

Module 2

4 June 2012

Module 2

Evaluation Procedures

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

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

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

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

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

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

2.1 Background Screening

Background screening will be conducted in two areas:

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

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

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

2.1.1 General business diligence and criminal history

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

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

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

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

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

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

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

2.1.2 History of cybersquatting

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

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

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

2.2 Initial Evaluation

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

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

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

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

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

2.2.1 String Reviews

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

2.2.1.1 String Similarity Review

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

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

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

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

2.2.1.1.1 Reviews Performed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a) Any one-character label (in any script), and
- b) Any possible two-character ASCII combination.

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

2.2.1.1.2 Review Methodology

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

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

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

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

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

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

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

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

2.2.1.1.3 Outcomes of the String Similarity Review

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

² See <http://icann.sword-group.com/algorithm/>

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

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

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

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

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

2.2.1.2 *Reserved Names and Other Unavailable Strings*

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

2.2.1.2.1 *Reserved Names*

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

Top-Level Reserved Names List

<i>AFRINIC</i>	<i>IANA-SERVERS</i>	<i>NRO</i>
<i>ALAC</i>	<i>ICANN</i>	<i>RFC-EDITOR</i>
<i>APNIC</i>	<i>IESG</i>	<i>RIPE</i>
<i>ARIN</i>	<i>IETF</i>	<i>ROOT-SERVERS</i>
<i>ASO</i>	<i>INTERNIC</i>	<i>RSSAC</i>
<i>CCNSO</i>	<i>INVALID</i>	<i>SSAC</i>
<i>EXAMPLE*</i>	<i>IRTF</i>	<i>TEST*</i>
<i>GAC</i>	<i>ISTF</i>	<i>TLD</i>

<i>GNSO</i>	<i>LACNIC</i>	<i>WHOIS</i>
<i>GTLT-SERVERS</i>	<i>LOCAL</i>	<i>WWW</i>
<i>IAB</i>	<i>LOCALHOST</i>	
<i>IANA</i>	<i>NIC</i>	
*Note that in addition to the above strings, ICANN will reserve translations of the terms "test" and "example" in multiple languages. The remainder of the strings are reserved only in the form included above.		

If an applicant enters a Reserved Name as its applied-for gTLD string, the application system will recognize the Reserved Name and will not allow the application to be submitted.

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

2.2.1.2.2 Declared Variants

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

2.2.1.2.3 Strings Ineligible for Delegation

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

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

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

International Olympic Committee		
OLYMPIC	OLYMPIAD	OLYMPIQUE
OLYMPIADE	OLYMPISCH	OLÍMPICO
OLIMPÍADA	أولمبي	أولمبياد
奥林匹克	奥林匹亚	奥林匹克
奧林匹亞	Ολυμπιακοί	Ολυμπιάδα
올림픽	올림픽아드	Олимпийский
Олимпиада		
International Red Cross and Red Crescent Movement		
REDCROSS	REDCRESCENT	REDCRYSTAL
REDLIONANDSUN	MAGENDDAVIDADOM	REDSTAROFDAVID
CROIXROUGE	CROIX-ROUGE	CROISSANTROUGE
CROISSANT-ROUGE	CRISTALROUGE	CRISTAL-ROUGE
מגן דוד אדום	CRUZROJA	MEDIALUNAROJA
CRISTALROJO	Красный Крест	Красный Полумесяц
Красный Кристалл	رمح ألابي لصلال	لاله لارمحل
ءارمحلل قرولبلل	لكرلستلة الصراء	紅十字
紅十字	紅新月	紅新月
紅水晶	紅水晶	

2.2.1.3 DNS Stability Review

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

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

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

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

2.2.1.3.1 DNS Stability: String Review Procedure

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

- ensure that applied-for gTLD strings comply with the requirements provided in section 2.2.1.3.2, and
- determine whether any strings raise significant security or stability issues that may require further review.

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

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

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

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

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

2.2.1.3.2 *String Requirements*

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

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

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

- 1.1 The ASCII label (i.e., the label as transmitted on the wire) must be valid as specified in technical standards *Domain Names: Implementation and Specification* (RFC 1035), and *Clarifications to the DNS Specification* (RFC 2181) and any updates thereto. This includes the following:
 - 1.1.1 The label must have no more than 63 characters.
 - 1.1.2 Upper and lower case characters are treated as identical.
- 1.2 The ASCII label must be a valid host name, as specified in the technical standards *DOD Internet Host Table Specification* (RFC 952), *Requirements for Internet Hosts — Application and Support* (RFC 1123), and *Application Techniques for Checking and Transformation of Names* (RFC 3696), *Internationalized Domain Names in Applications (IDNA)* (RFCs 5890-5894), and any updates thereto. This includes the following:
 - 1.2.1 The ASCII label must consist entirely of letters (alphabetic characters a-z), or

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

Part II -- Requirements for Internationalized Domain Names

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

- 2.1 The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further restricted by the following, non-exhaustive, list of limitations:
 - 2.1.1 Must be a valid A-label according to IDNA.
 - 2.1.2 The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (accompanied by unambiguous contextual rules).⁴
 - 2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Li, Lo, Lm, Mn, Mc).
 - 2.1.4 The U-label must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms*. See also examples in <http://unicode.org/faq/normalization.html>.
 - 2.1.5 The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.
- 2.2 The label must meet the relevant criteria of the *ICANN Guidelines for the Implementation of Internationalised Domain Names*. See <http://www.icann.org/en/topics/idn/implementation>

⁴ It is expected that conversion tools for IDNA will be available before the Application Submission period begins, and that labels will be checked for validity under IDNA. In this case, labels valid under the previous version of the protocol (IDNA2003) but not under IDNA will not meet this element of the requirements. Labels that are valid under both versions of the protocol will meet this element of the requirements. Labels valid under IDNA but not under IDNA2003 may meet the requirements; however, applicants are strongly advised to note that the duration of the transition period between the two protocols cannot presently be estimated nor guaranteed in any specific timeframe. The development of support for IDNA in the broader software applications environment will occur gradually. During that time, TLD labels that are valid under IDNA, but not under IDNA2003, will have limited functionality.

[n-guidelines.htm](#). This includes the following, non-exhaustive, list of limitations:

- 2.2.1 All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property (See <http://www.unicode.org/reports/tr24/>).
- 2.2.2 Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table are clearly defined.

Part III - Policy Requirements for Generic Top-Level

Domains – These requirements apply to all prospective top-level domain strings applied for as gTLDs.

- 3.1 Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard.
- 3.2 Applied-for gTLD strings in IDN scripts must be composed of two or more visually distinct characters in the script, as appropriate.⁵ Note, however, that a two-character IDN string will not be approved if:
 - 3.2.1 It is visually similar to any one-character label (in any script); or
 - 3.2.2 It is visually similar to any possible two-character ASCII combination.

See the String Similarity review in subsection 2.2.1.1 for additional information on this requirement.

⁵ Note that the Joint ccNSO-GNSO IDN Working Group (JIG) has made recommendations that this section be revised to allow for single-character IDN gTLD labels. See the JIG Final Report at <http://gns0.icann.org/drafts/jig-final-report-30mar11-en.pdf>. Implementation models for these recommendations are being developed for community discussion.

2.2.1.4 Geographic Names Review

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

2.2.1.4.1 Treatment of Country or Territory Names⁶

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

- i. it is an alpha-3 code listed in the ISO 3166-1 standard.
- ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.
- iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.
- iv. it is the short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.
- v. it is a separable component of a country name designated on the “Separable Country Names List,” or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.
- vi. it is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or

⁶ Country and territory names are excluded from the process based on advice from the Governmental Advisory Committee in recent communiqués providing interpretation of Principle 2.2 of the GAC Principles regarding New gTLDs to indicate that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccPDP, and other geographic strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”

- vii. it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization.

2.2.1.4.2 *Geographic Names Requiring Government Support*

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

1. An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard.
2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

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

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

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

- (b) The applied-for string is a city name as listed on official city documents.⁷
3. An application for any string that is an exact match of a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.
 4. An application for a string listed as a UNESCO region⁸ or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.⁹

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

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

An applied-for gTLD string that falls into any of 1 through 4 listed above is considered to represent a geographic name. In the event of any doubt, it is in the applicant’s interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.

Strings that include but do not match a geographic name (as defined in this section) will not be considered geographic names as defined by section 2.2.1.4.2, and therefore will not require documentation of government support in the evaluation process.

⁷ City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

⁸ See <http://www.unesco.org/new/en/unesco/worldwide/>.

⁹ See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

For each application, the Geographic Names Panel will determine which governments are relevant based on the inputs of the applicant, governments, and its own research and analysis. In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

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

Note: the level of government and which administrative agency is responsible for the filing of letters of support or non-objection is a matter for each national administration to determine. Applicants should consult within the relevant jurisdiction to determine the appropriate level of support.

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

2.2.1.4.3 Documentation Requirements

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant

Governmental Advisory Committee (GAC) representative.¹⁰

The letter must clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and its intended use.

The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.)

A sample letter of support is available as an attachment to this module.

Applicants and governments may conduct discussions concerning government support for an application at any time. Applicants are encouraged to begin such discussions at the earliest possible stage, and enable governments to follow the processes that may be necessary to consider, approve, and generate a letter of support or non-objection.

It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.

It is also possible that a government may withdraw its support for an application at a later time, including after the new gTLD has been delegated, if the registry operator has deviated from the conditions of original support or non-objection. Applicants should be aware that ICANN has committed to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, **ICANN will comply with a legally binding order** from a court in the jurisdiction of the government or public authority that has given support to an application.

2.2.1.4.4 Review Procedure for Geographic Names

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic

¹⁰ See <https://gacweb.icann.org/display/gacweb/GAC+Members>

name, and verify the relevance and authenticity of the supporting documentation where necessary.

The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the application will not pass the Geographic Names review and will be denied. No additional reviews will be available.

For any application where the GNP determines that the applied-for gTLD string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.

The GNP may communicate with the signing entity of the letter to confirm their intent and their understanding of the terms on which the support for an application is given.

In cases where an applicant has not provided the required documentation, the applicant will be contacted and notified of the requirement, and given a limited time frame to provide the documentation. If the applicant is able to provide the documentation before the close of the Initial Evaluation period, and the documentation is found to meet the requirements, the applicant will pass the Geographic Names review. If not, the applicant will have additional time to obtain the required documentation; however, if the applicant has not produced the required documentation by the required date (at least 90 calendar days from the date of notice), the application will be considered incomplete and will be ineligible for further review. The applicant may reapply in subsequent application rounds, if desired, subject to the fees and requirements of the specific application rounds.

If there is more than one application for a string representing a certain geographic name as described in this section, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. If the applicants have not reached a resolution by either the date of the end of the application round (as announced by ICANN), or the date on which ICANN opens a subsequent application round, whichever comes first, the applications will be rejected and applicable refunds will be available to applicants according to the conditions described in section 1.5.

However, in the event that a contention set is composed of multiple applications with documentation of support from the same government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation.

If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the string contention will be resolved using the string contention procedures described in Module 4.

2.2.2 Applicant Reviews

Concurrent with the applied-for gTLD string reviews described in subsection 2.2.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

2.2.2.1 Technical/Operational Review

In its application, the applicant will respond to a set of questions (see questions 24 – 44 in the Application Form) intended to gather information about the applicant's technical capabilities and its plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete

a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

2.2.2.2 Financial Review

In its application, the applicant will respond to a set of questions (see questions 45-50 in the Application Form) intended to gather information about the applicant's financial capabilities for operation of a gTLD registry and its financial planning in preparation for long-term stability of the new gTLD.

Because different registry types and purposes may justify different responses to individual questions, evaluators will pay particular attention to the consistency of an application across all criteria. For example, an applicant's scaling plans identifying system hardware to ensure its capacity to operate at a particular volume level should be consistent with its financial plans to secure the necessary equipment. That is, the evaluation criteria scale with the applicant plans to provide flexibility.

2.2.2.3 Evaluation Methodology

Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews, according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

The evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators. These communications will occur via TAS. Unless otherwise noted, such communications will include a 2-week deadline for the applicant to respond. Any supplemental information provided by the applicant will become part of the application.

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made

available in the application and submitted by the due date, unless explicitly requested by the evaluators.

2.2.3 Registry Services Review

Concurrent with the other reviews that occur during the Initial Evaluation period, ICANN will review the applicant's proposed registry services for any possible adverse impact on security or stability. The applicant will be required to provide a list of proposed registry services in its application.

2.2.3.1 Definitions

Registry services are defined as:

1. operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement;
2. other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and
3. any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

Proposed registry services will be examined to determine if they might raise significant stability or security issues. Examples of services proposed by existing registries can be found at <http://www.icann.org/en/registries/rsep/>. In most cases, these proposed services successfully pass this inquiry.

Registry services currently provided by gTLD registries can be found in registry agreement appendices. See <http://www.icann.org/en/registries/agreements.htm>.

A full definition of registry services can be found at <http://www.icann.org/en/registries/rsep/rsep.html>.

For purposes of this review, security and stability are defined as follows:

Security – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or

resources on the Internet by systems operating in accordance with all applicable standards.

Stability – an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator's delegation information or provisioning services.

2.2.3.2 Customary Services

The following registry services are customary services offered by a registry operator:

- Receipt of data from registrars concerning registration of domain names and name servers
- Dissemination of TLD zone files
- Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois)
- DNS Security Extensions

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

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

2.2.3.3 TLD Zone Contents

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

- Apex SOA record.
- Apex NS records and in-bailiwick glue for the TLD's DNS servers.

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

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

2.2.3.4 Methodology

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

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

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

2.2.4 Applicant's Withdrawal of an Application

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

2.3 *Extended Evaluation*

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

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

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

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

2.3.1 *Geographic Names Extended Evaluation*

In the case of an application that has been identified as a geographic name requiring government support, but where the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the Initial Evaluation period, the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation.

If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in

section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 calendar days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.

2.3.2 Technical/Operational or Financial Extended Evaluation

The following applies to an Extended Evaluation of an applicant's technical and operational capability or financial capability, as described in subsection 2.2.2.

An applicant who has requested Extended Evaluation will again access the online application system (TAS) and clarify its answers to those questions or sections on which it received a non-passing score (or, in the case of an application where individual questions were passed but the total score was insufficient to pass Initial Evaluation, those questions or sections on which additional points are possible). The answers should be responsive to the evaluator report that indicates the reasons for failure, or provide any amplification that is not a material change to the application. Applicants may not use the Extended Evaluation period to substitute portions of new information for the information submitted in their original applications, i.e., to materially change the application.

An applicant participating in an Extended Evaluation on the Technical / Operational or Financial reviews will have the option to have its application reviewed by the same evaluation panelists who performed the review during the Initial Evaluation period, or to have a different set of panelists perform the review during Extended Evaluation.

The Extended Evaluation allows an additional exchange of information between the evaluators and the applicant to further clarify information contained in the application. This supplemental information will become part of the application record. Such communications will include a deadline for the applicant to respond.

ICANN will notify applicants at the end of the Extended Evaluation period as to whether they have passed. If an application passes Extended Evaluation, it continues to the next stage in the process. If an application does not pass Extended Evaluation, it will proceed no further. No further reviews are available.

2.3.3 Registry Services Extended Evaluation

This section applies to Extended Evaluation of registry services, as described in subsection 2.2.3.

If a proposed registry service has been referred to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review, the RSTEP will form a review team of members with the appropriate qualifications.

The review team will generally consist of three members, depending on the complexity of the registry service proposed. In a 3-member panel, the review could be conducted within 30 to 45 calendar days. In cases where a 5-member panel is needed, this will be identified before the extended evaluation starts. In a 5-member panel, the review could be conducted in 45 calendar days or fewer.

The cost of an RSTEP review will be covered by the applicant through payment of the Registry Services Review Fee. Refer to payment procedures in section 1.5 of Module 1. The RSTEP review will not commence until payment has been received.

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant's registry agreement with ICANN. If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD. In this instance, an applicant has 15 calendar days to notify ICANN of its intent to proceed with the application. If an applicant does not explicitly provide such notice within this time frame, the application will proceed no further.

2.4 Parties Involved in Evaluation

A number of independent experts and groups play a part in performing the various reviews in the evaluation process. A brief description of the various panels, their evaluation roles, and the circumstances under which they work is included in this section.

2.4.1 Panels and Roles

The **String Similarity Panel** will assess whether a proposed gTLD string creates a probability of user confusion due to similarity with any reserved name, any existing TLD, any requested IDN ccTLD, or any new gTLD string applied for in the current application round. This occurs during the String Similarity review in Initial Evaluation. The panel may also review IDN tables submitted by applicants as part of its work.

The **DNS Stability Panel** will determine whether a proposed string might adversely affect the security or stability of the DNS. This occurs during the DNS Stability String review in Initial Evaluation.

The **Geographic Names Panel** will review each application to determine whether the applied-for gTLD represents a geographic name, as defined in this guidebook. In the event that the string is a geographic name requiring government support, the panel will ensure that the required documentation is provided with the application and verify that the documentation is from the relevant governments or public authorities and is authentic.

The **Technical Evaluation Panel** will review the technical components of each application against the criteria in the Applicant Guidebook, along with proposed registry operations, in order to determine whether the applicant is technically and operationally capable of operating a gTLD registry as proposed in the application. This occurs during the Technical/Operational reviews in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Financial Evaluation Panel** will review each application against the relevant business, financial and organizational criteria contained in the Applicant Guidebook, to determine whether the applicant is financially capable of maintaining a gTLD registry as proposed in the application. This occurs during the Financial review in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Registry Services Technical Evaluation Panel (RSTEP)** will review proposed registry services in the application to determine if they pose a risk of a meaningful adverse impact on security or stability. This occurs, if applicable, during the Extended Evaluation period.

Members of all panels are required to abide by the established Code of Conduct and Conflict of Interest guidelines included in this module.

2.4.2 Panel Selection Process

ICANN has selected qualified third-party providers to perform the various reviews, based on an extensive selection process.¹¹ In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:

- The provider must be able to convene – or have the capacity to convene - globally diverse panels and be able to evaluate applications from all regions of the world, including applications for IDN gTLDs.
- The provider should be familiar with the IETF IDNA standards, Unicode standards, relevant RFCs and the terminology associated with IDNs.
- The provider must be able to scale quickly to meet the demands of the evaluation of an unknown number of applications. At present it is not known how many applications will be received, how complex they will be, and whether they will be predominantly for ASCII or non-ASCII gTLDs.
- The provider must be able to evaluate the applications within the required timeframes of Initial and Extended Evaluation.

2.4.3 Code of Conduct Guidelines for Panelists

The purpose of the New gTLD Program (“Program”) Code of Conduct (“Code”) is to prevent real and apparent conflicts of interest and unethical behavior by any Evaluation Panelist (“Panelist”).

Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected

¹¹ <http://newgtlds.icann.org/about/evaluation-panels-selection-process>

to be guided by the following principles in carrying out their respective responsibilities. This Code is intended to summarize the principles and nothing in this Code should be considered as limiting duties, obligations or legal requirements with which Panelists must comply.

Bias -- Panelists shall:

- not advance personal agendas or non-ICANN approved agendas in the evaluation of applications;
- examine facts as they exist and not be influenced by past reputation, media accounts, or unverified statements about the applications being evaluated;
- exclude themselves from participating in the evaluation of an application if, to their knowledge, there is some predisposing factor that could prejudice them with respect to such evaluation; and
- exclude themselves from evaluation activities if they are philosophically opposed to or are on record as having made generic criticism about a specific type of applicant or application.

Compensation/Gifts -- Panelists shall not request or accept any compensation whatsoever or any gifts of substance from the Applicant being reviewed or anyone affiliated with the Applicant. (Gifts of substance would include any gift greater than USD 25 in value).

If the giving of small tokens is important to the Applicant's culture, Panelists may accept these tokens; however, the total of such tokens must not exceed USD 25 in value. If in doubt, the Panelist should err on the side of caution by declining gifts of any kind.

Conflicts of Interest -- Panelists shall act in accordance with the "New gTLD Program Conflicts of Interest Guidelines" (see subsection 2.4.3.1).

Confidentiality -- Confidentiality is an integral part of the evaluation process. Panelists must have access to sensitive information in order to conduct evaluations. Panelists must maintain confidentiality of information entrusted to them by ICANN and the Applicant and any other confidential information provided to them from whatever source,

except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes all elements of the Program and information gathered as part of the process – which includes but is not limited to: documents, interviews, discussions, interpretations, and analyses – related to the review of any new gTLD application.

Affirmation -- All Panelists shall read this Code prior to commencing evaluation services and shall certify in writing that they have done so and understand the Code.

2.4.3.1 Conflict of Interest Guidelines for Panelists

It is recognized that third-party providers may have a large number of employees in several countries serving numerous clients. In fact, it is possible that a number of Panelists may be very well known within the registry / registrar community and have provided professional services to a number of potential applicants.

To safeguard against the potential for inappropriate influence and ensure applications are evaluated in an objective and independent manner, ICANN has established detailed Conflict of Interest guidelines and procedures that will be followed by the Evaluation Panelists. To help ensure that the guidelines are appropriately followed ICANN will:

- Require each Evaluation Panelist (provider and individual) to acknowledge and document understanding of the Conflict of Interest guidelines.
- Require each Evaluation Panelist to disclose all business relationships engaged in at any time during the past six months.
- Where possible, identify and secure primary and backup providers for evaluation panels.
- In conjunction with the Evaluation Panelists, develop and implement a process to identify conflicts and re-assign applications as appropriate to secondary or contingent third party providers to perform the reviews.

Compliance Period -- All Evaluation Panelists must comply with the Conflict of Interest guidelines beginning with the opening date of the Application Submission period and ending with the public announcement by ICANN of the

final outcomes of all the applications from the Applicant in question.

Guidelines -- The following guidelines are the minimum standards with which all Evaluation Panelists must comply. It is recognized that it is impossible to foresee and cover all circumstances in which a potential conflict of interest might arise. In these cases the Evaluation Panelist should evaluate whether the existing facts and circumstances would lead a reasonable person to conclude that there is an actual conflict of interest.

Evaluation Panelists and Immediate Family Members:

- Must not be under contract, have or be included in a current proposal to provide Professional Services for or on behalf of the Applicant during the Compliance Period.
- Must not currently hold or be committed to acquire any interest in a privately-held Applicant.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed Applicant's outstanding equity securities or other ownership interests.
- Must not be involved or have an interest in a joint venture, partnership or other business arrangement with the Applicant.
- Must not have been named in a lawsuit with or against the Applicant.
- Must not be a:
 - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the Applicant;
 - Promoter, underwriter, or voting trustee of the Applicant; or
 - Trustee for any pension or profit-sharing trust of the Applicant.

Definitions--

Evaluation Panelist: An Evaluation Panelist is any individual associated with the review of an application. This includes

any primary, secondary, and contingent third party Panelists engaged by ICANN to review new gTLD applications.

Immediate Family Member: Immediate Family Member is a spouse, spousal equivalent, or dependent (whether or not related) of an Evaluation Panelist.

Professional Services: include, but are not limited to legal services, financial audit, financial planning / investment, outsourced services, consulting services such as business / management / internal audit, tax, information technology, registry / registrar services.

2.4.3.2 Code of Conduct Violations

Evaluation panelist breaches of the Code of Conduct, whether intentional or not, shall be reviewed by ICANN, which may make recommendations for corrective action, if deemed necessary. Serious breaches of the Code may be cause for dismissal of the person, persons or provider committing the infraction.

In a case where ICANN determines that a Panelist has failed to comply with the Code of Conduct, the results of that Panelist's review for all assigned applications will be discarded and the affected applications will undergo a review by new panelists.

Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period. Concerns of applicants regarding panels should be communicated via the defined support channels (see subsection 1.4.2). Concerns of the general public (i.e., non-applicants) can be raised via the public comment forum, as described in Module 1.

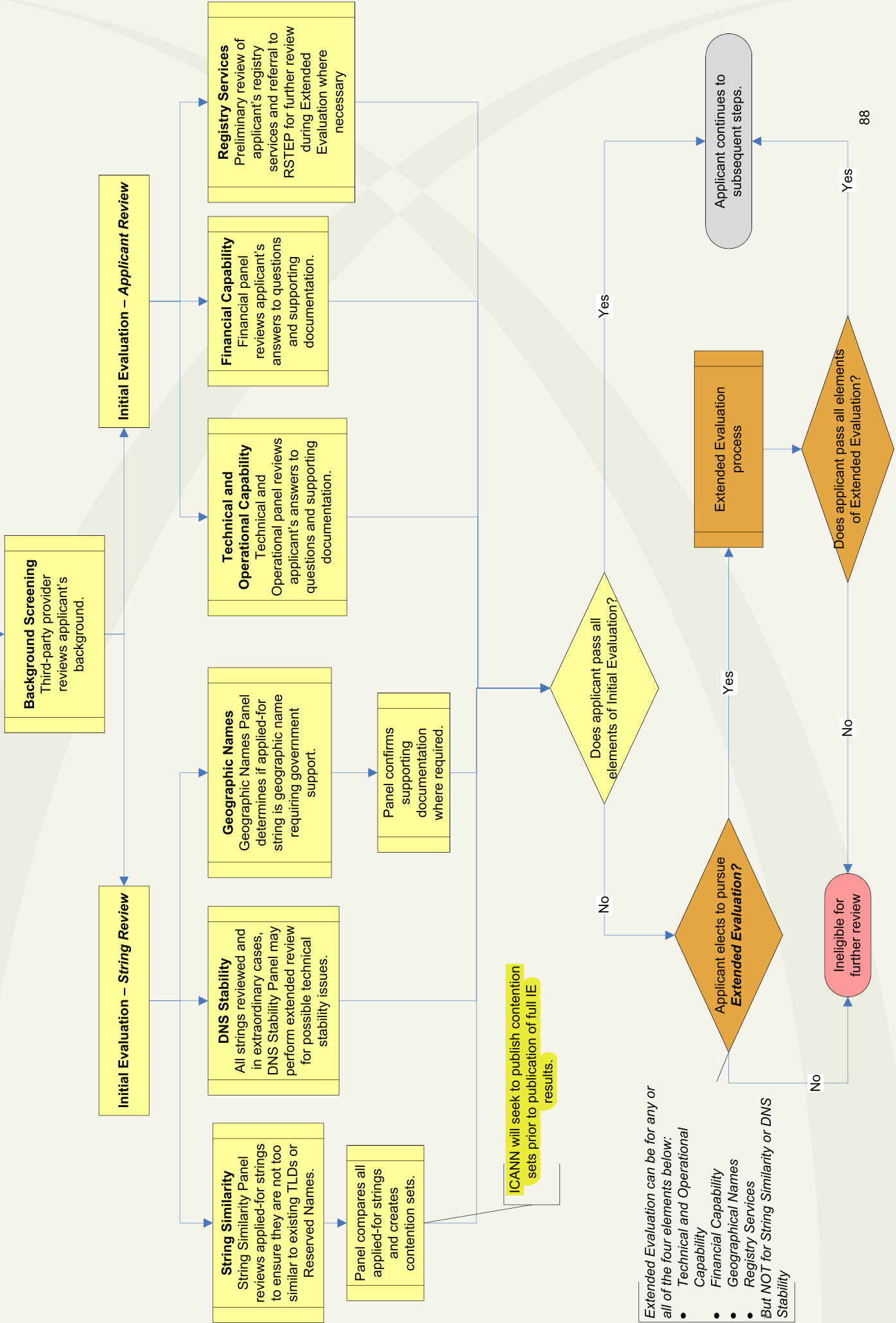
2.4.4 Communication Channels

Defined channels for technical support or exchanges of information with ICANN and with evaluation panels are available to applicants during the Initial Evaluation and Extended Evaluation periods. Contacting individual ICANN staff members, Board members, or individuals engaged by ICANN to perform an evaluation role in order to lobby for a particular outcome or to obtain confidential information about applications under review is not appropriate. In the interests of fairness and equivalent treatment for all applicants, any such individual contacts will be referred to the appropriate communication channels.

DRAFT - New gTLD Program – Initial Evaluation and Extended Evaluation



Application is confirmed as complete and ready for evaluation during Administrative Completeness Check



Extended Evaluation can be for any or all of the four elements below:

- Technical and Operational Capability
- Financial Capability
- Geographical Names
- Registry Services

But NOT for String Similarity or DNS Stability

Annex: Separable Country Names List

gTLD application restrictions on country or territory names are tied to listing in property fields of the ISO 3166-1 standard. Notionally, the ISO 3166-1 standard has an “English short name” field which is the common name for a country and can be used for such protections; however, in some cases this does not represent the common name. This registry seeks to add additional protected elements which are derived from definitions in the ISO 3166-1 standard. An explanation of the various classes is included below.

Separable Country Names List

Code	English Short Name	Cl.	Separable Name
ax	Åland Islands	B1	Åland
as	American Samoa	C	Tutuila
		C	Swain's Island
ao	Angola	C	Cabinda
ag	Antigua and Barbuda	A	Antigua
		A	Barbuda
		C	Redonda Island
au	Australia	C	Lord Howe Island
		C	Macquarie Island
		C	Ashmore Island
		C	Cartier Island
		C	Coral Sea Islands
bo	Bolivia, Plurinational State of	B1	Bolivia
bq	Bonaire, Sint Eustatius and Saba	A	Bonaire
		A	Sint Eustatius
		A	Saba
ba	Bosnia and Herzegovina	A	Bosnia
		A	Herzegovina
br	Brazil	C	Fernando de Noronha Island
		C	Martim Vaz Islands
		C	Trinidad Island
io	British Indian Ocean Territory	C	Chagos Archipelago
		C	Diego Garcia
bn	Brunei Darussalam	B1	Brunei
		C	Negara Brunei Darussalam
cv	Cape Verde	C	São Tiago
		C	São Vicente
ky	Cayman Islands	C	Grand Cayman
cl	Chile	C	Easter Island
		C	Juan Fernández Islands
		C	Sala y Gómez Island
		C	San Ambrosio Island
		C	San Félix Island
cc	Cocos (Keeling) Islands	A	Cocos Islands
		A	Keeling Islands
co	Colombia	C	Malpelo Island
		C	San Andrés Island
		C	Providencia Island
km	Comoros	C	Anjouan
		C	Grande Comore
		C	Mohéli
ck	Cook Islands	C	Rarotonga
cr	Costa Rica	C	Coco Island
ec	Ecuador	C	Galápagos Islands
gq	Equatorial Guinea	C	Annobón Island
		C	Bioko Island

		C	Río Muni
fk	Falkland Islands (Malvinas)	B1	Falkland Islands
		B1	Malvinas
fo	Faroe Islands	A	Faroe
fj	Fiji	C	Vanua Levu
		C	Viti Levu
		C	Rotuma Island
pf	French Polynesia	C	Austral Islands
		C	Gambier Islands
		C	Marquesas Islands
		C	Society Archipelago
		C	Tahiti
		C	Tuamotu Islands
		C	Clipperton Island
tf	French Southern Territories	C	Amsterdam Islands
		C	Crozet Archipelago
		C	Kerguelen Islands
		C	Saint Paul Island
gr	Greece	C	Mount Athos
		B1	**
gd	Grenada	C	Southern Grenadine Islands
		C	Carriacou
gp	Guadeloupe	C	la Désirade
		C	Marie-Galante
		C	les Saintes
hm	Heard Island and McDonald Islands	A	Heard Island
		A	McDonald Islands
va	Holy See (Vatican City State)	A	Holy See
		A	Vatican
hn	Honduras	C	Swan Islands
in	India	C	Amindivi Islands
		C	Andaman Islands
		C	Laccadive Islands
		C	Minicoy Island
		C	Nicobar Islands
ir	Iran, Islamic Republic of	B1	Iran
ki	Kiribati	C	Gilbert Islands
		C	Tarawa
		C	Banaba
		C	Line Islands
		C	Kiritimati
		C	Phoenix Islands
		C	Abariringa
		C	Enderbury Island
kp	Korea, Democratic People's Republic of	C	North Korea
kr	Korea, Republic of	C	South Korea
la	Lao People's Democratic Republic	B1	Laos
mk	Macedonia, the Former Yugoslav Republic of	B1	**
my	Malaysia	C	Sabah
		C	Sarawak
mh	Marshall Islands	C	Jaluit
			Kwajalein
			Majuro
mu	Mauritius	C	Agalega Islands
		C	Cargados Carajos Shoals
		C	Rodrigues Island
fm	Micronesia, Federated States of	B1	Micronesia

		C	Caroline Islands (see also pw)
		C	Chuuk
		C	Kosrae
		C	Pohnpei
		C	Yap
md	Moldova, Republic of	B1	Moldova
		C	Moldava
nc	New Caledonia	C	Loyalty Islands
mp	Northern Mariana Islands	C	Mariana Islands
		C	Saipan
om	Oman	C	Musandam Peninsula
pw	Palau	C	Caroline Islands (see also fm)
		C	Babelthuap
ps	Palestinian Territory, Occupied	B1	Palestine
pg	Papua New Guinea	C	Bismarck Archipelago
		C	Northern Solomon Islands
		C	Bougainville
pn	Pitcairn	C	Ducie Island
		C	Henderson Island
		C	Oeno Island
re	Réunion	C	Bassas da India
		C	Europa Island
		C	Glorioso Island
		C	Juan de Nova Island
		C	Tromelin Island
ru	Russian Federation	B1	Russia
		C	Kaliningrad Region
sh	Saint Helena, Ascension, and Tristan de Cunha	A	Saint Helena
		A	Ascension
		A	Tristan de Cunha
		C	Gough Island
		C	Tristan de Cunha Archipelago
kn	Saint Kitts and Nevis	A	Saint Kitts
		A	Nevis
pm	Saint Pierre and Miquelon	A	Saint Pierre
		A	Miquelon
vc	Saint Vincent and the Grenadines	A	Saint Vincent
		A	The Grenadines
		C	Northern Grenadine Islands
		C	Bequia
		C	Saint Vincent Island
ws	Samoa	C	Savai'i
		C	Upolu
st	Sao Tome and Principe	A	Sao Tome
		A	Principe
sc	Seychelles	C	Mahé
		C	Aldabra Islands
		C	Amirante Islands
		C	Cosmoledo Islands
		C	Farquhar Islands
sb	Solomon Islands	C	Santa Cruz Islands
		C	Southern Solomon Islands
		C	Guadalcanal
za	South Africa	C	Marion Island
		C	Prince Edward Island
gs	South Georgia and the South Sandwich Islands	A	South Georgia
		A	South Sandwich Islands

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

Maintenance

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

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

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

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

Eligibility

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

- Class A:** The ISO 3166-1 English Short Name is comprised of multiple, separable parts whereby the country is comprised of distinct sub-entities. Each of these separable parts is eligible in its own right for consideration as a country name. For example, "Antigua and Barbuda" is comprised of "Antigua" and "Barbuda."
- Class B:** The ISO 3166-1 English Short Name (1) or the ISO 3166-1 English Full Name (2) contains additional language as to the type of country the entity is, which is often not used in common usage when referencing the country. For example, one such short name is "The Bolivarian Republic of Venezuela" for a country in common usage referred to as "Venezuela."
- ** Macedonia is a separable name in the context of this list; however, due to the ongoing dispute listed in UN documents between the Hellenic Republic (Greece) and the Former Yugoslav Republic of Macedonia over the name, no country will be afforded attribution or rights to the name "Macedonia" until the dispute over the name has been resolved. See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/240/37/IMG/N9324037.pdf>.
- Class C:** The ISO 3166-1 Remarks column containing synonyms of the country name, or sub-national entities, as denoted by "often referred to as," "includes", "comprises", "variant" or "principal islands".

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

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

Attachment to Module 2

Sample Letter of Government Support

[This letter should be provided on official letterhead]

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

Attention: New gTLD Evaluation Process

Subject: Letter for support for [TLD requested]

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

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

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

[Government / public authority] further understands that, in the event of a dispute between [government/public authority] and the applicant, ICANN will comply with a legally binding order from a court in the jurisdiction of [government/public authority].

[Optional] This application is being submitted as a community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the application. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.

[Optional] I can advise that in the event that this application is successful [government/public authority] will enter into a separate agreement with the applicant. This agreement will outline the conditions under which we support them in the operation of the TLD, and circumstances under which we would withdraw that support. ICANN will not be a party to this agreement, and enforcement of this agreement lies fully with [government/public authority].

[Government / public authority] understands that the Geographic Names Panel engaged by ICANN will, among other things, conduct due diligence on the authenticity of this documentation. I would request that if additional information is required during this process, that [name and contact details] be contacted in the first instance.

Thank you for the opportunity to support this application.

Yours sincerely

Signature from relevant government/public authority

Attachment to Module 2

Evaluation Questions and Criteria

Since ICANN was founded in 1998 as a not-for-profit, multi-stakeholder organization, one of its key mandates has been to promote competition in the domain name market. ICANN's mission specifically calls for the corporation to maintain and build on processes that will ensure competition and consumer interests – without compromising Internet security and stability. This includes the consideration and implementation of new gTLDs. It is ICANN's goal to make the criteria and evaluation as objective as possible.

While new gTLDs are viewed by ICANN as important to fostering choice, innovation and competition in domain registration services, the decision to launch these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community.

Any public or private sector organization can apply to create and operate a new gTLD. However the process is not like simply registering or buying a second-level domain name. Instead, the application process is to evaluate and select candidates capable of running a registry, a business that manages top level domains such as, for example, .COM or .INFO. Any successful applicant will need to meet published operational and technical criteria in order to preserve Internet stability and interoperability.

I. Principles of the Technical and Financial New gTLD Evaluation Criteria

- Principles of conservatism. This is the first round of what is to be an ongoing process for the introduction of new TLDs, including Internationalized Domain Names. Therefore, the criteria in this round require applicants to provide a thorough and thoughtful analysis of the technical requirements to operate a registry and the proposed business model.
- The criteria and evaluation should be as objective as possible.
 - With that goal in mind, an important objective of the new TLD process is to diversify the namespace, with different registry business models and target audiences. In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. For example, the business model for a registry targeted to a small community need not possess the same robustness in funding and technical infrastructure as a registry intending to compete with large gTLDs. Therefore purely objective criteria such as a requirement for a certain amount of cash on hand will not provide for the flexibility to consider different business models. The process must provide for an objective evaluation framework, but allow for adaptation according to the differing models applicants will present. Within that framework, applicant responses will be evaluated against the criteria in light of the proposed model.
 - Therefore the criteria should be flexible: able to scale with the overall business approach, providing that the planned approach is consistent and coherent, and can withstand highs and lows.

- Criteria can be objective in areas of registrant protection, for example:
 - Providing for funds to continue operations in the event of a registry failure.
 - Adherence to data escrow, registry failover, and continuity planning requirements.
- The evaluation must strike the correct balance between establishing the business and technical competence of the applicant to operate a registry (to serve the interests of registrants), while not asking for the detailed sort of information or making the judgment that a venture capitalist would. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.
- New registries must be added in a way that maintains DNS stability and security. Therefore, ICANN asks several questions so that the applicant can demonstrate an understanding of the technical requirements to operate a registry. ICANN will ask the applicant to demonstrate actual operational technical compliance prior to delegation. This is in line with current prerequisites for the delegation of a TLD.
- Registrant protection is emphasized in both the criteria and the scoring. Examples of this include asking the applicant to:
 - Plan for the occurrence of contingencies and registry failure by putting in place financial resources to fund the ongoing resolution of names while a replacement operator is found or extended notice can be given to registrants,
 - Demonstrate a capability to understand and plan for business contingencies to afford some protections through the marketplace,
 - Adhere to DNS stability and security requirements as described in the technical section, and
 - Provide access to the widest variety of services.

II. Aspects of the Questions Asked in the Application and Evaluation Criteria

The technical and financial questions are intended to inform and guide the applicant in aspects of registry start-up and operation. The established registry operator should find the questions straightforward while inexperienced applicants should find them a natural part of planning.

Evaluation and scoring (detailed below) will emphasize:

- How thorough are the answers? Are they well thought through and do they provide a sufficient basis for evaluation?
- Demonstration of the ability to operate and fund the registry on an ongoing basis:
 - Funding sources to support technical operations in a manner that ensures stability and security and supports planned expenses,
 - Resilience and sustainability in the face of ups and downs, anticipation of contingencies,
 - Funding to carry on operations in the event of failure.

- Demonstration that the technical plan will likely deliver on best practices for a registry and identification of aspects that might raise DNS stability and security issues.
- Ensures plan integration, consistency and compatibility (responses to questions are not evaluated individually but in comparison to others):
 - Funding adequately covers technical requirements,
 - Funding covers costs,
 - Risks are identified and addressed, in comparison to other aspects of the plan.

III. Scoring

Evaluation

- The questions, criteria, scoring and evaluation methodology are to be conducted in accordance with the principles described earlier in section I. With that in mind, globally diverse evaluation panelists will staff evaluation panels. The diversity of evaluators and access to experts in all regions of the world will ensure application evaluations take into account cultural, technical and business norms in the regions from which applications originate.
- Evaluation teams will consist of two independent panels. One will evaluate the applications against the financial criteria. The other will evaluate the applications against the technical & operational criteria. Given the requirement that technical and financial planning be well integrated, the panels will work together and coordinate information transfer where necessary. Other relevant experts (e.g., technical, audit, legal, insurance, finance) in pertinent regions will provide advice as required.
- Precautions will be taken to ensure that no member of the Evaluation Teams will have any interest or association that may be viewed as a real or potential conflict of interest with an applicant or application. All members must adhere to the Code of Conduct and Conflict of Interest guidelines that are found in Module 2.
- Communications between the evaluation teams and the applicants will be through an online interface. During the evaluation, evaluators may pose a set of clarifying questions to an applicant, to which the applicant may respond through the interface.

Confidentiality: ICANN will post applications after the close of the application submission period. The application form notes which parts of the application will be posted.

Scoring

- Responses will be evaluated against each criterion. A score will be assigned according to the scoring schedule linked to each question or set of questions. In several questions, 1 point is the maximum score that may be awarded. In several other questions, 2 points are awarded for a response that exceeds requirements, 1 point is awarded for a response that meets requirements and 0 points are awarded for a response that fails to meet requirements. Each question must receive at least a score of "1," making each a "pass/fail" question.
- In the Continuity question in the financial section(see Question #50), up to 3 points are awarded if an applicant provides, at the application stage, a financial instrument that will guarantee ongoing registry operations in the event of a business failure. This extra

point can serve to guarantee passing the financial criteria for applicants who score the minimum passing score for each of the individual criteria. The purpose of this weighting is to reward applicants who make early arrangements for the protection of registrants and to accept relatively riskier business plans where registrants are protected.

- There are 21 Technical & Operational questions. Each question has a criterion and scoring associated with it. The scoring for each is 0, 1, or 2 points as described above. One of the questions (IDN implementation) is optional. Other than the optional questions, all Technical & Operational criteria must be scored a 1 or more or the application will fail the evaluation.
- The total technical score must be equal to or greater than 22 for the application to pass. That means the applicant can pass by:
 - Receiving a 1 on all questions, including the optional question, and a 2 on at least one mandatory question; or
 - Receiving a 1 on all questions, excluding the optional question and a 2 on at least two mandatory questions.

This scoring methodology requires a minimum passing score for each question and a slightly higher average score than the per question minimum to pass.

- There are six Financial questions and six sets of criteria that are scored by rating the answers to one or more of the questions. For example, the question concerning registry operation costs requires consistency between the technical plans (described in the answers to the Technical & Operational questions) and the costs (described in the answers to the costs question).
- The scoring for each of the Financial criteria is 0, 1 or 2 points as described above with the exception of the Continuity question, for which up to 3 points are possible. All questions must receive at least a 1 or the application will fail the evaluation.
- The total financial score on the six criteria must be 8 or greater for the application to pass. That means the applicant can pass by:
 - Scoring a 3 on the continuity criteria, or
 - Scoring a 2 on any two financial criteria.
- Applications that do not pass Initial Evaluation can enter into an extended evaluation process as described in Module 2. The scoring is the same.

Applicant Information	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	1	Full legal name of the Applicant (the established entity that would enter into a Registry Agreement with ICANN)	Y	Responses to Questions 1 - 12 are required for a complete application. Responses are not scored.			
	2	Address of the principal place of business of the Applicant. This address will be used for contractual purposes. No Post Office boxes are allowed.	Y				
	3	Phone number for the Applicant's principal place of business.	Y				
	4	Fax number for the Applicant's principal place of business.	Y				
	5	Website or URL, if applicable.	Y				
Primary Contact for this Application	6	Name	Y	The primary contact is the individual designated with the primary responsibility for management of the application, including responding to tasks in the TLD Application System (TAS) during the various application phases. Both contacts listed should also be prepared to receive inquiries from the public.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Secondary Contact for this Application	7	Name	Y	The secondary contact is listed in the event the primary contact is unavailable to continue with the application process.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Proof of Legal Establishment	8	<p>Email address</p> <p>(a) Legal form of the Applicant. (e.g., partnership, corporation, non-profit institution),</p> <p>(b) State the specific national or other jurisdiction that defines the type of entity identified in 8(a).</p>	Y	In the event of questions regarding proof of establishment, the applicant may be asked for additional details, such as the specific national or other law applying to this type of entity			
		(c) Attach evidence of the applicant's establishment as the type of entity identified in Question 8(a) above, in accordance with the applicable laws identified in Question 8(b).	Y	Applications without valid proof of legal establishment will not be evaluated further. Supporting documentation for proof of legal establishment should be submitted in the original language.			
	9	<p>(a) If the applying entity is publicly traded, provide the exchange and symbol.</p> <p>(b) If the applying entity is a subsidiary, provide the parent company.</p> <p>(c) If the applying entity is a joint venture, list all joint venture partners.</p>	Y				
	10	Business ID, Tax ID, VAT registration number, or equivalent of the Applicant.	N				
Applicant Background	11	(a) Enter the full name, date and country of birth, contact information (permanent residence), and position of all directors (i.e., members of the applicant's Board of Directors, if applicable).	Partial	Applicants should be aware that the names and positions of the individuals listed in response to this question will be published as part of the application. The contact information listed for individuals is for identification purposes only and will not be published as part of the application.			
				Background checks may be conducted on individuals named in the applicant's response to question 11. Any material misstatement or misrepresentation (or omission of material information) may cause the application to be rejected.			The applicant certifies that it has obtained permission for the posting of the names and positions of individuals included in this application.

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	(b) Enter the full name, date and country of birth, contact information (permanent residence), and position of all officers and partners. Officers are high-level management officials of a corporation or business, for example, a CEO, vice president, secretary, chief financial officer. Partners would be listed in the context of a partnership or other such form of legal entity.	Partial				
	(c) Enter the full name and contact information of all shareholders holding at least 15% of shares, and percentage held by each. For a shareholder entity, enter the principal place of business. For a shareholder individual, enter the date and country of birth and contact information (permanent residence).	Partial				
	(d) For an applying entity that does not have directors, officers, partners, or shareholders, enter the full name, date and country of birth, contact information (permanent residence), and position of all individuals having overall legal or executive responsibility for the applying entity.	Partial				
	(e) Indicate whether the applicant or any of the individuals named above: <ul style="list-style-type: none"> i. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that is the substantive equivalent of any of these; ii. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of funds of others; iii. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities; iv. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative; 	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook.			

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>v. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;</p> <p>vi. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;</p> <p>vii. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;</p> <p>viii. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;</p> <p>ix. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transitional Organized Crime (all Protocols);</p> <p>x. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xi. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xii. is the subject of a disqualification imposed by ICANN and in effect at the time of this application.</p> <p>If any of the above events have occurred, please provide details.</p>					

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	(f) Indicate whether the applicant or any of the individuals named above have been involved in any decisions indicating that the applicant or individual named in the application was engaged in cybersquatting, as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or equivalent legislation.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
	(g) Disclose whether the applicant or any of the individuals named above has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made. Provide an explanation related to each such instance.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
	(h) Provide an explanation for any additional background information that may be found concerning the applicant or any individual named in the application, which may affect eligibility, including any criminal convictions not identified above.	N				
Evaluation Fee	12 (a) Enter the confirmation information for payment of the evaluation fee (e.g., wire transfer confirmation number).	N	The evaluation fee is paid in the form of a deposit at the time of user registration, and submission of the remaining amount at the time the full application is submitted. The information in question 12 is required for each payment. The full amount in USD must be received by ICANN. Applicant is responsible for all transaction fees and exchange rate fluctuation. Fedwire is the preferred wire mechanism; SWIFT is also acceptable. ACH is not recommended as these funds will take longer to clear and could affect timing of the application processing.			
	(b) Payer name	N				
	(c) Payer address	N				

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	(d) Wiring bank	N				
	(e) Bank address	N				
	(f) Wire date	N				
13	Provide the applied-for gTLD string. If applying for an IDN, provide the U-label.	Y	Responses to Questions 13-17 are not scored, but are used for database and validation purposes. The U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character.			
14	(a) If applying for an IDN, provide the A-label (beginning with "xn--"). (b) If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant. (c) If an IDN, provide the language of the label (both in English and as referenced by ISO-639-1). (d) If an IDN, provide the script of the label (both in English and as referenced by ISO 15924). (e) If an IDN, list all code points contained in the U-label according to Unicode form.	Y				
		Y				
		Y				
		Y	For example, the string "HELLO" would be listed as U+0048 U+0065 U+006C U+006E U+006F.			
15	(a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include: 1. the applied-for gTLD string relevant to the tables, 2. the script or language designator (as defined in BCP 47), 3. table version number, 4. effective date (DD Month YYYY), and 5. contact name, email address, and phone number. Submission of IDN tables in a standards-based format is encouraged.	Y	In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string. IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second level (see question 44). IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual			

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
			rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.			
	(b) Describe the process used for development of the IDN tables submitted, including consultations and sources used.	Y				
	(c) List any variants to the applied-for gTLD string according to the relevant IDN tables.	Y	Variant TLD strings will not be delegated as a result of this application. Variant strings will be checked for consistency and, if the application is approved, will be entered on a Declared IDN Variants List to allow for future allocation once a variant management mechanism is established for the top level. Inclusion of variant TLD strings in this application is for information only and confers no right or claim to these strings upon the applicant.			
16	Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.	Y				
17	OPTIONAL. Provide a representation of the label according to the International Phonetic Alphabet (http://www.langsci.ucd.ac.uk/ipa/).	Y	If provided, this information will be used as a guide to ICANN in communications regarding the application.			
Mission/Purpose	(a) Describe the mission/purpose of your proposed gTLD.	Y	The information gathered in response to Question 18 is intended to inform the post-launch review of the New gTLD Program, from the perspective of assessing the relative costs and benefits achieved in the expanded gTLD space. For the application to be considered complete, answers to this section must be fulsome and sufficiently quantitative and detailed to inform future study on plans vs. results.			

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
			<p>The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of Commitments. This will include consideration of the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.</p> <p>The information gathered in this section will be one source of input to help inform this review. This information is not used as part of the evaluation or scoring of the application, except to the extent that the information may overlap with questions or evaluation areas that are scored.</p> <p>An applicant wishing to designate this application as community-based should ensure that these responses are consistent with its responses for question 20 below.</p>			
	(b) How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?	Y	<p>Answers should address the following points:</p> <ol style="list-style-type: none"> i. What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation? ii. What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation? iii. What goals does your proposed gTLD have in terms of user experience? iv. Provide a complete description of the applicant's intended registration policies in support of the goals listed above. v. Will your proposed gTLD impose any measures for 			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<p>protecting the privacy or confidential information of registrants or users? If so, please describe any such measures.</p> <p>Describe whether and in what ways outreach and communications will help to achieve your projected benefits.</p>			
	18	(c) What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?	Y	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> i. How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis? ii. Explain any cost benefits for registrants you intend to implement (e.g., advantageous pricing, introductory discounts, bulk registration discounts). iii. Note that the Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Additionally, the Registry Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans. 			
Community-based Designation	19	Is the application for a community-based TLD?	Y	There is a presumption that the application is a standard application (as defined in the Applicant Guidebook) if this question is left unanswered.			

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
20	(a) Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.	Y	<p>The applicant's designation as standard or community-based cannot be changed once the application is submitted.</p> <p>Descriptions should include:</p> <ul style="list-style-type: none"> How the community is delineated from Internet users generally. Such descriptions may include, but are not limited to, the following: <ul style="list-style-type: none"> membership, registration, or licensing processes, operation in a particular industry, use of a language. How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required. When the community was established, including the date(s) of formal organization, if any, as well as a description of community activities to date. The current estimated size of the community, both as to membership and geographic extent. 		<p>Responses to Question 20 will be regarded as firm commitments to the specified community and reflected in the Registry Agreement, provided the application is successful.</p> <p>Responses are not scored in the Initial Evaluation. Responses may be scored in a community priority evaluation, if applicable. Criteria and scoring methodology for the community priority evaluation are described in Module 4 of the Applicant Guidebook.</p>	
	(b) Explain the applicant's relationship to the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> Relations to any community organizations. Relations to the community and its constituent parts/groups. Accountability mechanisms of the applicant to the community. 			
	(c) Provide a description of the community-based purpose of the applied-for gTLD.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> Intended registrants in the TLD. Intended end-users of the TLD. Related activities the applicant has carried out or intends to carry out in service of this purpose. Explanation of how the purpose is of a lasting nature. 			
	(d) Explain the relationship between the applied-for gTLD string and the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> relationship to the established name, if any, of the community. 			

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	(e) Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set.	Y	<ul style="list-style-type: none"> relationship to the identification of community members. any connotations the string may have beyond the community. 			
			<p>Descriptions should include proposed policies, if any, on the following:</p> <ul style="list-style-type: none"> Eligibility: who is eligible to register a second-level name in the gTLD, and how will eligibility be determined. Name selector: what types of second-level names may be registered in the gTLD. Content/Use: what restrictions, if any, the registry operator will impose on how a registrant may use its registered name. Enforcement: what investigation practices and mechanisms exist to enforce the policies above, what resources are allocated for enforcement, and what appeal mechanisms are available to registrants. 			
	(f) Attach any written endorsements for the application from established institutions representative of the community identified in 20(a). An applicant may submit written endorsements by multiple institutions, if relevant to the community.	Y	<p>At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement support for the application, and the supply the contact information of the entity providing the endorsement.</p> <p>Endorsements from institutions not mentioned in the response to 20(b) should be accompanied by a clear description of each such institution's relationship to the community.</p> <p>Endorsements presented as supporting documentation for this question should be submitted in the original language.</p>			

Geographic Names	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	21	(a) Is the application for a geographic name?	Y	An applied-for gTLD string is considered a geographic name requiring government support if it is: (a) the capital city name of a country or territory listed in the ISO 3166-1 standard; (b) a city name, where it is clear from statements in the application that the applicant intends to use the gTLD for purposes associated with the city name; (c) a sub-national place name listed in the ISO 3166-2 standard; or (d) a name listed as a UNESCO region or appearing on the "Composition of macro geographic (continental) or regions, geographic sub-regions, and selected economic and other groupings" list. See Module 2 for complete definitions and criteria. An application for a country or territory name, as defined in the Applicant Guidebook, will not be approved.			
		(b) If a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities.	N	See the documentation requirements in Module 2 of the Applicant Guidebook. Documentation presented in response to this question should be submitted in the original language.			
Protection of Geographic Names	22	Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names.	Y	Applicants should consider and describe how they will incorporate Governmental Advisory Committee (GAC) advice in their management of second-level domain name registrations. See "Principles regarding New gTLDs" at https://gacweb.icann.org/display/GACADY/NEW+gTLDs . For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain. See the Dot Info Circular at https://gacweb.icann.org/display/GACADY/NEW+gTLDs . Proposed measures will be posted for public comment as part of the application. However, note that procedures for release of geographic names at the second level			

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
23	<p>Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns.</p> <p>The following registry services are customary services offered by a registry operator:</p> <ul style="list-style-type: none"> A. Receipt of data from registrars concerning registration of domain names and name servers. B. Dissemination of TLD zone files. C. Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois service). D. Internationalized Domain Names, where offered. E. DNS Security Extensions (DNSSEC). <p>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.</p> <p>Additional proposed registry services that are unique to the registry must also be described.</p>	Y	<p>Registry Services are defined as the following: (1) operations of the Registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the Registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the Registry Agreement; and (2) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy; (3) any other products or services that only a Registry Operator is capable of providing, by reason of its designation as the Registry Operator. A full definition of Registry Services can be found at http://www.icann.org/en/registries/rsep/rspp.html.</p> <p>Security: For purposes of this Applicant Guidebook, an effect on security by the proposed Registry Service means (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with applicable standards.</p> <p>Stability: For purposes of this Applicant Guidebook, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and</p>		<p>Responses are not scored. A preliminary assessment will be made to determine if there are potential security or stability issues with any of the applicant's proposed Registry Services. If any such issues are identified, the application will be referred for an extended review. See the description of the Registry Services review process in Module 2 of the Applicant Guidebook. Any information contained in the application may be considered as part of the Registry Services review. If its application is approved, applicant may engage in only those registry services defined in the application, unless a new request is submitted to ICANN in accordance with the Registry Agreement.</p>	

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
24	<p>Shared Registration System (SRS) Performance:</p> <ul style="list-style-type: none"> the plan for operation of a robust and reliable SRS. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. SRS must include the EPP interface to the registry, as well as any other interfaces intended to be provided, if they are critical to the functioning of the registry. Please refer to the requirements in Specification 6 (section 1.2) and Specification 10 (SLA Matrix) attached to the Registry Agreement; and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> A high-level SRS system description; Representative network diagram(s); Number of servers; Description of interconnectivity with other registry systems; Frequency of synchronization between servers; and Synchronization scheme (e.g., hot standby, cold standby). 	Y	<p>authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning.</p> <p>The questions in this section (24-44) are intended to give applicants an opportunity to demonstrate their technical and operational capabilities to run a registry. In the event that an applicant chooses to outsource one or more parts of its registry operations, the applicant should still provide the full details of the technical arrangements.</p> <p>Note that the resource plans provided in this section assist in validating the technical and operational plans as well as informing the cost estimates in the Financial section below.</p> <p>Questions 24-30(a) are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are outward-facing, i.e., interactions with registrars, registrants, and various DNS users. Responses to these questions will be published to allow review by affected parties.</p>	0-1	<p>Complete answer demonstrates:</p> <p>(1) a plan for operating a robust and reliable SRS, one of the five critical registry functions;</p> <p>(2) scalability and performance consistent with the overall business approach, and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the financial section; and</p> <p>(4) evidence of compliance with Specification 6 (section 1.2) to the Registry Agreement.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of SRS that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Details of a well-developed plan to operate a robust and reliable SRS;</p> <p>(3) SRS plans are sufficient to result in compliance with Specification 6 and Specification 10 to the Registry Agreement;</p> <p>(4) SRS is consistent with the technical, operational and financial approach described in the application; and</p> <p>(5) Demonstrates that adequate technical resources are already on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
25	<p>A complete answer is expected to be no more than 5 pages. (As a guide, one page contains approximately 4000 characters).</p> <p>Extensible Provisioning Protocol (EPP); provide a detailed description of the interface with registrars, including how the applicant will comply with EPP in RFCs 3735 (if applicable), and 5730-5734.</p> <p>If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.</p> <p>Describe resourcing plans (number and description of personnel roles allocated to this area).</p> <p>A complete answer is expected to be no more than 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be no more than 5 pages per EPP extension.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; (4) ability to comply with relevant RFCs; (5) if applicable, a well-documented implementation of any proprietary EPP extensions; and (6) if applicable, how proprietary EPP extensions are consistent with the registration lifecycle as described in Question 27. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of EPP that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Sufficient evidence that any proprietary EPP extensions are compliant with RFCs and provide all necessary functionalities for the provision of registry services; (3) EPP interface is consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates that technical resources are already on hand, or committed or readily available. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
26	<p>Whois: describe</p> <ul style="list-style-type: none"> • how the applicant will comply with Whois specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement; • how the Applicant's Whois service will comply with RFC 3912; and • resourcing plans for the initial implementation of, and ongoing maintenance of, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer should include, but is not limited to:</p>	Y	<p>The Registry Agreement (Specification 4) requires provision of Whois lookup services for all names registered in the TLD. This is a minimum requirement. Provision for Searchable Whois as defined in the scoring column is a requirement for achieving a score of 2 points.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of this aspect of registry technical requirements, (one of the five critical registry functions); (2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the 	<p>2 - exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (1) A Searchable Whois service: Whois service includes web-based search capabilities by domain name, registrant name, postal address, contact names, registrar IDs, and Internet Protocol addresses without arbitrary limit. Boolean search capabilities may be offered. The service shall include appropriate precautions to avoid abuse of this feature (e.g., limiting access to legitimate authorized users), and the

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> A high-level Whois system description; Relevant network diagram(s); IT and infrastructure resources (e.g., servers, switches, routers and other components); Description of interconnectivity with other registry systems; and Frequency of synchronization between servers. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> Provision for Searchable Whois capabilities; and A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions. <p>A complete answer is expected to be no more than 5 pages.</p>				<p>planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) evidence of compliance with Specifications 4 and 10 to the Registry Agreement; and</p> <p>(6) if applicable, a well-documented implementation of Searchable Whois.</p>	<p>application demonstrates compliance with any applicable privacy laws or policies.</p> <p>1 - meets requirements: Response includes</p> <p>(1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Evidence that Whois services are compliant with RFCs, Specifications 4 and 10 to the Registry Agreement, and any other contractual requirements including all necessary functionalities for user interface;</p> <p>(3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	27	<p>Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:</p> <ul style="list-style-type: none"> explain the various registration states as well as the criteria and procedures that are used to change state; describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply; clearly explain any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; and describe resourcing plans for this aspect of the criteria (number and 	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of registration lifecycles and states;</p> <p>(2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and</p> <p>(3) the ability to comply with relevant RFCs.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Details of a fully developed registration life cycle with definition of various registration states; transition between the states, and trigger points;</p> <p>(3) A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and</p> <p>(4) Demonstrates an adequate level of</p>

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>description of personnel roles allocated to this area).</p> <p>The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state.</p> <p>If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>resources that are already on hand or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
28	<p>Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> An implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller; Policies for handling complaints regarding abuse; Proposed measures for removal of orphan glue records for names removed from the zone when provided with evidence in written form that the glue is present in connection with malicious conduct (see Specification 6); and Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as</p>	Y	<p>Note that, while orphan glue often supports correct and ordinary operation of the DNS, registry operators will be required to take action to remove orphan glue records (as defined at http://www.icann.org/en/committees/security/s-ac048.pdf) when provided with evidence in written form that such records are present in connection with malicious conduct.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> Comprehensive abuse policies, which include clear definitions of what constitutes abuse in the TLD, and procedures that will effectively minimize potential for abuse in the TLD; Plans are adequately resourced in the planned costs detailed in the financial section; Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and When executed in accordance with the Registry Agreement, plans will result in compliance with contractual requirements. 	<p>2 - exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> Whois accuracy, using measures specified here or other measures commensurate in their effectiveness; and Measures from at least one additional area to be eligible for 2 points as described in the question. <p>1 - meets requirements Response includes:</p> <ol style="list-style-type: none"> An adequate description of abuse prevention and mitigation policies and procedures that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Details of well-developed abuse policies and procedures; Plans are sufficient to result in compliance with contractual requirements; Plans are consistent with the technical, operational, and financial approach described in the application, and any commitments made to registrants; and Demonstrates an adequate level of resources that are on hand, committed, or readily available to

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>described below.</p> <ul style="list-style-type: none"> • Measures to promote Whois accuracy (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: <ul style="list-style-type: none"> ○ Authentication of registrant information as complete and accurate at time of registration. Measures to accomplish this could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means. ○ Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and ○ If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA will continue to apply to all ICANN-accredited registrars. • A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners; • Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by 					<p>carry out this function. 0 – fails requirements Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:</p> <ul style="list-style-type: none"> ○ Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests. ○ Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and ○ Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted. <p>A complete answer is expected to be no more than 20 pages.</p>					
	29	<p>Rights Protection Mechanisms: Applicants must describe how their registry will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> • A description of how the registry operator will implement safeguards against allowing unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies), and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer a Sunrise period and a Trademark Claims service during the required time periods, and implement decisions rendered under the URS on an ongoing basis, and • A description of resourcing plans for the 	Y		0-2	<p>Complete answer describes mechanisms designed to:</p> <ol style="list-style-type: none"> (1) prevent abusive registrations, and (2) identify and address the abusive use of registered names on an ongoing basis. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (1) Identification of rights protection as a core objective, supported by a well-developed plan for rights protection; and (2) Mechanisms for providing effective protections that exceed minimum requirements (e.g., RPMs in addition to those required in the registry agreement). <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) An adequate description of RPMs that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) A commitment from the applicant to implement of rights protection mechanisms sufficient to comply with minimum requirements in Specification 7; (3) Plans that are sufficient to result in compliance with contractual requirements;

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>(4) Mechanisms that are consistent with the technical, operational, and financial approach described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
30	<p>(a) Security Policy; provide a summary of the security policy for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> • indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities; • description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided); • list of commitments made to registrants concerning security levels. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001). <p>A summary of the above should be no more than 20 pages. Note that the complete security policy for the registry is required to be submitted in accordance with 30(b).</p>	Y	<p>Criterion 5 calls for security levels to be appropriate for the use and level of trust associated with the TLD string, such as, for example, financial services oriented TLDs. "Financial services" are activities performed by financial institutions, including: 1) the acceptance of deposits and other repayable funds; 2) lending; 3) payment and remittance services; 4) insurance or reinsurance services; 5) brokerage services; 6) investment services and activities; 7) financial leasing; 8) issuance of guarantees and commitments; 9) provision of financial advice; or 11) acting as a financial clearinghouse. Financial services is used as an example only; other strings with exceptional potential to cause harm to consumers would also be expected to deploy appropriate levels of security.</p>	0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed description of processes and solutions deployed to manage logical security across infrastructure and systems, monitoring and detecting threats and security vulnerabilities and taking appropriate steps to resolve them;</p> <p>(2) security capabilities are consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan adequately resourced in the financial sector;</p> <p>(4) security measures are consistent with any commitments made to registrants regarding security levels; and</p> <p>(5) security measures are appropriate for the applied-gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to provide a commensurate level of security).</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <p>(1) Evidence of highly developed and detailed security capabilities, with various baseline security levels, independent benchmarking of security metrics, robust periodic security monitoring, and continuous enforcement; and</p> <p>(2) an independent assessment report is provided demonstrating effective security controls are either in place or have been designed, and are commensurate with the applied-for gTLD string. (This could be ISO 27001 certification or other well-established and recognized industry certifications for the registry operation. If new independent standards for demonstration of effective security controls are established, such as the High Security Top Level Domain (HSTLD) designation, this could also be included. An illustrative example of an independent standard is the proposed set of requirements described in http://www.icann.org/en/consultations/aba-bits-to-beckstrom-crocker-20dec11-en.pdf.)</p> <p>1 - meets requirements: Response includes:</p>

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
30	<p>(b) Security Policy; provide the complete security policy and procedures for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> • system (data, server, application / services) and network access control, ensuring systems are maintained in a secure fashion, including details of how they are monitored, logged and backed up; • resources to secure integrity of updates between registry systems and nameservers, and between nameservers, if any; • independent assessment reports demonstrating security capabilities (submitted as attachments), if any; • provisioning and other measures that mitigate risks posed by denial of service attacks; • computer and network incident response 	N	<p>Questions 30(b) – 44 are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are internal to the infrastructure and operations of the registry. To allow the applicant to provide full details and safeguard proprietary information, responses to these questions will not be published.</p>			<p>Scoring</p> <p>(1) Adequate description of security policies and procedures that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of adequate security capabilities, including enforcement of logical access control, threat analysis, incident response and auditing, Ad-hoc oversight and governance and leading practices being followed;</p> <p>(3) Security capabilities consistent with the technical, operational, and financial approach as described in the application, and any commitments made to registrants;</p> <p>(4) Demonstrates that an adequate level of resources are on hand, committed or readily available to carry out this function; and</p> <p>(5) Proposed security measures are commensurate with the nature of the applied-for gTLD string.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
<p>Demonstration of Technical & Operational Capability (Internal)</p>						

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>policies, plans, and processes;</p> <ul style="list-style-type: none"> plans to minimize the risk of unauthorized access to its systems or tampering with registry data; intrusion detection mechanisms, a threat analysis for the proposed registry, the defenses that will be deployed against those threats, and provision for periodic threat analysis updates; details for auditing capability on all network access; physical security approach; identification of department or group responsible for the registry's security organization; background checks conducted on security personnel; description of the main security threats to the registry operation that have been identified; and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). 					
	31	<p>Technical Overview of Proposed Registry: provide a technical overview of the proposed registry.</p> <p>The technical plan must be adequately resourced, with appropriate expertise and allocation of costs. The applicant will provide financial descriptions of resources in the next section and those resources must be reasonably related to these technical requirements.</p> <p>The overview should include information on the estimated scale of the registry's technical operation, for example, estimates for the number of registration transactions and DNS queries per month should be provided for the first two years of operation.</p> <p>In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions.</p>	N	<p>To the extent this answer is affected by the applicant's intent to outsource various registry operations, the applicant should describe these plans (e.g., taking advantage of economies of scale or existing facilities). However, the response must include specifying the technical plans, estimated scale, and geographic dispersion as required by the question.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of technical aspects of registry requirements; an adequate level of resiliency for the registry's technical operations; consistency with planned or currently deployed technical/operational solutions; consistency with the overall business approach and planned size of the registry; adequate resourcing for technical plan in the 	<p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Technical plans consistent with the technical, operational, and financial approach as described in the application; Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.</p> <p>This high-level summary should not repeat answers to questions below. Answers should include a visual diagram(s) to highlight dataflows, to provide context for the overall technical infrastructure. Detailed diagrams for subsequent questions should be able to map back to this high-level diagram(s). The visual diagram(s) can be supplemented with documentation, or a narrative, to explain how all of the Technical & Operational components conform.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>planned costs detailed in the financial section; and</p> <p>(6) consistency with subsequent technical questions.</p>	
32	<p>Architecture: provide documentation for the system and network architecture that will support registry operations for the proposed scale of the registry. System and network architecture documentation must clearly demonstrate the applicant's ability to operate, manage, and monitor registry systems. Documentation should include multiple diagrams or other components including but not limited to:</p> <ul style="list-style-type: none"> • Detailed network diagram(s) showing the full interplay of registry elements, including but not limited to SRS, DNS, Whois, data escrow, and registry database functions; • Network and associated systems necessary to support registry operations, including: <ul style="list-style-type: none"> ▪ Anticipated TCP/IP addressing scheme, ▪ Hardware (i.e., servers, routers, networking components, virtual machines and key characteristics (CPU and RAM, Disk space, internal network connectivity, and make and model)), ▪ Operating system and versions, and ▪ Software and applications (with version information) necessary to support registry operations, management, and monitoring • General overview of capacity planning, including bandwidth allocation plans, • List of providers / carriers; and • Resourcing plans for the initial 	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed and coherent network architecture; (2) architecture providing resiliency for registry systems; (3) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and (4) a technical plan that is adequately resourced in the planned costs detailed in the financial section. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> (1) Evidence of highly developed and detailed network architecture that is able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for initial registry startup; and (2) Evidence of a highly available, robust, and secure infrastructure. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) An adequate description of the architecture that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Plans for network architecture describe all necessary elements; (3) Descriptions demonstrate adequate network architecture providing robustness and security of the

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include evidence of a network architecture design that greatly reduces the risk profile of the proposed registry by providing a level of scalability and adaptability (e.g., protection against DDoS attacks) that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>registry;</p> <p>(4) Bandwidth and SLA are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
33	<p>Database Capabilities: provide details of database capabilities including but not limited to:</p> <ul style="list-style-type: none"> • database software; • storage capacity (both in raw terms [e.g., MB, GB] and in number of registrations / registration transactions); • maximum transaction throughput (in total and by type of transaction); • scalability; • procedures for object creation, editing, and deletion, and user and credential management; • high availability; • change management procedures; • reporting capabilities; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A registry database data model can be included to provide additional clarity to this response.</p> <p>Note: Database capabilities described should be in reference to registry services and not necessarily related support functions such as Personnel or Accounting, unless such services are inherently intertwined with the delivery of registry services.</p> <p>To be eligible for a score of 2, answers must also</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of database capabilities to meet the registry technical requirements;</p> <p>(2) database capabilities consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <p>(1) Highly developed and detailed description of database capabilities that are able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for registry startup; and</p> <p>(2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices.</p> <p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of database capabilities that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for database capabilities</p>

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>include evidence of database capabilities that greatly reduce the risk profile of the proposed registry by providing a level of scalability and adaptability that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate database capabilities, with database throughput, scalability, and database operations with limited operational governance;</p> <p>(4) Database capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates that an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
34	<p>Geographic Diversity: provide a description of plans for geographic diversity of:</p> <ol style="list-style-type: none"> name servers, and operations centers. <p>Answers should include, but are not limited to:</p> <ul style="list-style-type: none"> the intended physical locations of systems, primary and back-up operations centers (including security attributes), and other infrastructure; any registry plans to use Anycast or other topological and geographical diversity measures, in which case, the configuration of the relevant service must be included; resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also include evidence of a geographic diversity plan that greatly reduces the risk profile of the proposed registry by ensuring the continuance of all vital business functions (as identified in the applicant's continuity plan in Question 39) in the event of a natural or other disaster) at the principal place of business or point of presence.</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> geographic diversity of nameservers and operations centers; proposed geo-diversity measures are consistent with the overall business approach and planned size of the registry; and a technical plan that is adequately resourced in the planned costs detailed in the financial section. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> Evidence of highly developed measures for geo-diversity of operations, with locations and functions to continue all vital business functions in the event of a natural or other disaster at the principal place of business or point of presence; and A high level of availability, security, and bandwidth. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> An adequate description of Geographic Diversity that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Plans provide adequate geo-diversity of name servers and operations to continue critical registry functions in the event of a temporary outage at the principal place of business or point of presence; Geo-diversity plans are consistent

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>A complete answer is expected to be no more than 5 pages.</p>					<p>with technical, operational, and financial approach as described in the application, and</p> <p>(4) Demonstrates adequate resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
35	<p>DNS Service: describe the configuration and operation of nameservers, including how the applicant will comply with relevant RFCs.</p> <p>All name servers used for the new gTLD must be operated in compliance with the DNS protocol specifications defined in the relevant RFCs, including but not limited to: 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472.</p> <ul style="list-style-type: none"> Provide details of the intended DNS Service including, but not limited to: <ul style="list-style-type: none"> A description of the DNS services to be provided, such as query rates to be supported at initial operation, and reserve capacity of the system. Describe how your nameserver update methods will change at various scales. Describe how DNS performance will change at various scales. RFCs that will be followed – describe how services are compliant with RFCs and if these are dedicated or shared with any other functions (capacity/performance) or DNS zones. The resources used to implement the services - describe complete server hardware and software, including network bandwidth and addressing plans for servers. Also include resourcing plans for the initial implementation of, and ongoing maintenance of, this aspect of the criteria (number and description of personnel roles allocated to this area). Demonstrate how the system will 	N	<p>Note that the use of DNS wildcard resource records as described in RFC 4592 or any other method or technology for synthesizing DNS resource records or using redirection within the DNS by the registry is prohibited in the Registry Agreement.</p> <p>Also note that name servers for the new gTLD must comply with IANA Technical requirements for authoritative name servers: http://www.iana.org/procedures/nameserver-requirements.html.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> adequate description of configurations of nameservers and compliance with respective DNS protocol-related RFCs; a technical plan consistent with the overall business approach and planned size of the registry; a technical plan that is adequately resourced in the financial section; evidence of compliance with Specification 6 to the Registry Agreement; and evidence of complete knowledge and understanding of requirements for DNS service, one of the five critical registry functions. 	<p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> Adequate description of DNS service that substantially demonstrates the applicant's capability and knowledge required to meet this element; Plans are sufficient to result in compliance with DNS protocols (Specification 6, section 1.1) and required performance specifications Specification 10, Service Level Matrix; Plans are consistent with technical, operational, and financial approach as described in the application; and Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>function - describe how the proposed infrastructure will be able to deliver the performance described in Specification 10 (section 2) attached to the Registry Agreement.</p> <p>Examples of evidence include:</p> <ul style="list-style-type: none"> • Server configuration standard (i.e., planned configuration). • Network addressing and bandwidth for query load and update propagation. • Headroom to meet surges. <p>A complete answer is expected to be no more than 10 pages.</p>					
36	<p>IPv6 Reachability; provide a description of plans for providing IPv6 transport including, but not limited to:</p> <ul style="list-style-type: none"> • How the registry will support IPv6 access to Whois, Web-based Whois and any other Registration Data Publication Service as described in Specification 6 (section 1.5) to the Registry Agreement. • How the registry will comply with the requirement in Specification 6 for having at least two nameservers reachable over IPv6. • List all services that will be provided over IPv6, and describe the IPv6 connectivity and provider diversity that will be used. • Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages.</p>	N	IANA nameserver requirements are available at http://www.iana.org/procedures/nameserver-requirements.html .	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) evidence of compliance with Specification 6 to the Registry Agreement. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of IPv6 reachability that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) A description of an adequate implementation plan addressing requirements for IPv6 reachability, indicating IPv6 reachability allowing IPv6 transport in the network over two independent IPv6 capable networks in compliance to IPv4 IANA specifications, and Specification 10; (3) IPv6 plans consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
37	<p>Data Backup Policies & Procedures; provide details of frequency and procedures for backup of data.</p> <ul style="list-style-type: none"> hardware, and systems used for backup, data format, data backup features, backup testing procedures, procedures for retrieval of data/rebuild of database, storage controls and procedures, and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages.</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed backup and retrieval processes deployed; (2) backup and retrieval process and frequency are consistent with the overall business approach and planned size of the registry; and (3) a technical plan that is adequately resourced in the financial section. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of backup policies and procedures that substantially demonstrate the applicant's capabilities and knowledge required to meet this element; (2) A description of leading practices being or to be followed; (3) Backup procedures consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
38	<p>Data Escrow; describe</p> <ul style="list-style-type: none"> how the applicant will comply with the data escrow requirements documented in the Registry Data Escrow Specification (Specification 2 of the Registry Agreement); and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of data escrow, one of the five critical registry functions; (2) compliance with Specification 2 of the Registry Agreement; (3) a technical plan that is adequately resourced in the financial section; and (4) the escrow arrangement is consistent with the overall business approach and size/scope of the registry. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of a Data Escrow process that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Data escrow plans are sufficient to result in compliance with the Data Escrow Specification (Specification 2 to the Registry Agreement); (3) Escrow capabilities are consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
39	<p>Registry Continuity: describe how the applicant will comply with registry continuity obligations as described in Specification 6 (section 3) to the registry agreement. This includes conducting registry operations using diverse, redundant servers to ensure continued operation of critical functions in the case of technical failure.</p> <p>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>The response should include, but is not limited to, the following elements of the business continuity plan:</p> <ul style="list-style-type: none"> • Identification of risks and threats to compliance with registry continuity obligations; • Identification and definitions of vital business functions (which may include registry services beyond the five critical registry functions) versus other registry functions and supporting operations and technology; • Definitions of Recovery Point Objectives and Recovery Time Objective; and • Descriptions of testing plans to promote compliance with relevant obligations. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • A highly detailed plan that provides for leading practice levels of availability, and • Evidence of concrete steps such as a contract with a backup provider (in addition to any currently designated service operator) or a maintained hot site. <p>A complete answer is expected to be no more than 15 pages.</p>	N	<p>For reference, applicants should review the ICANN gTLD Registry Continuity Plan at http://www.icann.org/en/registries/continuity/qtd-registry-continuity-plan-25apr09-en.pdf.</p> <p>A Recovery Point Objective (RPO) refers to the point in time to which data should be recovered following a business disruption or disaster. The RPO allows an organization to define a window of time before a disruption or disaster during which data may be lost and is independent of the time it takes to get a system back on-line. If the RPO of a company is two hours, then when a system is brought back on-line after a disruption/disaster, all data must be restored to a point within two hours before the disaster.</p> <p>A Recovery Time Objective (RTO) is the duration of time within which a process must be restored after a business disruption or disaster to avoid what the entity may deem as unacceptable consequences. For example, pursuant to the draft Registry Agreement DNS service must not be down for longer than 4 hours. At 4 hours ICANN may invoke the use of an Emergency Back End Registry Operator to take over this function. The entity may deem this to be an unacceptable consequence therefore they may set their RTO to be something less than 4 hours and would build continuity plans accordingly.</p> <p>Vital business functions are functions that are critical to the success of the operation. For example, if a registry operator provides an additional service beyond the five critical registry functions, that it deems as central to its TLD, or supports an operation that is central to the TLD, this might be identified as a vital business function.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed description showing plans for compliance with registry continuity obligations; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the financial section; and (4) evidence of compliance with Specification 6 to the Registry Agreement. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (1) Highly developed and detailed processes for maintaining registry continuity; and (2) Evidence of concrete steps, such as a contract with a backup service provider or a maintained hot site. <p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> (1) Adequate description of a Registry Continuity plan that substantially demonstrates capability and knowledge required to meet this element; (2) Continuity plans are sufficient to result in compliance with requirements (Specification 6); (3) Continuity plans are consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
40	<p>Registry Transition: provide a Service Migration Plan (as described in the Registry Transition Processes) that could be followed in the event</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of a registry

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>that it becomes necessary to permanently transition the proposed gTLD to a new operator. The plan must take into account, and be consistent with the vital business functions identified in the previous question.</p> <p>Elements of the plan may include, but are not limited to:</p> <ul style="list-style-type: none"> • Preparatory steps needed for the transition of critical registry functions; • Monitoring during registry transition and efforts to minimize any interruption to critical registry functions during this time; and • Contingency plans in the event that any part of the registry transition is unable to move forward according to the plan. <p>A complete answer is expected to be no more than 10 pages.</p>				<p>understanding of the Registry Transition Processes; and</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry.</p>	<p>transition plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate registry transition plan with appropriate monitoring during registry transition; and</p> <p>(3) Transition plan is consistent with the technical, operational, and financial approach as described in the application.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
41	<p>Fallover Testing: provide</p> <ul style="list-style-type: none"> • a description of the fallover testing plan, including mandatory annual testing of the plan. Examples may include a description of plans to test fallover of data centers or operations to alternate sites, from a hot to a cold facility, registry data escrow testing, or other mechanisms. The plan must take into account and be consistent with the vital business functions identified in Question 39; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>The fallover testing plan should include, but is not limited to, the following elements:</p> <ul style="list-style-type: none"> • Types of testing (e.g., walkthroughs, takedown of sites) and the frequency of testing; • How results are captured, what is done 	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of a fallover testing plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate fallover testing plan with an appropriate level of review and analysis of fallover testing results;</p> <p>(3) Fallover testing plan is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</p> <p>0 - fails requirements Does not meet all the requirements to score a 1.</p>

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>with the results, and with whom results are shared:</p> <ul style="list-style-type: none"> How test plans are updated (e.g., what triggers an update, change management processes for making updates); Length of time to restore critical registry functions; Length of time to restore all operations, inclusive of critical registry functions; and Length of time to migrate from one site to another. <p>A complete answer is expected to be no more than 10 pages.</p>					
42	<p>Monitoring and Fault Escalation Processes:</p> <ul style="list-style-type: none"> a description of the proposed (or actual) arrangements for monitoring critical registry systems (including SRS, database systems, DNS servers, Whois service, network connectivity, routers and firewalls). This description should explain how these systems are monitored and the mechanisms that will be used for fault escalation and reporting, and should provide details of the proposed support arrangements for these registry systems, resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> Meeting the fault tolerance / monitoring guidelines described Evidence of commitment to provide a 24x7 fault response team. <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of this aspect of registry/technical requirements; a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; a technical plan that is adequately resourced in the planned costs detailed in the financial section; and consistency with the commitments made to registrants and registrars regarding system maintenance. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> Evidence showing highly developed and detailed fault tolerance/monitoring and redundant systems deployed with real-time monitoring tools / dashboard (metrics) deployed and reviewed regularly; A high level of availability that allows for the ability to respond to faults through a 24x7 response team. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> Adequate description of monitoring and fault escalation processes that substantially demonstrates the applicant's capability and knowledge required to meet this element; Evidence showing adequate fault tolerance/monitoring systems planned with an appropriate level of monitoring and limited periodic review being performed; Plans are consistent with the technical, operational, and financial approach described in the application; and Demonstrates an adequate level of resources that are on hand,

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
43	<p>DNSSEC: Provide</p> <ul style="list-style-type: none"> The registry's DNSSEC policy, statement (DPS), which should include the policies and procedures the proposed registry will follow, for example, for signing the zone file, for verifying and accepting DS records from child domains, and for generating, exchanging, and storing keying material; Describe how the DNSSEC implementation will comply with relevant RFCs, including but not limited to: RFCs 4033, 4034, 4035, 5810, 4509, 4641, and 5155 (the latter will only be required if Hashed Authenticated Denial of Existence will be offered); and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages. Note, the DPS is required to be submitted as part of the application</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of this aspect of registry technical requirements, one of the five critical registry functions; a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; a technical plan that is adequately resourced in the financial section; and an ability to comply with relevant RFCs. 	<p>committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.</p> <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> An adequate description of DNSSEC that substantially demonstrates the applicant's capability and knowledge required to meet this element; Evidence that TLD zone files will be signed at time of launch, in compliance with required RFCs, and registry offers provisioning capabilities to accept public key material from registrants through the SRS ; An adequate description of key management procedures in the proposed TLD, including providing secure encryption key management (generation, exchange, and storage); Technical plan is consistent with the technical, operational, and financial approach as described in the application; and Demonstrates an adequate level of resources that are already on hand, committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
44	<p>OPTIONAL: IDNs:</p> <ul style="list-style-type: none"> State whether the proposed registry will support the registration of IDN labels in the TLD, and if so, how. For example, explain which characters will be supported, and provide the associated IDN Tables with variant characters identified, along with a corresponding registration policy. This includes public interfaces to the databases such as Whois and EPP. Describe how the IDN implementation will comply with RFCs 5809-5883 as well as the ICANN IDN Guidelines at http://www.icann.org/en/topics/idn/imple-mentation-guidelines.html. Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 10 pages plus attachments.</p>	N	<p>IDNs are an optional service at time of launch. Absence of IDN implementation or plans will not detract from an applicant's score. Applicants who respond to this question with plans for implementation of IDNs at time of launch will be scored according to the criteria indicated here.</p> <p>IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.</p>	0-1	<p>IDNs are an optional service. Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan that is adequately resourced in the planned costs detailed in the financial section; (3) consistency with the commitments made to registrants and the technical, operational, and financial approach described in the application; (4) issues regarding use of scripts are settled and IDN tables are complete and publicly available; and (5) ability to comply with relevant RFCs.</p>	<p>1 - meets requirements for this optional element: Response includes implementation that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) An adequate description of the IDN procedures, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, and periodic monitoring of IDN operations;</p> <p>(3) Evidence of ability to resolve rendering and known IDN issues or spoofing attacks;</p> <p>(4) IDN plans are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
45	<p>Financial Statements: provide audited or independently certified financial statements for the most recently completed fiscal year for the applicant, and</p> <ul style="list-style-type: none"> audited or unaudited financial statements for the most recently ended interim financial period for the applicant for which this information may be released. <p>For newly-formed applicants, or where financial statements are not audited, provide:</p> <ul style="list-style-type: none"> the latest available unaudited financial statements; and an explanation as to why audited or independently certified financial statements are not available. <p>At a minimum, the financial statements should be provided for the legal entity listed as the applicant.</p>	N	<p>The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry.</p> <p>Supporting documentation for this question should be submitted in the original language.</p>	0-1	<p>Audited or independently certified financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB) or nationally recognized accounting standards (e.g., GAAP). This will include a balance sheet and income statement reflecting the applicant's financial position and results of operations, a statement of shareholders equity/partner capital, and a cash flow statement. In the event the applicant is an entity newly formed for the purpose of applying for a gTLD and with little to no operating history</p>	<p>1 - meets requirements: Complete audited or independently certified financial statements are provided, at the highest level available in the applicant's jurisdiction. Where such audited or independently certified financial statements are not available, such as for newly-formed entities, the applicant has provided an explanation and has financial statements.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>Financial statements are used in the analysis of projections and costs.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> • balance sheet; • income statement; • statement of shareholders equity/partner capital; • cash flow statement; and • letter of auditor or independent certification, if applicable. 				<p>(less than one year), the applicant must submit, at a minimum, pro forma financial statements including all components listed in the question. Where audited or independently certified financial statements are not available, applicant has provided an adequate explanation as to the accounting practices in its jurisdiction and has provided, at a minimum, unaudited financial statements.</p>	
46	<p>Projections Template: provide financial projections for costs and funding using Template 1, Most Likely Scenario (attached).</p> <p>Note, if certain services are outsourced, reflect this in the relevant cost section of the template.</p> <p>The template is intended to provide commonality among TLD applications and thereby facilitate the evaluation process.</p> <p>A complete answer is expected to be no more than 10 pages in addition to the template.</p>	N		0-1	<p>Applicant has provided a thorough model that demonstrates a sustainable business (even if break-even is not achieved through the first three years of operation).</p> <p>Applicant's description of projections development is sufficient to show due diligence.</p>	<p>1 - meets requirements:</p> <ol style="list-style-type: none"> (1) Financial projections adequately describe the cost, funding and risks for the application (2) Demonstrates resources and plan for sustainable operations; (3) Financial assumptions about the registry operations, funding and market are identified, explained, and supported. <p>0 - fails requirements: Does not meet all of the requirements to score a 1.</p>
47	<p>Costs and capital expenditures: in conjunction with the financial projections template, describe and explain:</p> <ul style="list-style-type: none"> • the expected operating costs and capital expenditures of setting up and operating the proposed registry; • any functions to be outsourced, as indicated in the cost section of the template, and the reasons for outsourcing; • any significant variances between years in any category of expected costs; and • a description of the basis / key assumptions including rationale for the costs provided in the projections template. This may include an 	N	This question is based on the template submitted in question 46.	0-2	<p>Costs identified are consistent with the proposed registry services, adequately fund technical requirements, and are consistent with proposed mission/purpose of the registry. Costs projected are reasonable for a registry of size and scope described in the application. Costs identified include the funding costs (interest expenses and fees) related to the continued operations instrument described in Question 50 below.</p>	<p>2 - exceeds requirements: Response meets all of the attributes for a score of 1 and:</p> <ol style="list-style-type: none"> (1) Estimated costs and assumptions are conservative and consistent with an operation of the registry volume/scope/size as described by the applicant; (2) Estimates are derived from actual examples of previous or existing registry operations or equivalent; and (3) Conservative estimates are based on those experiences and describe a range of anticipated costs and use the high end of those estimates.

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made.</p> <p>As described in the Applicant Guidebook, the information provided will be considered in light of the entire application and the evaluation criteria. Therefore, this answer should agree with the information provided in Template 1 to: 1) maintain registry operations, 2) provide registry services described above, and 3) satisfy the technical requirements described in the Demonstration of Technical & Operational Capability section. Costs should include both fixed and variable costs.</p> <p>To be eligible for a score of two points, answers must demonstrate a conservative estimate of costs based on actual examples of previous or existing registry operations with similar approach and projections for growth and costs or equivalent. Attach reference material for such examples.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>Key assumptions and their rationale are clearly described and may include, but are not limited to:</p> <ul style="list-style-type: none"> • Key components of capital expenditures; • Key components of operating costs, unit operating costs, headcount, number of technical/operating/equipment units, marketing, and other costs; and • Costs of outsourcing, if any. 	<p>1 - meets requirements:</p> <p>(1) Cost elements are reasonable and complete (i.e., cover all of the aspects of registry operations: registry services, technical requirements and other aspects as described by the applicant);</p> <p>(2) Estimated costs and assumptions are consistent and defensible with an operation of the registry volume/scope/size as described by the applicant, and</p> <p>(3) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	<p>(b) Describe anticipated ranges in projected costs. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
48	<p>(a) Funding and Revenue: Funding can be derived from several sources (e.g., existing capital or proceeds/revenue from operation of the proposed registry).</p> <p>Describe:</p> <p>I) How existing funds will provide resources for both: a) start-up of operations, and b) ongoing operations;</p> <p>II) the revenue model including projections for transaction volumes and price (if the applicant does not intend to rely on registration revenue in order to cover the costs of the registry's</p>	N	Supporting documentation for this question should be submitted in the original language.	0-2	<p>Funding resources are clearly identified and adequately provide for registry cost projections. Sources of capital funding are clearly identified, held apart from other potential uses of those funds and available. The plan for transition of funding sources from available capital to revenue from operations (if applicable) is described.</p>	<p>2 - exceeds requirements:</p> <p>Response meets all the attributes for a score of 1 and</p> <p>(1) Existing funds (specifically all funds required for start-up) are quantified, on hand, segregated in an account available only to the applicant for purposes of the application only, ;</p> <p>(2) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is segregated and</p>

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>operation, it must clarify how the funding for the operation will be developed and maintained in a stable and sustainable manner);</p> <p>III) outside sources of funding (the applicant must, where applicable, provide evidence of the commitment by the party committing the funds). Secured vs unsecured funding should be clearly identified, including associated sources of funding (i.e., different types of funding, level and type of security/collateral, and key items) for each type of funding;</p> <p>IV) Any significant variances between years in any category of funding and revenue; and</p> <p>V) A description of the basis / key assumptions including rationale for the funding and revenue provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made; and</p> <p>VI) Assurances that funding and revenue projections cited in this application are consistent with other public and private claims made to promote the business and generate support. To be eligible for a score of 2 points, answers must demonstrate:</p> <p>I) A conservative estimate of funding and revenue; and</p> <p>II) Ongoing operations that are not dependent on projected revenue.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>Outside sources of funding are documented and verified. Examples of evidence for funding sources include, but are not limited to:</p> <ul style="list-style-type: none"> • Executed funding agreements; • A letter of credit; • A commitment letter; or • A bank statement. <p>Funding commitments may be conditional on the approval of the application. Sources of capital funding required to sustain registry operations on an on-going basis are identified. The projected revenues are consistent with the size and projected penetration of the target markets.</p> <p>Key assumptions and their rationale are clearly described and address, at a minimum:</p> <ul style="list-style-type: none"> • Key components of the funding plan and their key terms; and • Price and number of registrations. 	<p>earmarked for this purpose only in an amount adequate for three years operation;</p> <p>(3) If ongoing operations are to be at least partially resourced from revenues, assumptions made are conservative and take into consideration studies, reference data, or other steps taken to develop the response and validate any assumptions made; and</p> <p>(4) Cash flow models are prepared which link funding and revenue assumptions to projected actual business activity.</p> <p>1 - meets requirements:</p> <p>(1) Assurances provided that materials provided to investors and/or lenders are consistent with the projections and assumptions included in the projections templates;</p> <p>(2) Existing funds (specifically all funds required for start-up) are quantified, committed, identified as available to the applicant;</p> <p>(3) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is quantified and its sources identified in an amount adequate for three years operation;</p> <p>(4) If ongoing operations are to be at least partially resourced from revenues, assumptions made are reasonable and are directly related to projected business volumes, market size and penetration; and</p> <p>(5) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>(b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
49	<p>(a) Contingency Planning: describe your contingency planning:</p> <ul style="list-style-type: none"> Identify any projected barriers/risks to implementation of the business approach described in the application and how they affect cost, funding, revenue, or timeline in your planning; Identify the impact of any particular regulation, law or policy that might impact the Registry Services offering; and Describe the measures to mitigate the key risks as described in this question. <p>A complete answer should include, for each contingency, a clear description of the impact to projected revenue, funding, and costs for the 3-year period presented in Template 1 (Most Likely Scenario).</p> <p>To be eligible for a score of 2 points, answers must demonstrate that action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Contingencies and risks are identified, quantified, and included in the cost, revenue, and funding analyses. Action plans are identified in the event contingencies occur. The model is resilient in the event those contingencies occur. Responses address the probability and resource impact of the contingencies identified.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and:</p> <p>(1) Action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p>1 - meets requirements:</p> <p>(1) Model adequately identifies the key risks (including operational, business, legal, jurisdictional, financial, and other relevant risks);</p> <p>(2) Response gives consideration to probability and resource impact of contingencies identified; and</p> <p>(3) If resources are not available to fund contingencies in the existing plan, funding sources and a plan for obtaining them are identified.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	<p>(b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, describe:</p> <ul style="list-style-type: none"> how on-going technical requirements will be met; and what alternative funding can be reasonably raised at a later time. <p>Provide an explanation if you do not believe there is any chance of reduced funding.</p>	N				

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>Complete a financial projections template (Template 2, Worst Case Scenario)</p> <p>A complete answer is expected to be no more than 10 pages, in addition to the template.</p>					
	<p>(c) Describe your contingency planning where activity volumes so significantly exceed the high projections that material deviation from the implementation model are required. In particular, how will on-going technical requirements be met?</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
50	<p>(a) Provide a cost estimate for funding critical registry functions on an annual basis, and a rationale for these cost estimates commensurate with the technical, operational, and financial approach described in the application.</p> <p>The critical functions of a registry which must be supported even if an applicant's business and/or funding fails are:</p> <p>(1) DNS resolution for registered domain names</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+); the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(2) Operation of the Shared Registration System</p> <p>Applicants should consider ranges of volume of daily EPP transactions (e.g., 0-200K, 200K-2M, 2M+); the incremental costs associated with</p>	N	<p>Registrar protection is critical and thus new gTLD applicants are requested to provide evidence indicating that the critical functions will continue to be performed even if the registry fails. Registrant needs are best protected by a clear demonstration that the basic registry functions are sustained for an extended period even in the face of registry failure. Therefore, this section is weighed heavily as a clear, objective measure to protect and serve registrants.</p> <p>The applicant has two tasks associated with adequately making this demonstration of continuity for critical registry functions. First, costs for maintaining critical registrant protection functions are to be estimated (Part a). In evaluating the application, the evaluators will adjudge whether the estimate is reasonable given the systems architecture and overall business approach described elsewhere in the application.</p> <p>The Continuing Operations Instrument (COI) is invoked by ICANN if necessary to pay for an Emergency Back End Registry Operator (EBERO) to maintain the five critical registry functions for a period of three to five years. Thus, the cost estimates are tied to the cost for a third party to provide the functions, not</p>	0-3	<p>Figures provided are based on an accurate estimate of costs. Documented evidence or detailed plan for ability to fund on-going critical registry functions for registrants for a period of three years in the event of registry failure, default or until a successor operator can be designated. Evidence of financial wherewithal to fund this requirement prior to delegation. This requirement must be met prior to or concurrent with the execution of the Registry Agreement.</p>	<p>3 - exceeds requirements: Response meets all the attributes for a score of 1 and: (1) Financial instrument is secured and in place to provide for on-going operations for at least three years in the event of failure.</p> <p>1 - meets requirements: (1) Costs are commensurate with technical, operational, and financial approach as described in the application; and (2) Funding is identified and instrument is described to provide for on-going operations of at least three years in the event of failure.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(3) Provision of Whois service</p> <p>Applicants should consider ranges of volume of daily Whois queries (e.g., 0-100K, 100K-1M, 1M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics for both web-based and port-43 services.</p> <p>(4) Registry data escrow deposits</p> <p>Applicants should consider administration, retention, and transfer fees as well as daily deposit (e.g., full or incremental) handling. Costs may vary depending on the size of the files in escrow (i.e., the size of the registry database).</p> <p>(5) Maintenance of a properly signed zone in accordance with DNSSEC requirements.</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p>		<p>to the applicant's actual in-house or subcontracting costs for provision of these functions.</p> <p>Refer to guidelines at http://www.icann.org/en/announcements/announcement-3-23-06-01-en.htm regarding estimation of costs. However, the applicant must provide its own estimates and explanation in response to this question.</p>			
	<p>List the estimated annual cost for each of these functions (specify currency used).</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N	<p>Second (Part b), methods of securing the funds required to perform those functions for at least three years are to be described by the applicant in accordance with the criteria below. Two types of instruments will fulfill</p>			

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement:</p> <p>(i) Irrevocable standby letter of credit (LOC) issued by a reputable financial institution.</p> <ul style="list-style-type: none"> • The amount of the LOC must be equal to or greater than the amount required to fund the registry operations specified above for at least three years. In the event of a draw upon the letter of credit, the actual payout would be tied to the cost of running those functions. • The LOC must name ICANN or its designee as the beneficiary. Any funds paid out would be provided to the designee who is operating the required registry functions. • The LOC must have a term of at least five years from the delegation of the TLD. The LOC may be structured with an annual expiration date if it contains an evergreen provision providing for annual extensions, without amendment, for an indefinite number of periods until the issuing bank informs the beneficiary of its final expiration or until the beneficiary releases the LOC as evidenced in writing. If the expiration date occurs prior to the fifth anniversary of the delegation of the TLD, applicant will be required to obtain a replacement instrument. • The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated). • The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee. • Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions. If not yet executed, the Applicant will be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement. • The LOC must contain at least the following required elements: <ul style="list-style-type: none"> ○ Issuing bank and date of issue. ○ Beneficiary: ICANN / 4576 Admiralty 		<p>this requirement. The applicant must identify which of the two methods is being described. The instrument is required to be in place at the time of the execution of the Registry Agreement.</p> <p>Financial Institution Ratings: The instrument must be issued or held by a financial institution with a rating beginning with 'A' (or the equivalent) by any of the following rating agencies: A.M. Best, Dominion Bond Rating Service, Egan-Jones, Fitch Ratings, Kroll Bond Rating Agency, Moody's, Morningstar, Standard & Poor's, and Japan Credit Rating Agency.</p> <p>If an applicant cannot access a financial institution with a rating beginning with 'A,' but a branch or subsidiary of such an institution exists in the jurisdiction of the applying entity, then the instrument may be issued by the branch or subsidiary or by a local financial institution with an equivalent or higher rating to the branch or subsidiary.</p> <p>If an applicant cannot access any such financial institutions, the instrument may be issued by the highest-rated financial institution in the national jurisdiction of the applying entity, if accepted by ICANN.</p> <p>Execution by ICANN: For any financial instruments that contemplate ICANN being a party, upon the written request of the applicant, ICANN may (but is not obligated to) execute such agreement prior to submission of the applicant's application if the agreement is on terms acceptable to ICANN. ICANN encourages applicants to deliver a written copy of any such agreement (only if it requires ICANN's signature) to ICANN as soon as possible to facilitate ICANN's review. If the financial instrument requires ICANN's signature, then the applicant will receive 3 points for question 50 (for the instrument being "secured and in place") only if ICANN executes the agreement prior to submission of the application. ICANN will determine, in</p>			

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee.</p> <ul style="list-style-type: none"> ○ Applicant's complete name and address. ○ LOC identifying number. ○ Exact amount in USD. ○ Expiry date. ○ Address, procedure, and required forms whereby presentation for payment is to be made. ○ Conditions: <ul style="list-style-type: none"> ▪ Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit. ▪ All payments must be marked with the issuing bank name and the bank's standby letter of credit number. ▪ LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument. ▪ The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590), or to an alternative standard that has been demonstrated to be reasonably equivalent. <p>(ii) A deposit into an irrevocable cash escrow account held by a reputable financial institution.</p> <ul style="list-style-type: none"> • The amount of the deposit must be equal to or greater than the amount required to fund registry operations for at least three years. • Cash is to be held by a third party financial institution which will not allow the funds to be commingled with the Applicant's operating funds or other funds and may only be accessed by ICANN or its designee if certain conditions are met. • The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated). • The escrow agreement relating to the escrow account will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee. • The escrow agreement must have a term 		<p>its sole discretion, whether to execute and become a party to a financial instrument.</p> <p>The financial instrument should be submitted in the original language.</p>			

#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	<p>of five years from the delegation of the TLD.</p> <ul style="list-style-type: none"> The funds in the deposit escrow account are not considered to be an asset of ICANN. Any interest earnings less bank fees are to accrue to the deposit, and will be paid back to the applicant upon liquidation of the account to the extent not used to pay the costs and expenses of maintaining the escrow. The deposit plus accrued interest, less any bank fees in respect of the escrow, is to be returned to the applicant if the funds are not used to fund registry functions due to a triggering event or after five years, whichever is greater. The Applicant will be required to provide ICANN an explanation as to the amount of the deposit, the institution that will hold the deposit, and the escrow agreement for the account at the time of submitting an application. Applicant should attach evidence of deposited funds in the escrow account, or evidence of provisional arrangement for deposit of funds. Evidence of deposited funds and terms of escrow agreement must be provided to ICANN prior to or concurrent with the execution of the Registry Agreement. 					

Instructions: TLD Applicant – Financial Projections

The application process requires the applicant to submit two cash basis Financial Projections.

The first projection (Template 1) should show the Financial Projections associated with the Most Likely scenario expected. This projection should include the forecasted registration volume, registration fee, and all costs and capital expenditures expected during the start-up period and during the first three years of operations. Template 1 relates to Question 46 (Projections Template) in the application.

We also ask that applicants show as a separate projection (Template 2) the Financial Projections associated with a realistic Worst Case scenario. Template 2 relates to Question 49 (Contingency Planning) in the application.

For each Projection prepared, please include Comments and Notes on the bottom of the projection (in the area provided) to provide those reviewing these projections with information regarding:

1. Assumptions used, significant variances in Operating Cash Flows and Capital Expenditures from year-to-year;
2. How you plan to fund operations;
3. Contingency planning

As you complete Template 1 and Template 2, please reference data points and/or formulas used in your calculations (where appropriate).

Section I – Projected Cash inflows and outflows

Projected Cash Inflows

Lines A and B. Provide the number of forecasted registrations and the registration fee for years 1, 2, and 3. Leave the *Start-up* column blank. The start-up period is for cash costs and capital expenditures only; there should be no cash projections input to this column.

Line C. Multiply lines A and B to arrive at the *Registration Cash Inflow* for line C.

Line D. Provide projected cash inflows from any other revenue source for years 1, 2, and 3. For any figures provided on line D, please disclose the source in the *Comments/Notes* box of Section I. Note, do not include funding in Line D as that is covered in Section VI.

Line E. Add lines C and D to arrive at the total cash inflow.

Projected Operating Cash Outflows

Start up costs - For all line items (F thru L) Please describe the total period of time this start-up cost is expected to cover in the *Comments/Notes* box.

Line F. Provide the projected labor costs for marketing, customer support, and technical support for start-up, year 1, year 2, and year 3. Note, other labor costs should be put in line *L* (*Other Costs*) and specify the type of labor and associated projected costs in the *Comments/Notes* box of this section.

Line G. *Marketing Costs* represent the amount spent on advertising, promotions, and other marketing activities. This amount should not include labor costs included in Marketing Labor (line *F*).

Lines H through K. Provide projected costs for facilities, G&A, interests and taxes, and Outsourcing for start-up as well as for years 1, 2, and 3. Be sure to list the type of activities that are being outsourced. You may combine certain activities from the same provider as long as an appropriate description of the services being combined is listed in the *Comments/Notes* box.

Line L. Provide any other projected operating costs for start-up, year 1, year 2, year 3. Be sure to specify the type of cost in the *Comments/Notes* box.

Line M. Add lines *F* through *L* to arrive at the total costs for line *M*.

Line N. Subtract line *E* from line *M* to arrive at the projected net operation number for line *N*.

Section IIa – Breakout of Fixed and Variable Operating Cash Outflows

Line A. Provide the projected variable operating cash outflows including labor and other costs that are not fixed in nature. Variable operating cash outflows are expenditures that fluctuate in relationship with increases or decreases in production or level of operations.

Line B. Provide the projected fixed operating cash outflows. Fixed operating cash outflows are expenditures that do not generally fluctuate in relationship with increases or decreases in production or level of operations. Such costs are generally necessary to be incurred in order to operate the base line operations of the organization or are expected to be incurred based on contractual commitments.

Line C – Add lines *A* and *B* to arrive at total Fixed and Variable Operating Cash Outflows for line *C*. This must equal Total Operating Cash Outflows from Section I, Line *M*.

Section IIb – Breakout of Critical Registry Function Operating Cash Outflows

Lines A – E. Provide the projected cash outflows for the five critical registry functions. If these functions are outsourced, the component of the outsourcing fee representing these functions must be separately identified and provided. These costs are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50.

Line F. If there are other critical registry functions based on the applicant's registry business model then the projected cash outflow for this function must be provided with a description added to the *Comment/Notes* box. This projected cash outflow may also be included in the 3-year reserve.

Line G. Add lines *A* through *F* to arrive at the Total Critical Registry Function Cash Outflows.

Section III – Projected Capital Expenditures

Lines A through C. Provide projected hardware, software, and furniture & equipment capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Provide any projected capital expenditures as a result of outsourcing. This should be included for start-up and years 1, 2, and 3. Specify the type of expenditure and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section III.

Line E – Please describe “other” capital expenditures in the *Comments/Notes* box.

Line F. Add lines A through E to arrive at the Total Capital Expenditures.

Section IV – Projected Assets & Liabilities

Lines A through C. Provide projected cash, account receivables, and other current assets for start-up as well as for years 1, 2, and 3. For *Other Current Assets*, specify the type of asset and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Add lines A, B, C to arrive at the Total Current Assets.

Lines E through G. Provide projected accounts payable, short-term debt, and other current liabilities for start-up as well as for years 1, 2, and 3. For *Other Current Liabilities*, specify the type of liability and describe the total period of time the start-up up cost is expected to cover in the *Comments/Notes* box.

Line H. Ad lines E through G to arrive at the total current liabilities.

Lines I through K. Provide the projected fixed assets (PP&E), the 3-year reserve, and long-term assets for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line L. Ad lines I through K to arrive at the total long-term assets.

Line M. Provide the projected long-term debt for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box

Section V – Projected Cash Flow

Cash flow is driven by *Projected Net Operations* (Section I), *Projected Capital Expenditures* (Section III), and *Projected Assets & Liabilities* (Section IV).

Line A. Provide the projected net operating cash flows for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line B. Provide the projected capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section V.

Lines C through F. Provide the projected change in non-cash current assets, total current liabilities, debt adjustments, and other adjustments for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line G. Add lines A through F to arrive at the projected net cash flow for line H.

Section VI – Sources of Funds

Lines A & B. Provide projected funds from debt and equity at start-up. Describe the sources of debt and equity funding as well as the total period of time the start-up is expected to cover in the *Comments/Notes* box. Please also provide evidence the funding (e.g., letter of commitment).

Line C. Add lines A and B to arrive at the total sources of funds for line C.

General Comments – Regarding Assumptions Used, Significant Variances Between Years, etc.

Provide explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding.

General Comments – Regarding how the Applicant Plans to Fund Operations

Provide general comments explaining how you will fund operations. Funding should be explained in detail in response to question 48.

General Comments – Regarding Contingencies

Provide general comments to describe your contingency planning. Contingency planning should be explained in detail in response to question 49.

TLD Applicant -- Financial Projections - Sample					Comments / Notes	
In local currency (unless noted otherwise)					Provide name of local currency used.	
Sec.	Reference / Formula	Live / Operational				
		Start-up Costs	Year 1	Year 2		Year 3
I) Projected Cash Inflows and Outflows					Registration was forecasted based on recent market surveys which we have attached and discussed below. We do not anticipate significant increases in Registration Fees subsequent to year 3. Other cash inflows represent advertising monies expected from display ads on our website. Costs are further detailed and explained in response to question 47. Provide a list and associated cost for each outsourced function. Outsourcing hot site to ABC Company, cost based on number of servers hosted and customer support. Outsourced certain registry and other functions to ABC registry (applicant should list outsourced functions). Costs for each year are based on expected domains under management.	
A) Forecasted registration volume		-	62,000	81,600		105,180
B) Registration fee		\$ -	\$ 5.00	\$ 5.50		\$ 6.05
C) Registration cash inflows	A * B	-	310,000	448,800		636,339
D) Other cash inflows		-	35,000	48,000		62,000
E) Total Cash Inflows		-	345,000	496,800		698,339
Projected Operating Cash Outflows						
F) Labor:						
G) Marketing Labor		25,000	66,000	72,000		81,000
H) Customer Support Labor		5,000	68,000	71,000		74,000
I) Technical Labor		32,000	45,000	47,000	49,000	
J) Marketing		40,000	44,000	26,400	31,600	
K) Facilities		7,000	10,000	12,000	14,400	
L) General & Administrative		14,000	112,000	122,500	136,000	
M) Interest and Taxes		27,500	28,000	28,800	30,750	
N) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
O) Hot site maintenance		5,000	7,500	7,500	7,500	
P) Partial Registry Functions		32,000	37,500	41,000	43,000	
Q) (list type of activities being outsourced)		-	-	-	-	
R) (list type of activities being outsourced)		-	-	-	-	
S) (list type of activities being outsourced)		-	-	-	-	
T) (list type of activities being outsourced)		-	-	-	-	
U) Other Operating Costs		12,200	18,000	21,600	25,200	
V) Total Operating Cash Outflows		199,700	417,000	450,800	493,250	
W) Projected Net Operating Cash Flow	E - M	(199,700)	(82,000)	46,000	205,079	
II) Break out of Fixed and Variable Operating Cash Outflows					Variable Costs: -Start Up equals all labor plus 75% of marketing. -years 1 through 3 equal 75% of all labor plus 50% of Marketing, and 30% of GSA and Other Operating Costs Fixed Costs: equals Total Costs less Variable Costs Check that I) C equals I) N.	
A) Total Variable Operating Costs		92,000	195,250	198,930		217,416
B) Total Fixed Operating Costs		107,700	241,750	251,870		275,844
C) Total Operating Cash Outflows	= Sec. II) M CHECK	199,700	417,000	450,800		493,250
III) Break out of Critical Registry Function Operating Cash Outflows						
A) Operation of SRS		-	5,000	5,500		6,050
B) Provision of Whois		-	6,000	6,600		7,260
C) DNS Resolution for Registered Domain Names		-	7,000	7,700		8,470
D) Registry Data Escrow		-	8,000	8,800		9,680
E) Maintenance of Zone in accordance with DNSSEC		-	9,000	9,900		10,890
F) Other		-	-	-	-	
G) Total Critical Function Cash Outflows		-	35,000	38,500	42,350	
IV) Projected Capital Expenditures					-Hardware & Software have a useful life of 3 years -Furniture & other equipment have a useful life of 5 years List and describe each identifiable type of outsourcing. List and describe each identifiable type of outsourcing. List and describe each identifiable type of outsourcing. List and describe each identifiable type of outsourcing. List and describe each identifiable type of outsourcing.	
A) Hardware		98,000	21,000	16,000		58,000
B) Software		92,000	18,000	24,000		11,000
C) Furniture & Other Equipment		43,000	22,000	14,000		16,000
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures):						
E) (list type of activities being outsourced)		-	-	-		-
F) (list type of activities being outsourced)		-	-	-		-
G) (list type of activities being outsourced)		-	-	-		-
H) (list type of activities being outsourced)		-	-	-		-
I) Other		-	-	-		-
J) Total Capital Expenditures		173,000	61,000	54,000	85,000	
V) Projected Assets & Liabilities					Should equal amount calculated for Question 50 Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest will be paid as incurred and is reflected in Sec. I).	
A) Cash		668,300	474,300	413,300		471,679
B) Accounts receivable		-	70,000	106,000		160,000
C) Other current assets		-	40,000	60,000		80,000
D) Total Current Assets		668,300	584,300	579,300		711,679
E) Accounts payable		41,000	110,000	113,000		125,300
F) Short-term Debt		-	-	-		-
G) Other Current Liabilities		41,000	110,000	113,000		125,300
H) Total Current Liabilities		82,000	220,000	226,000		250,600
I) Total Property, Plant & Equipment (PP&E)	= Sec III) F: cumulative Prior Years + Cur Yr	173,000	234,000	288,000		373,000
J) 3-year Reserve		186,000	186,000	186,000	186,000	
K) Other Long-term Assets		359,000	420,000	474,000	559,000	
L) Total Long-term Assets		545,000	620,000	674,000	735,000	
M) Total Long-term Debt		1,000,000	1,000,000	1,000,000	1,000,000	
VI) Projected Cash Flow (excl. 3-year Reserve)					The \$41k in Start Up Costs represents an offset of the Accounts Payable reflected in the Projected balance sheet. Subsequent years are based on changes in Current Liabilities where Prior Year is subtracted from the Current year. See below for comments on funding. Revenues are further detailed and explained in response to question 48.	
A) Net operating cash flows	= Sec. II) N	(199,700)	(82,000)	46,000		205,079
B) Capital expenditures	= Sec. III) FE	(173,000)	(61,000)	(54,000)		(85,000)
C) Change in Non Cash Current Assets	= Sec. IV) (B+C): Prior Yr - Cur Yr	n/a	(110,000)	(56,000)		(74,000)
D) Change in Total Current Liabilities	= Sec. IV) H: Cur Yr - Prior Yr	41,000	69,000	3,000		12,300
E) Debt Adjustments	= Sec IV) F and M: Cur Yr - Prior Yr	n/a	-	-		-
F) Other Adjustments		-	-	-		-
G) Projected Net Cash Flow		(311,700)	(184,000)	(61,000)		58,379
VII) Sources of funds						
A) Debt:						
B) On-hand at time of application		1,000,000	-	-	-	
C) Contingent and/or committed but not yet on-hand		-	-	-	-	
D) Equity:						
E) On-hand at time of application		-	-	-	-	
F) Contingent and/or committed but not yet on-hand		-	-	-	-	
G) Total Sources of funds		1,000,000	-	-	-	
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.)						
We expect the number of registrations to grow at approximately 30% per year with an increase in the registration fee of \$1 per year for the first three years. These volume assumptions are based on the attached (i) market data and (ii) published benchmark registry growth. Fee assumptions are aligned with the growth plan and anticipated demand based on the registration curve. We anticipate our costs will increase at a controlled pace over the first three years except for marketing costs which will be higher in the start-up and first year as we establish our brand name and work to increase registrations. Operating costs are supported by the attached (i) benchmark report for a basket of similar registries and (ii) a build-up of costs based on our current operations. Our capital expenditures will be greatest in the start-up phase and then our need to invest in computer hardware and software will level off after the start-up period. Capital expenses are based on contract drafts and discussions held with vendors. We have included and referenced the hardware costs to support the estimates. Our investment in Furniture and Equipment will be greatest in the start-up period as we build our infrastructure and then decrease in the following periods. Start-up: Our start-up phase is anticipated to comprise [X] months in line with benchmark growth curves indicated by prior start-ups and published market data. Our assumptions were derived from the attached support.						
Comments regarding how the Applicant plans to fund operations:						
We have recently negotiated a line of credit with XYZ Bank (a copy of the fully executed line of credit agreement has been included with our application) and this funding will allow us to purchase necessary equipment and pay for employees and other Operating Costs during our start-up period and the first few years of operations. We expect that our business operation will be self-funded (i.e., revenue from operations will cover all anticipated costs and capital expenditures) by the second half of our second year in operation; we also expect to become profitable with positive cash flow in year three.						
General Comments regarding contingencies:						
Although we expect to be cash flow positive by the end of year 2, the recently negotiated line of credit will cover our operating costs for the first 4 years of operation if necessary. We have also entered into an agreement with XYZ Co. to assume our registrants should our business model not have the ability to sustain itself in future years. Agreement with XYZ Co. has been included with our application. A full description of risks and a range of potential outcomes and impacts are included in our responses to Question 49. These responses have quantified the impacts of certain probabilities and our negotiated funding and action plans as shown, are adequate to fund our new World Wide Services.						

Template 1 - Financial Projections: Most Likely						Comments / Notes
In local currency (unless noted otherwise)						Provide name of local currency used.
Sec.	Reference / Formula	Live / Operational				
		Start-up Costs	Year 1	Year 2	Year 3	
I) Projected Cash inflows and outflows						
A)	Forecasted registration volume					
B)	Registration fee					
C)	Registration cash inflows		-	-	-	
D)	Other cash inflows					
	E) Total Cash Inflows	-	-	-	-	
Projected Operating Cash Outflows						
F) Labor:						
i)	Marketing Labor					
ii)	Customer Support Labor					
iii)	Technical Labor					
G)	Marketing					
H)	Facilities					
I)	General & Administrative					
J)	Interest and Taxes					
K)	Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
i)	(list type of activities being outsourced)					
ii)	(list type of activities being outsourced)					
iii)	(list type of activities being outsourced)					
iv)	(list type of activities being outsourced)					
v)	(list type of activities being outsourced)					
vi)	(list type of activities being outsourced)					
L)	Other Operating costs					
	M) Total Operating Cash Outflows	-	-	-	-	
	N) Projected Net Operating Cash flow	-	-	-	-	
IIa) Break out of Fixed and Variable Operating Cash Outflows						
A)	Total Variable Operating Costs					
B)	Total Fixed Operating Costs					
	C) Total Operating Cash Outflows	-	-	-	-	
		CHECK	-	-	-	
IIb) Break out of Critical Function Operating Cash Outflows						
A)	Operation of SRS					
B)	Provision of Whois					
C)	DNS Resolution for Registered Domain Names					
D)	Registry Data Escrow					
E)	Maintenance of Zone in accordance with DNSSEC					
	G) Total Critical Registry Function Cash Outflows	-	-	-	-	
	H) 3-year Total	-	-	-	-	
III) Projected Capital Expenditures						
A)	Hardware					
B)	Software					
C)	Furniture & Other Equipment					
D)	Outsourcing Capital Expenditures, if any (list the type of capital expenditures)					
i)						
ii)						
iii)						
iv)						
v)						
vi)						
E)	Other Capital Expenditures					
	F) Total Capital Expenditures	-	-	-	-	
IV) Projected Assets & Liabilities						
A) Cash						
B)	Accounts receivable					
C)	Other current assets					
	D) Total Current Assets	-	-	-	-	
E) Accounts payable						
F) Short-term Debt						
G)	Other Current Liabilities					
	H) Total Current Liabilities	-	-	-	-	
I)	Total Property, Plant & Equipment (PP&E)	-	-	-	-	
J)	3-year Reserve					
K)	Other Long-term Assets					
	L) Total Long-term Assets	-	-	-	-	
M) Total Long-term Debt						
V) Projected Cash flow (excl. 3-year Reserve)						
A)	Net operating cash flows	-	-	-	-	
B)	Capital expenditures	-	-	-	-	
C)	Change in Non Cash Current Assets	n/a	-	-	-	
D)	Change in Total Current Liabilities	-	-	-	-	
E)	Debt Adjustments	n/a	-	-	-	
F)	Other Adjustments					
	H) Projected Net Cash flow	-	-	-	-	
VI) Sources of funds						
A) Debt:						
i)	On-hand at time of application					
ii)	Contingent and/or committed but not yet on-hand					
B) Equity:						
i)	On-hand at time of application					
ii)	Contingent and/or committed but not yet on-hand					
	C) Total Sources of funds	-	-	-	-	
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):						
Comments regarding how the Applicant plans to Fund operations:						
General Comments regarding contingencies:						

Template 2 - Financial Projections: Worst Case						Comments / Notes
In local currency (unless noted otherwise)			Live / Operational			Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3	
I)	Projected Cash inflows and outflows					
	A) Forecasted registration volume					
	B) Registration fee					
	C) Registration cash inflows					
	D) Other cash inflows					
	E) Total Cash Inflows					
	Projected Operating Cash Outflows					
	F) Labor:					
	i) Marketing Labor					
	ii) Customer Support Labor					
	iii) Technical Labor					
	G) Marketing					
	H) Facilities					
	I) General & Administrative					
	J) Interest and Taxes					
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
	i) [(list type of activities being outsourced)]					
	ii) [(list type of activities being outsourced)]					
	iii) [(list type of activities being outsourced)]					
	iv) [(list type of activities being outsourced)]					
	v) [(list type of activities being outsourced)]					
	vi) [(list type of activities being outsourced)]					
	L) Other Operating costs					
	M) Total Operating Cash Outflows					
	N) Projected Net Operating Cash flow					
IIa)	Break out of Fixed and Variable Operating Cash Outflows					
	A) Total Variable Operating Costs					
	B) Total Fixed Operating Costs					
	C) Total Operating Cash Outflows					
		CHECK				
IIb)	Break out of Critical Function Operating Cash Outflows					
	A) Operation of SRS					
	B) Provision of Whois					
	C) DNS Resolution for Registered Domain Names					
	D) Registry Data Escrow					
	E) Maintenance of Zone in accordance with DNSSEC					
	G) Total Critical Registry Function Cash Outflows					
	H) 3-year Total					
III)	Projected Capital Expenditures					
	A) Hardware					
	B) Software					
	C) Furniture & Other Equipment					
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)					
	i)					
	ii)					
	iii)					
	iv)					
	v)					
	vi)					
	E) Other Capital Expenditures					
	F) Total Capital Expenditures					
IV)	Projected Assets & Liabilities					
	A) Cash					
	B) Accounts receivable					
	C) Other current assets					
	D) Total Current Assets					
	E) Accounts payable					
	F) Short-term Debt					
	G) Other Current Liabilities					
	H) Total Current Liabilities					
	I) Total Property, Plant & Equipment (PP&E)					
	J) 3-year Reserve					
	K) Other Long-term Assets					
	L) Total Long-term Assets					
	M) Total Long-term Debt					
V)	Projected Cash flow (excl. 3-year Reserve)					
	A) Net operating cash flows					
	C) Capital expenditures					
	D) Change in Non Cash Current Assets	n/a				
	E) Change in Total Current Liabilities					
	F) Debt Adjustments	n/a				
	G) Other Adjustments					
	H) Projected Net Cash flow					
VI)	Sources of funds					
	A) Debt:					
	i) On-hand at time of application					
	ii) Contingent and/or committed but not yet on-hand					
	B) Equity:					
	i) On-hand at time of application					
	ii) Contingent and/or committed but not yet on-hand					
	C) Total Sources of funds					
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):						
Comments regarding how the Applicant plans to Fund operations:						
General Comments regarding contingencies:						



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 3

4 June 2012

Module 3

Objection Procedures

This module describes two types of mechanisms that may affect an application:

- I. The procedure by which ICANN's Governmental Advisory Committee may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.
- II. The dispute resolution procedure triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

3.1 GAC Advice on New gTLDs

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

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns

raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

- I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.
- II. The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.
- III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

3.2 *Public Objection and Dispute Resolution Process*

The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts.

A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.

As described in section 3.1 above, ICANN's Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to the grounds for objection enumerated in the public objection and dispute resolution process.

3.2.1 *Grounds for Objection*

A formal objection may be filed on any one of the following four grounds:

String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.

Legal Rights Objection – The applied-for gTLD string infringes the existing legal rights of the objector.

Limited Public Interest Objection – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

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

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see

<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

3.2.2 *Standing to Object*

Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round. In the case where an IDN ccTLD Fast Track request has been submitted before the public posting of gTLD applications received, and the Fast Track requestor wishes to file a string confusion objection to a gTLD application, the Fast Track requestor will be granted standing.
Legal rights	Rightholders
Limited public interest	No limitations on who may file – however, subject to a “quick look” designed for early conclusion of frivolous and/or abusive objections
Community	Established institution associated with a clearly delineated community

3.2.2.1 *String Confusion Objection*

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation.

In the case where an existing TLD operator successfully asserts string confusion with an applicant, the application will be rejected.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible

outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures). If an objection by one gTLD applicant to another gTLD application is unsuccessful, the applicants may both move forward in the process without being considered in direct contention with one another.

3.2.2.2 *Legal Rights Objection*

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

An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name¹:

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.

3.2.2.3 *Limited Public Interest Objection*

Anyone may file a Limited Public Interest Objection. Due to the inclusive standing base, however, objectors are subject to a "quick look" procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.

A Limited Public Interest objection would be manifestly unfounded if it did not fall within one of the categories that have been defined as the grounds for such an objection (see subsection 3.5.3).

A Limited Public Interest objection that is manifestly unfounded may also be an abuse of the right to object. An objection may be framed to fall within one of the

¹ See also <http://www.iana.org/domains/int/policy/>.

accepted categories for Limited Public Interest objections, but other facts may clearly show that the objection is abusive. For example, multiple objections filed by the same or related parties against a single applicant may constitute harassment of the applicant, rather than a legitimate defense of legal norms that are recognized under general principles of international law. An objection that attacks the applicant, rather than the applied-for string, could be an abuse of the right to object.²

The quick look is the Panel's first task, after its appointment by the DRSP and is a review on the merits of the objection. The dismissal of an objection that is manifestly unfounded and/or an abuse of the right to object would be an Expert Determination, rendered in accordance with Article 21 of the New gTLD Dispute Resolution Procedure.

In the case where the quick look review does lead to the dismissal of the objection, the proceedings that normally follow the initial submissions (including payment of the full advance on costs) will not take place, and it is currently contemplated that the filing fee paid by the applicant would be refunded, pursuant to Procedure Article 14(e).

3.2.2.4 Community Objection

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. To qualify for standing for a community objection, the objector must prove both of the following:

² The jurisprudence of the European Court of Human Rights offers specific examples of how the term "manifestly ill-founded" has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides: "The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application." The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court's website <http://www.echr.coe.int>.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. E.g., Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility of an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: *Décision sur la recevabilité de la requête no 65831/01 présentée par Roger Garaudy contre la France* (2003); *Décision sur la recevabilité de la requête no 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal* (2004).

The jurisprudence of the European Court of Human Rights also provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR Article 35(3). See, for example, *Décision partielle sur la recevabilité de la requête no 61164/00 présentée par Gérard Duringer et autres contre la France et de la requête no 18589/02 contre la France* (2003).

It is an established institution – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

It has an ongoing relationship with a clearly delineated community – Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

3.2.3 Dispute Resolution Service Providers

To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.

- The International Centre for Dispute Resolution has agreed to administer disputes brought pursuant to string confusion objections.
- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed to administer disputes brought pursuant to legal rights objections.

- The International Center of Expertise of the International Chamber of Commerce has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest³ followed by dialogue with those candidates who responded. The call for expressions of interest specified several criteria for providers, including established services, subject matter expertise, global capacity, and operational capabilities. An important aspect of the selection process was the ability to recruit panelists who will engender the respect of the parties to the dispute.

3.2.4 Options in the Event of Objection

Applicants whose applications are the subject of an objection have the following options:

The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;

The applicant can file a response to the objection and enter the dispute resolution process (refer to Section 3.2); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

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

3.2.5 Independent Objector

A formal objection to a gTLD application may also be filed by the Independent Objector (IO). The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet.

In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of Limited Public Interest and Community.

³ See <http://www.icann.org/en/announcements/announcement-21dec07.htm>.

Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest.

Mandate and Scope - The IO may file objections against “highly objectionable” gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Limited Public Interest objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2).

The IO may file a Limited Public Interest objection against an application even if a Community objection has been filed, and vice versa.

The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed.

Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.

The IO may consider public comment when making an independent assessment whether an objection is warranted. The IO will have access to application comments received during the comment period.

In light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.

Selection – The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant. The Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant.

Although recommendations for IO candidates from the community are welcomed, the IO must be and remain independent and unaffiliated with any of the gTLD applicants. The various rules of ethics for judges and international arbitrators provide models for the IO to declare and maintain his/her independence.

The IO's (renewable) tenure is limited to the time necessary to carry out his/her duties in connection with a single round of gTLD applications.

Budget and Funding – The IO's budget would comprise two principal elements: (a) salaries and operating expenses, and (b) dispute resolution procedure costs – both of which should be funded from the proceeds of new gTLD applications.

As an objector in dispute resolution proceedings, the IO is required to pay filing and administrative fees, as well as advance payment of costs, just as all other objectors are required to do. Those payments will be refunded by the DRSP in cases where the IO is the prevailing party.

In addition, the IO will incur various expenses in presenting objections before DRSP panels that will not be refunded, regardless of the outcome. These expenses include the fees and expenses of outside counsel (if retained) and the costs of legal research or factual investigations.

3.3 *Filing Procedures*

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

- Objections; and
- Responses to objections.

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

Note that the rules and procedures of each DRSP specific to each objection ground must also be followed. See <http://newgtlds.icann.org/en/program-status/objection-dispute-resolution>.

3.3.1 *Objection Filing Procedures*

The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. Should an applicant wish to file a formal objection to another gTLD application, it would follow these same procedures.

- All objections must be filed electronically with the appropriate DRSP by the posted deadline date.

Objections will not be accepted by the DRSPs after this date.

- All objections must be filed in English.
- Each objection must be filed separately. An objector wishing to object to several applications must file a separate objection and pay the accompanying filing fees for each application that is the subject of an objection. If an objector wishes to object to an application on more than one ground, the objector must file separate objections and pay the accompanying filing fees for each objection ground.

Each objection filed by an objector must include:

- The name and contact information of the objector.
- A statement of the objector's basis for standing; that is, why the objector believes it meets the standing requirements to object.
- A description of the basis for the objection, including:
 - A statement giving the specific ground upon which the objection is being filed.
 - A detailed explanation of the validity of the objection and why it should be upheld.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

An objector must provide copies of all submissions to the DRSP associated with the objection proceedings to the applicant.

The DRSP will publish, and regularly update a list on its website identifying all objections as they are filed. ICANN will post on its website a notice of all objections filed once the objection filing period has closed.

3.3.2 Objection Filing Fees

At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will

dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

Funding from ICANN for objection filing fees, as well as for advance payment of costs (see subsection 3.4.7 below) is available to the At-Large Advisory Committee (ALAC). Funding for ALAC objection filing and dispute resolution fees is contingent on publication by ALAC of its approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require: bottom-up development of potential objections, discussion and approval of objections at the Regional At-Large Organization (RALO) level, and a process for consideration and approval of the objection by the At-Large Advisory Committee.

Funding from ICANN for objection filing fees, as well as for advance payment of costs, is available to individual national governments in the amount of USD 50,000 with the guarantee that a minimum of one objection per government will be fully funded by ICANN where requested. ICANN will develop a procedure for application and disbursement of funds.

Funding available from ICANN is to cover costs payable to the dispute resolution service provider and made directly to the dispute resolution service provider; it does not cover other costs such as fees for legal advice.

3.3.3 Response Filing Procedures

Upon notification that ICANN has published the list of all objections filed (refer to subsection 3.3.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, an applicant responding to several objections must file a separate response and pay the accompanying filing fee to respond to each objection.
- Responses must be filed electronically.

Each response filed by an applicant must include:

- The name and contact information of the applicant.

- A point-by-point response to the claims made by the objector.
- Any copies of documents that it considers to be a basis for the response.

Responses are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

Each applicant must provide copies of all submissions to the DRSP associated with the objection proceedings to the objector.

3.3.4 Response Filing Fees

At the time an applicant files its response, it is required to pay a filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded, which will result in the objector prevailing.

3.4 Objection Processing Overview

The information below provides an overview of the process by which DRSPs administer dispute proceedings that have been initiated. For comprehensive information, please refer to the New gTLD Dispute Resolution Procedure (included as an attachment to this module).

3.4.1 Administrative Review

Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's right to submit a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for filing an objection.

3.4.2 Consolidation of Objections

Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections. The DRSP shall endeavor to decide upon

consolidation prior to issuing its notice to applicants that the response should be filed and, where appropriate, shall inform the parties of the consolidation in that notice.

An example of a circumstance in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable.

3.4.3 *Mediation*

The parties to a dispute resolution proceeding are encouraged—but not required—to participate in mediation aimed at settling the dispute. Each DRSP has experts who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel constituted to issue an expert determination in the related dispute.

There are no automatic extensions of time associated with the conduct of negotiations or mediation. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. Absent exceptional circumstances, the parties must limit their requests for extension to 30 calendar days.

The parties are free to negotiate without mediation at any time, or to engage a mutually acceptable mediator of their own accord.

3.4.4 Selection of Expert Panels

A panel will consist of appropriately qualified experts appointed to each proceeding by the designated DRSP. Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.

There will be one expert in proceedings involving a string confusion objection.

There will be one expert, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes in proceedings involving an existing legal rights objection.

There will be three experts recognized as eminent jurists of international reputation, with expertise in relevant fields as appropriate, in proceedings involving a Limited Public Interest objection.

There will be one expert in proceedings involving a community objection.

Neither the experts, the DRSP, ICANN, nor their respective employees, directors, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

3.4.5 Adjudication

The panel may decide whether the parties shall submit any written statements in addition to the filed objection and response, and may specify time limits for such submissions.

In order to achieve the goal of resolving disputes rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the panel may require a party to produce additional evidence.

Disputes will usually be resolved without an in-person hearing. The panel may decide to hold such a hearing only in extraordinary circumstances.

3.4.6 Expert Determination

The DRSPs' final expert determinations will be in writing and will include:

- A summary of the dispute and findings;

- An identification of the prevailing party; and
- The reasoning upon which the expert determination is based.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.

3.4.7 Dispute Resolution Costs

Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while Limited Public Interest and community objection proceedings will involve hourly rates charged by the panelists.

Within ten (10) calendar days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant. Each party must make its advance payment within ten (10) calendar days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DRSP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

3.5 Dispute Resolution Principles (Standards)

Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

3.5.1 String Confusion Objection

A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

3.5.2 Legal Rights Objection

In interpreting and giving meaning to GNSO Recommendation 3 (“Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law”), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s registered or unregistered trademark or service mark (“mark”) or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector’s mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector’s mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.
2. Whether the objector's acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.
7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.
8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

In the case where a legal rights objection has been filed by an IGO, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO;
2. Historical coexistence of the IGO and the applicant's use of a similar name or acronym. Factors considered may include:
 - a. Level of global recognition of both entities;
 - b. Length of time the entities have been in existence;
 - c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6^{ter} of the Paris Convention for the Protection of Industrial Property.
3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym;
4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide; and
5. Whether the applicant's intended use of the applied-for gTLD would create a likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

3.5.3 Limited Public Interest Objection

An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)

- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a Limited Public Interest objection.

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;
- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of

discrimination that violate generally accepted legal norms recognized under principles of international law;

- Incitement to or promotion of child pornography or other sexual abuse of children; or
- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

3.5.4 *Community Objection*

The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. Each of these tests is described in further detail below.

Community – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;
- The level of formal boundaries around the community and what persons or entities are considered to form the community;

- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

Substantial Opposition – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
 - Regional
 - Subsectors of community
 - Leadership of community
 - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

Targeting – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be

balanced by a panel to determine this include but are not limited to:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

Detriment – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

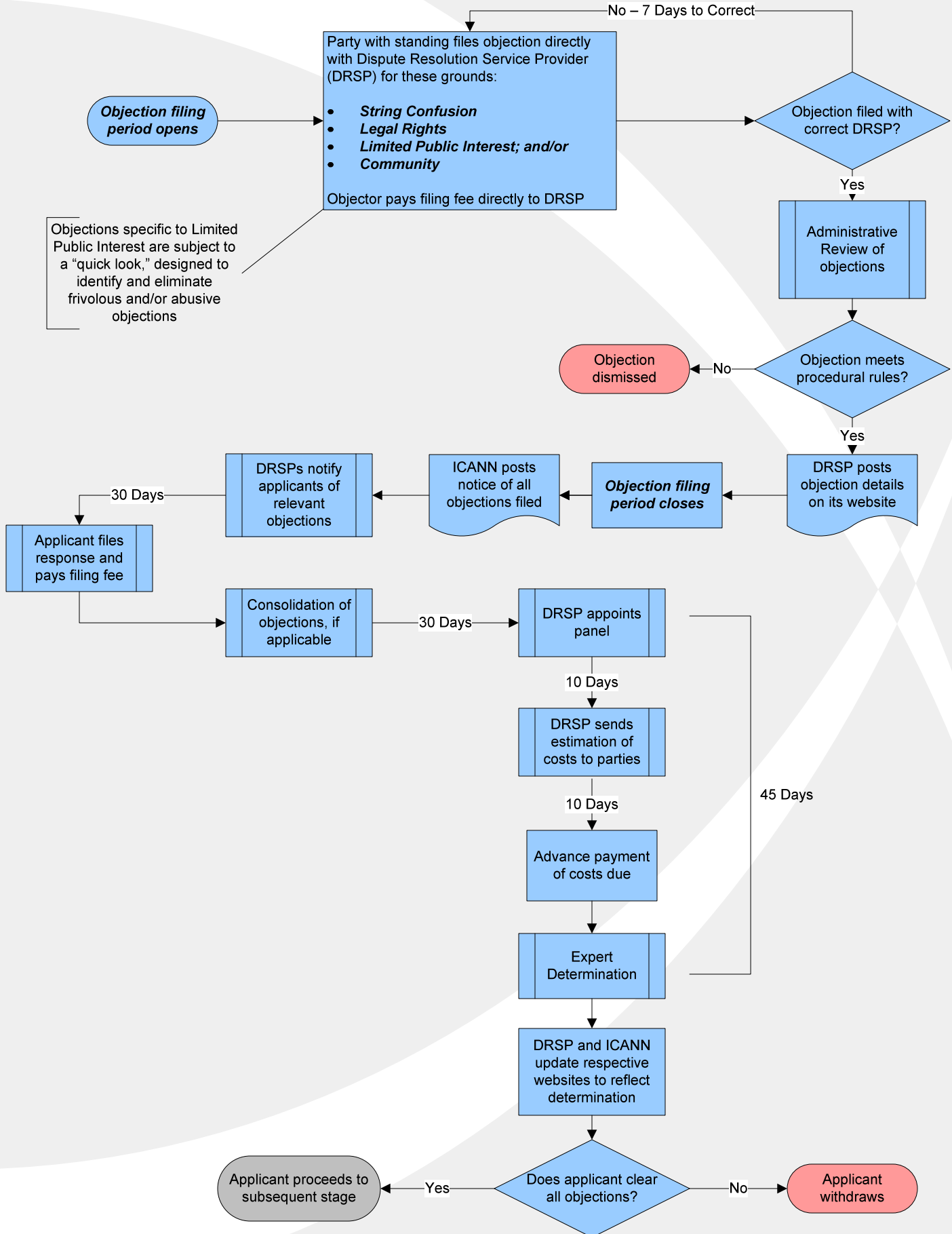
Factors that could be used by a panel in making this determination include but are not limited to:

- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

The objector must meet all four tests in the standard for the objection to prevail.

DRAFT - New gTLD Program – Objection and Dispute Resolution



Attachment to Module 3

New gTLD Dispute Resolution Procedure

These Procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP). Each of the DRSPs has a specific set of rules that will also apply to such proceedings.

NEW gTLD DISPUTE RESOLUTION PROCEDURE

Article 1. ICANN's New gTLD Program

- (a) The Internet Corporation for Assigned Names and Numbers ("ICANN") has implemented a program for the introduction of new generic Top-Level Domain Names ("gTLDs") in the internet. There will be a succession of rounds, during which applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN.
- (b) The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the "Procedure").
- (c) Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider ("DRSP") in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.

Article 2. Definitions

- (a) The "Applicant" or "Respondent" is an entity that has applied to ICANN for a new gTLD and that will be the party responding to the Objection.
- (b) The "Objector" is one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted.
- (c) The "Panel" is the panel of Experts, comprising one or three "Experts," that has been constituted by a DRSP in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) The "Expert Determination" is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (e) The grounds upon which an objection to a new gTLD may be filed are set out in full in Module 3 of the Applicant Guidebook. Such grounds are identified in this Procedure, and are based upon the Final Report on the Introduction of New Generic Top-Level Domains, dated 7 August 2007, issued by the ICANN Generic Names Supporting Organization (GNSO), as follows:
 - (i) "String Confusion Objection" refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.
 - (ii) "Existing Legal Rights Objection" refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others

that are recognized or enforceable under generally accepted and internationally recognized principles of law.

- (iii) "Limited Public Interest Objection" refers to the objection that the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law.
 - (iv) "Community Objection" refers to the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.
- (f) "DRSP Rules" are the rules of procedure of a particular DRSP that have been identified as being applicable to objection proceedings under this Procedure.

Article 3. Dispute Resolution Service Providers

The various categories of disputes shall be administered by the following DRSPs:

- (a) String Confusion Objections shall be administered by the International Centre for Dispute Resolution.
- (b) Existing Legal Rights Objections shall be administered by the Arbitration and Mediation Center of the World Intellectual Property Organization.
- (c) Limited Public Interest Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.
- (d) Community Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

Article 4. Applicable Rules

- (a) All proceedings before the Panel shall be governed by this Procedure and by the DRSP Rules that apply to a particular category of objection. The outcome of the proceedings shall be deemed an Expert Determination, and the members of the Panel shall act as experts.
- (b) The applicable DRSP Rules are the following:
 - (i) For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN's New gTLD Program.
 - (ii) For an Existing Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution.
 - (iii) For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
 - (iv) For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
- (c) In the event of any discrepancy between this Procedure and the applicable DRSP Rules, this Procedure shall prevail.

- (d) The place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings.
- (e) In all cases, the Panel shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its position.

Article 5. Language

- (a) The language of all submissions and proceedings under this Procedure shall be English.
- (b) Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.

Article 6. Communications and Time Limits

- (a) All communications by the Parties with the DRSPs and Panels must be submitted electronically. A Party that wishes to make a submission that is not available in electronic form (e.g., evidentiary models) shall request leave from the Panel to do so, and the Panel, in its sole discretion, shall determine whether to accept the non-electronic submission.
- (b) The DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings.
- (c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day that it is transmitted in accordance with paragraphs (a) and (b) of this Article.
- (d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (a) and (b) of this Article prior to or on the day of the expiration of the time limit.
- (e) For the purpose of calculating a period of time under this Procedure, such period shall begin to run on the day following the day when a notice or other communication is received.
- (f) Unless otherwise stated, all time periods provided in the Procedure are calculated on the basis of calendar days

Article 7. Filing of the Objection

- (a) A person wishing to object to a new gTLD for which an application has been submitted may file an objection ("Objection"). Any Objection to a proposed new gTLD must be filed before the published closing date for the Objection Filing period.
- (b) The Objection must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Applicant.
- (c) The electronic addresses for filing Objections (the specific addresses shall be made available once they are created by providers):
 - (i) A String Confusion Objection must be filed at: [●].

- (ii) An Existing Legal Rights Objection must be filed at: [●].
 - (iii) A Limited Public Interest Objection must be filed at: [●].
 - (iv) A Community Objection must be filed at: [●].
- (d) All Objections must be filed separately:
- (i) An Objector who wishes to object to an application on more than one ground must file separate objections with the appropriate DRSP(s).
 - (ii) An Objector who wishes to object to more than one gTLD must file separate objections to each gTLD with the appropriate DRSP(s).
- (e) If an Objection is filed with the wrong DRSP, that DRSP shall promptly notify the Objector of the error and that DRSP shall not process the incorrectly filed Objection. The Objector may then cure the error by filing its Objection with the correct DRSP within seven (7) days of receipt of the error notice, failing which the Objection shall be disregarded. If the Objection is filed with the correct DRSP within seven (7) days of receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

Article 8. Content of the Objection

- (a) The Objection shall contain, *inter alia*, the following information:
- (i) The names and contact information (address, telephone number, email address, etc.) of the Objector;
 - (ii) A statement of the Objector's basis for standing; and
 - (iii) A description of the basis for the Objection, including:
 - (aa) A statement of the ground upon which the Objection is being filed, as stated in Article 2(e) of this Procedure;
 - (bb) An explanation of the validity of the Objection and why the objection should be upheld.
- (b) The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.
- (c) At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

Article 9. Administrative Review of the Objection

- (a) The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within

fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

- (b) If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.
- (c) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.
- (d) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.
- (e) Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (iii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

Article 10. ICANN's Dispute Announcement

- (a) Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.
- (b) ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

Article 11. Response to the Objection

- (a) Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).
- (b) The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the transmission of the notice by the DRSP pursuant to Article 11(a).
- (c) The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.

- (d) The Response shall contain, inter alia, the following information:
 - (i) The names and contact information (address, telephone number, email address, etc.) of the Applicant; and
 - (ii) A point-by-point response to the statements made in the Objection.
- (e) The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.
- (f) At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be deemed to be in default, any Response disregarded and the Objection shall be deemed successful.
- (g) If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.
- (g) If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

Article 12. Consolidation of Objections

- (a) The DRSP is encouraged, whenever possible and practicable, and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.
- (b) If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, which decision must be made within 14 days of the notice given by the DRSP pursuant to Article 11(a), the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.
- (c) In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. The DRSP's determination on consolidation shall be final and not subject to appeal.
- (d) Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

Article 13. The Panel

- (a) The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.
- (b) Number and specific qualifications of Expert(s):
 - (i) There shall be one Expert in proceedings involving a String Confusion Objection.
 - (ii) There shall be one Expert or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.
 - (iii) There shall be three Experts recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a Limited Public Interest Objection.
 - (iv) There shall be one Expert in proceedings involving a Community Objection.
- (c) All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.
- (d) The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.
- (e) Unless required by a court of law or authorized in writing by the parties, an Expert shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

Article 14. Costs

- (a) Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").
- (b) Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Parties shall be credited against the amounts due for this advance payment of Costs.
- (c) The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.
- (d) Failure to make an advance payment of Costs:
 - (i) If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.

- (ii) If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.
- (e) Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

Article 15. Representation and Assistance

- (a) The parties may be represented or assisted by persons of their choice.
- (b) Each party or party representative shall communicate the name, contact information and function of such persons to the DRSP and the other party (or parties in case of consolidation).

Article 16. Negotiation and Mediation

- (a) The parties are encouraged, but not required, to participate in negotiations and/or mediation at any time throughout the dispute resolution process aimed at settling their dispute amicably.
- (b) Each DRSP shall be able to propose, if requested by the parties, a person who could assist the parties as mediator.
- (c) A person who acts as mediator for the parties shall not serve as an Expert in a dispute between the parties under this Procedure or any other proceeding under this Procedure involving the same gTLD.
- (d) The conduct of negotiations or mediation shall not, *ipso facto*, be the basis for a suspension of the dispute resolution proceedings or the extension of any deadline under this Procedure. Upon the joint request of the parties, the DRSP or (after it has been constituted) the Panel may grant the extension of a deadline or the suspension of the proceedings. Absent exceptional circumstances, such extension or suspension shall not exceed thirty (30) days and shall not delay the administration of any other Objection.
- (e) If, during negotiations and/or mediation, the parties agree on a settlement of the matter referred to the DRSP under this Procedure, the parties shall inform the DRSP, which shall terminate the proceedings, subject to the parties' payment obligation under this Procedure having been satisfied, and inform ICANN and the parties accordingly.

Article 17. Additional Written Submissions

- (a) The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.
- (b) The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

Article 18. Evidence

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

Article 19. Hearings

- (a) Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing.
- (b) The Panel may decide, on its own initiative or at the request of a party, to hold a hearing only in extraordinary circumstances.
- (c) In the event that the Panel decides to hold a hearing:
 - (i) The Panel shall decide how and where the hearing shall be conducted.
 - (ii) In order to expedite the proceedings and minimize costs, the hearing shall be conducted by videoconference if possible.
 - (iii) The hearing shall be limited to one day, unless the Panel decides, in exceptional circumstances, that more than one day is required for the hearing.
 - (iv) The Panel shall decide whether the hearing will be open to the public or conducted in private.

Article 20. Standards

- (a) For each category of Objection identified in Article 2(e), the Panel shall apply the standards that have been defined by ICANN.
- (b) In addition, the Panel may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.
- (c) The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.

Article 21. The Expert Determination

- (a) The DRSP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel. In specific circumstances such as consolidated cases and in consultation with the DRSP, if significant additional documentation is requested by the Panel, a brief extension may be allowed.
- (b) The Panel shall submit its Expert Determination in draft form to the DRSP's scrutiny as to form before it is signed, unless such scrutiny is specifically excluded by the applicable DRSP Rules. The modifications proposed by the DRSP to the Panel, if any, shall address only the form of the Expert Determination. The signed Expert Determination shall be communicated to the DRSP, which in turn will communicate that Expert Determination to the Parties and ICANN.
- (c) When the Panel comprises three Experts, the Expert Determination shall be made by a majority of the Experts.

- (d) The Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel shall be limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination, of its advance payment(s) of Costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.
- (e) The Expert Determination shall state the date when it is made, and it shall be signed by the Expert(s). If any Expert fails to sign the Expert Determination, it shall be accompanied by a statement of the reason for the absence of such signature.
- (f) In addition to providing electronic copies of its Expert Determination, the Panel shall provide a signed hard copy of the Expert Determination to the DRSP, unless the DRSP Rules provide for otherwise.
- (g) Unless the Panel decides otherwise, the Expert Determination shall be published in full on the DRSP's website.

Article 22. Exclusion of Liability

In addition to any exclusion of liability stipulated by the applicable DRSP Rules, neither the Expert(s), nor the DRSP and its employees, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

Article 23. Modification of the Procedure

- (a) ICANN may from time to time, in accordance with its Bylaws, modify this Procedure.
- (b) The version of this Procedure that is applicable to a dispute resolution proceeding is the version that was in effect on the day when the relevant application for a new gTLD is submitted.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 4

4 June 2012

Module 4

String Contention Procedures

This module describes situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.

4.1 String Contention

String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

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

4.1.1 Identification of Contention Sets

Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. That is, two or more applicants whose applied-for strings or designated variants are variant strings according to an IDN table submitted to ICANN would be considered in direct contention with one another. For example, if one applicant applies for string A and another applies for string B, and strings A and B are variant TLD strings as defined in Module 1, then the two applications are in direct contention.

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. The example that follows explains direct and indirect contention in greater detail.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.

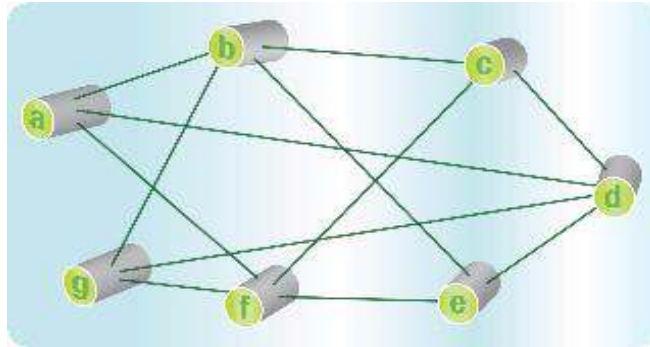


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While preliminary contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process stages have concluded. This is because any application excluded through those processes might modify a contention set identified earlier.

A contention set may be augmented, split into two sets, or eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding. The composition of a contention set may also be modified as some applications may be voluntarily withdrawn throughout the process.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

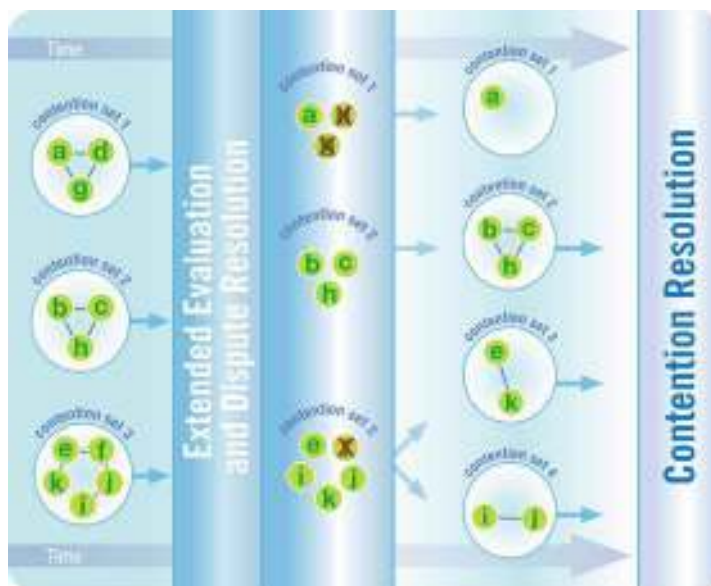


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through community priority evaluation or by other means, depending on the circumstances. In the string contention resolution stage, ICANN addresses each contention set to achieve an unambiguous resolution.

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

4.1.2 *Impact of String Confusion Dispute Resolution Proceedings on Contention Sets*

If an applicant files a string confusion objection against another application (refer to Module 3), and the panel finds that user confusion is probable (that is, finds in favor of the objector), the two applications will be placed in direct contention with each other. Thus, the outcome of a dispute resolution proceeding based on a string confusion objection would be a new contention set structure for the relevant applications, augmenting the original contention set.

If an applicant files a string confusion objection against another application, and the panel finds that string

confusion does not exist (that is, finds in favor of the responding applicant), the two applications will not be considered in direct contention with one another.

A dispute resolution outcome in the case of a string confusion objection filed by another applicant will not result in removal of an application from a previously established contention set.

4.1.3 Self-Resolution of String Contention

Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications. An applicant may not resolve string contention by selecting a new string or by replacing itself with a joint venture. It is understood that applicants may seek to establish joint ventures in their efforts to resolve string contention. However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the remaining application. Accordingly, new joint ventures must take place in a manner that does not materially change the application, to avoid being subject to re-evaluation.

4.1.4 Possible Contention Resolution Outcomes

An application that has successfully completed all previous stages and is no longer part of a contention set due to changes in the composition of the contention set (as described in subsection 4.1.1) or self-resolution by applicants in the contention set (as described in subsection 4.1.3) may proceed to the next stage.

An application that prevails in a contention resolution procedure, either community priority evaluation or auction, may proceed to the next stage.

In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, consider a case where string A is in contention with B, and B is in contention with C, but C is not in contention with A. If A wins the contention resolution procedure, B is eliminated but C can proceed since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

4.2 Community Priority Evaluation

Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process.

The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.

4.2.1 Eligibility for Community Priority Evaluation

As described in subsection 1.2.3 of Module 1, all applicants are required to identify whether their application type is:

- Community-based; or
- Standard.

Applicants designating their applications as community-based are also asked to respond to a set of questions in the application form to provide relevant information if a community priority evaluation occurs.

Only community-based applicants are eligible to participate in a community priority evaluation.

At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher.

Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.

4.2.2 Community Priority Evaluation Procedure

Community priority evaluations for each eligible contention set will be performed by a community priority panel appointed by ICANN to review these applications. The panel's role is to determine whether any of the community-based applications fulfills the community priority criteria. Standard applicants within the contention set, if any, will not participate in the community priority evaluation.

If a single community-based application is found to meet the community priority criteria (see subsection 4.2.3 below), that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as follows:

- In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.
- In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.

If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.

Results of each community priority evaluation will be posted when completed.

Applicants who are eliminated as a result of a community priority evaluation are eligible for a partial refund of the gTLD evaluation fee (see Module 1).

4.2.3 Community Priority Evaluation Criteria

The Community Priority Panel will review and score the one or more community-based applications having elected the community priority evaluation against four criteria as listed below.

The scoring process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). This calls for a holistic approach, taking multiple criteria into account, as reflected in the process. The scoring will be performed by a panel and be based on information provided in the application plus other relevant information available (such as public information regarding the community represented). The panel may also perform independent research, if deemed necessary to reach informed scoring decisions.

It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.

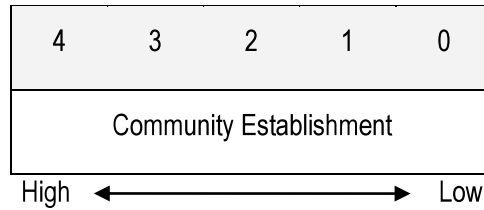
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any “double-counting” - any negative aspect found in assessing an application for one criterion

should only be counted there and should not affect the assessment for other criteria.

An application must score at least 14 points to prevail in a community priority evaluation. The outcome will be determined according to the procedure described in subsection 4.2.2.

Criterion #1: Community Establishment (0-4 points)

A maximum of 4 points is possible on the Community Establishment criterion:



As measured by:

A. Delineation (2)

2	1	0
Clearly delineated, organized, and pre-existing community.	Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.	Insufficient delineation and pre-existence for a score of 1.

B. Extension (2)

2	1	0
Community of considerable size and longevity.	Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.	Community of neither considerable size nor longevity.

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied-for string is not

considered here, but taken into account when scoring Criterion #2, “Nexus between Proposed String and Community.”)

Criterion 1 Definitions

- “Community” - Usage of the expression “community” has evolved considerably from its Latin origin – “communitas” meaning “fellowship” – while still implying more of cohesion than a mere commonality of interest. Notably, as “community” is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some understanding of the community’s existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.
- “Delineation” relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- “Pre-existing” means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.
- “Organized” implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.
- “Extension” relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.
- “Size” relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have “only” some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of “considerable size.”

- "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

Criterion 1 Guidelines

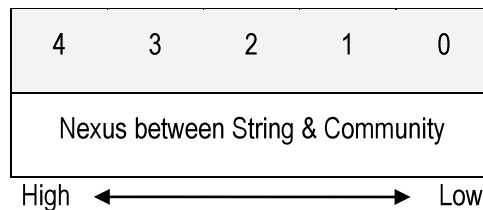
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."

With respect to "Delineation," if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.

Criterion #2: Nexus between Proposed String and Community (0-4 points)

A maximum of 4 points is possible on the Nexus criterion:



As measured by:

A. Nexus (3)

3	2	0
The string matches the name of the community or is a well-known short-form or abbreviation of the community	String identifies the community, but does not qualify for a score of 3.	String nexus does not fulfill the requirements for a score of 2.

3	2	0
---	---	---

name.

B. Uniqueness (1)

1	0
---	---

String has no other significant meaning beyond identifying the community described in the application.

String does not fulfill the requirement for a score of 1.

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

Criterion 2 Definitions

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

Criterion 2 Guidelines

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

With respect to "Nexus," for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for ".TENNIS") then it would not qualify for a 2.

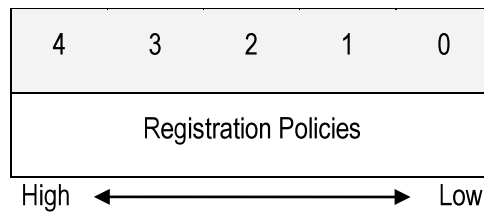
With respect to "Uniqueness," "significant meaning" relates to the public in general, with consideration of the community language context added.

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

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

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

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



As measured by:

A. Eligibility (1)

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

B. Name selection (1)

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

C. Content and use (1)

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

D. Enforcement (1)

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

This section evaluates the applicant's registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants, i.e. those desiring to register second-level domain names under the registry.

Criterion 3 Definitions

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

Criterion 3 Guidelines

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

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

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

4	3	2	1	0	
Community Endorsement					
High		←————→			Low

As measured by:

A. Support (2)

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

B. Opposition (2)

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

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

Criterion 4 Definitions

- "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by

the community members as representative of the community.

- "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

Criterion 4 Guidelines

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

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

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

To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.

When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed

in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for "Opposition." To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.

4.3 Auction: Mechanism of Last Resort

It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

An auction will not take place to resolve contention in the case where the contending applications are for geographic names (as defined in Module 2). In this case, the applications will be suspended pending resolution by the applicants.

An auction will take place, where contention has not already been resolved, in the case where an application for a geographic name is in a contention set with applications for similar strings that have not been identified as geographic names.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching the auction stage. However, there is a possibility that significant funding will accrue to ICANN as a result of one or more auctions.¹

¹ The purpose of an auction is to resolve contention in a clear, objective manner. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

4.3.1 Auction Procedures

An auction of two or more applications within a contention set is conducted as follows. The auctioneer successively increases the prices associated with applications within the contention set, and the respective applicants indicate their willingness to pay these prices. As the prices rise, applicants will successively choose to exit from the auction. When a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude. At the auction's conclusion, the applicants with remaining applications will pay the resulting prices and proceed toward delegation. This procedure is referred to as an "ascending-clock auction."

This section provides applicants an informal introduction to the practicalities of participation in an ascending-clock auction. It is intended only as a general introduction and is only preliminary. The detailed set of Auction Rules will be available prior to the commencement of any auction proceedings. If any conflict arises between this module and the auction rules, the auction rules will prevail.

For simplicity, this section will describe the situation where a contention set consists of two or more applications for identical strings.

All auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based software system designed especially for auction. The auction software system will be compatible with current versions of most prevalent browsers, and will not require the local installation of any additional software.

Auction participants ("bidders") will receive instructions for access to the online auction site. Access to the site will be password-protected and bids will be encrypted through SSL. If a bidder temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described

The amount of funding resulting from auctions, if any, will not be known until all relevant applications have completed this step. Thus, a detailed mechanism for allocation of these funds is not being created at present. However, a process can be pre-established to enable community consultation in the event that such funds are collected. This process will include, at a minimum, publication of data on any funds collected, and public comment on any proposed models.

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

The auction will be carried out in a series of auction rounds, as illustrated in Figure 4-3. The sequence of events is as follows:

1. For each auction round, the auctioneer will announce in advance: (1) the start-of-round price, (2) the end-of-round price, and (3) the starting and ending times of the auction round. In the first auction round, the start-of-round price for all bidders in the auction will be USD 0. In later auction rounds, the start-of-round price will be its end-of-round price from the previous auction round.



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

2. During each auction round, bidders will be required to submit a bid or bids representing their willingness to pay within the range of intermediate prices between the start-of-round and end-of-round prices. In this way a bidder indicates its willingness to stay in the auction at all prices through and including the end-of-auction round price, or its wish to exit the auction at a price less than the end-of-auction round price, called the exit bid.
3. Exit is irrevocable. If a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round.

4. Bidders may submit their bid or bids at any time during the auction round.
5. Only bids that comply with all aspects of the auction rules will be considered valid. If more than one valid bid is submitted by a given bidder within the time limit of the auction round, the auctioneer will treat the last valid submitted bid as the actual bid.
6. At the end of each auction round, bids become the bidders' legally-binding offers to secure the relevant gTLD strings at prices up to the respective bid amounts, subject to closure of the auction in accordance with the auction rules. In later auction rounds, bids may be used to exit from the auction at subsequent higher prices.
7. After each auction round, the auctioneer will disclose the aggregate number of bidders remaining in the auction at the end-of-round prices for the auction round, and will announce the prices and times for the next auction round.
 - Each bid should consist of a single price associated with the application, and such price must be greater than or equal to the start-of-round price.
 - If the bid amount is strictly less than the end-of-round price, then the bid is treated as an exit bid at the specified amount, and it signifies the bidder's binding commitment to pay up to the bid amount if its application is approved.
 - If the bid amount is greater than or equal to the end-of-round price, then the bid signifies that the bidder wishes to remain in the auction at all prices in the current auction round, and it signifies the bidder's binding commitment to pay up to the end-of-round price if its application is approved. Following such bid, the application cannot be eliminated within the current auction round.
 - To the extent that the bid amount exceeds the end-of-round price, then the bid is also treated as a proxy bid to be carried forward to the next auction round. The bidder will be permitted to change the proxy bid amount in the next auction round, and the amount of the proxy bid will not constrain the bidder's ability to submit any valid bid amount in the next auction round.

- No bidder is permitted to submit a bid for any application for which an exit bid was received in a prior auction round. That is, once an application has exited the auction, it may not return.
 - If no valid bid is submitted within a given auction round for an application that remains in the auction, then the bid amount is taken to be the amount of the proxy bid, if any, carried forward from the previous auction round or, if none, the bid is taken to be an exit bid at the start-of-round price for the current auction round.
8. This process continues, with the auctioneer increasing the price range for each given TLD string in each auction round, until there is one remaining bidder at the end-of-round price. After an auction round in which this condition is satisfied, the auction concludes and the auctioneer determines the clearing price. The last remaining application is deemed the successful application, and the associated bidder is obligated to pay the clearing price.

Figure 4-4 illustrates how an auction for five contending applications might progress.

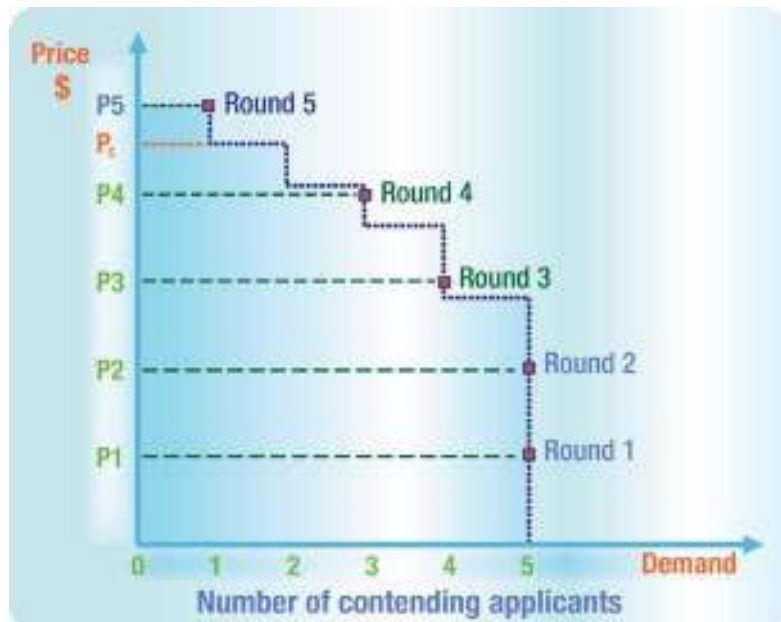


Figure 4-4 – Example of an auction for five mutually-contending applications.

- Before the first auction round, the auctioneer announces the end-of-round price P_1 .
- During Auction round 1, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_1 . Since the aggregate demand exceeds one, the auction proceeds to Auction round 2. The auctioneer discloses that five contending applications remained at P_1 and announces the end-of-round price P_2 .
- During Auction round 2, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_2 . The auctioneer discloses that five contending applications remained at P_2 and announces the end-of-round price P_3 .
- During Auction round 3, one of the bidders submits an exit bid at slightly below P_3 , while the other four bidders submit bids of at least P_3 . The auctioneer discloses that four contending applications remained at P_3 and announces the end-of-round price P_4 .
- During Auction round 4, one of the bidders submits an exit bid midway between P_3 and P_4 , while the other three remaining bidders submit bids of at least P_4 . The auctioneer discloses that three contending applications remained at P_4 and announces the end-of-auction round price P_5 .
- During Auction round 5, one of the bidders submits an exit bid at slightly above P_4 , and one of the bidders submits an exit bid at P_c midway between P_4 and P_5 . The final bidder submits a bid greater than P_c . Since the aggregate demand at P_5 does not exceed one, the auction concludes in Auction round 5. The application associated with the highest bid in Auction round 5 is deemed the successful application. The clearing price is P_c , as this is the lowest price at which aggregate demand can be met.

To the extent possible, auctions to resolve multiple string contention situations will be conducted simultaneously.

4.3.1.1 Currency

For bids to be comparable, all bids in the auction will be submitted in any integer (whole) number of US dollars.

4.3.1.2 Fees

A bidding deposit will be required of applicants participating in the auction, in an amount to be determined. The bidding deposit must be transmitted by wire transfer to a specified bank account specified by ICANN or its auction provider at a major international bank, to be received in advance of the auction date. The amount of the deposit will determine a bidding limit for each bidder: the bidding deposit will equal 10% of the bidding limit; and the bidder will not be permitted to submit any bid in excess of its bidding limit.

In order to avoid the need for bidders to pre-commit to a particular bidding limit, bidders may be given the option of making a specified deposit that will provide them with unlimited bidding authority for a given application. The amount of the deposit required for unlimited bidding authority will depend on the particular contention set and will be based on an assessment of the possible final prices within the auction.

All deposits from non-defaulting losing bidders will be returned following the close of the auction.

4.3.2 Winning Bid Payments

Any applicant that participates in an auction will be required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction, including that its bids are legally binding commitments to pay the amount bid if it wins (i.e., if its application is approved), and to enter into the prescribed registry agreement with ICANN— together with a specified penalty for defaulting on payment of its winning bid or failing to enter into the required registry agreement.

The winning bidder in any auction will be required to pay the full amount of the final price within 20 business days of the end of the auction. Payment is to be made by wire transfer to the same international bank account as the bidding deposit, and the applicant's bidding deposit will be credited toward the final price.

In the event that a bidder anticipates that it would require a longer payment period than 20 business days due to verifiable government-imposed currency restrictions, the bidder may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all bidders within the same contention set.

Any winning bidder for whom the full amount of the final price is not received within 20 business days of the end of an auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that receipt of full payment is imminent.

Any winning bidder for whom the full amount of the final price is received within 20 business days of the end of an auction retains the obligation to execute the required registry agreement within 90 days of the end of auction. Such winning bidder who does not execute the agreement within 90 days of the end of the auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that execution of the registry agreement is imminent.

4.3.3 Post-Default Procedures

Once declared in default, any winning bidder is subject to immediate forfeiture of its position in the auction and assessment of default penalties. After a winning bidder is declared in default, the remaining bidders will receive an offer to have their applications accepted, one at a time, in descending order of their exit bids. In this way, the next bidder would be declared the winner subject to payment of its last bid price. The same default procedures and penalties are in place for any runner-up bidder receiving such an offer.

Each bidder that is offered the relevant gTLD will be given a specified period—typically, four business days—to respond as to whether it wants the gTLD. A bidder who responds in the affirmative will have 20 business days to submit its full payment. A bidder who declines such an offer cannot revert on that statement, has no further obligations in this context and will not be considered in default.

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

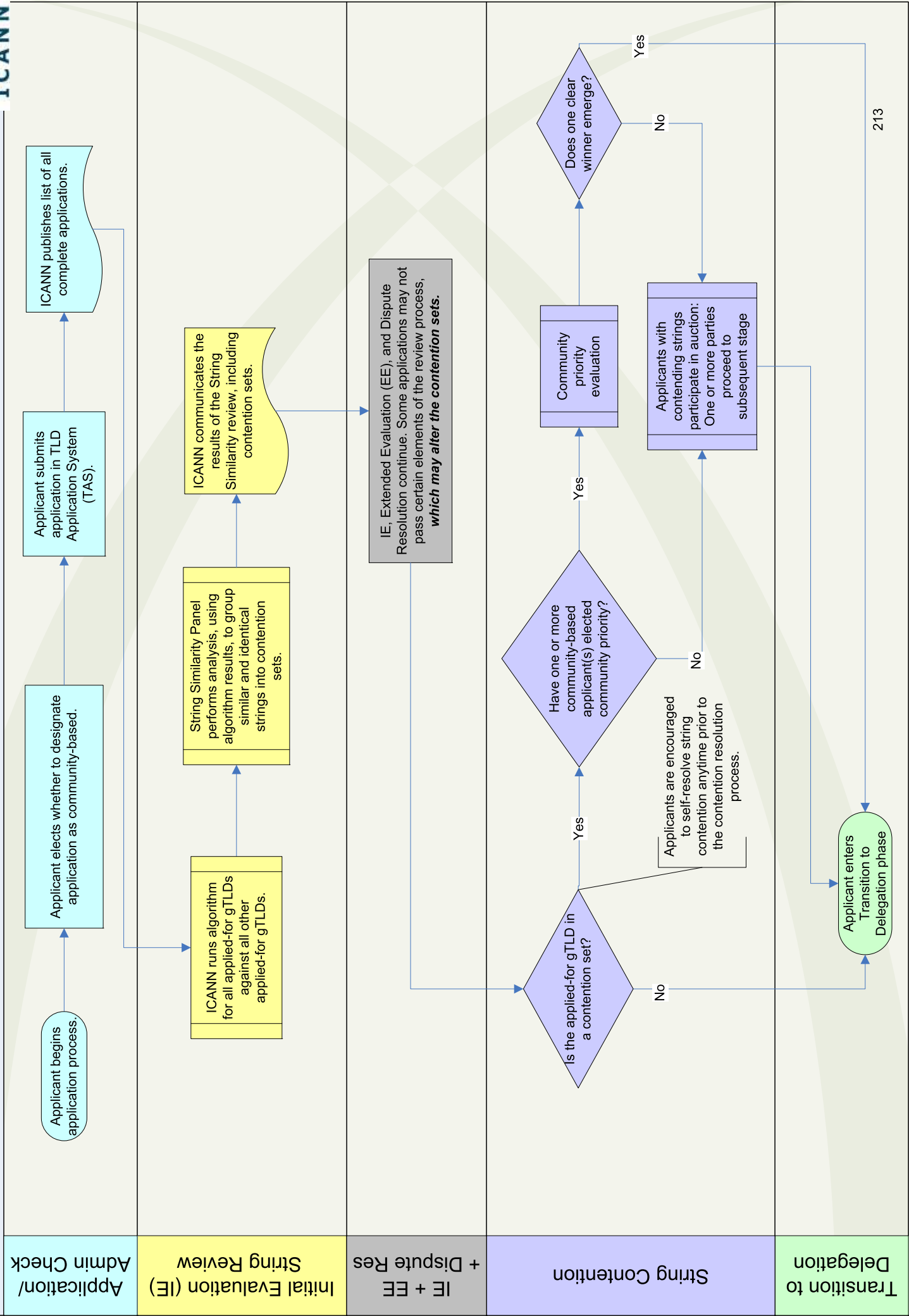
² If bidders were given the option of making a specified deposit that provided them with unlimited bidding authority for a given application and if the winning bidder utilized this option, then the penalty for defaulting on a winning bid will be the lesser of the following: (1) 10% of the defaulting bid, or (2) the specified deposit amount that provided the bidder with unlimited bidding authority.

4.4 Contention Resolution and Contract Execution

An applicant that has been declared the winner of a contention resolution process will proceed by entering into the contract execution step. (Refer to section 5.1 of Module 5.)

If a winner of the contention resolution procedure has not executed a contract within 90 calendar days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time. If the winning applicant can demonstrate that it is working diligently and in good faith toward successful completion of the steps necessary for entry into the registry agreement, ICANN may extend the 90-day period at its discretion. Runner-up applicants have no claim of priority over the winning application, even after what might be an extended period of negotiation.

DRAFT - New gTLD Program - String Contention



Application/
Admin Check

Initial Evaluation (IE)
String Review

IE + EE
+ Dispute Res

String Contention

Transition to
Delegation



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 5

4 June 2012

Module 5

Transition to Delegation

This module describes the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.

5.1 Registry Agreement

All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN before proceeding to delegation.

After the close of each stage in the process, ICANN will send a notification to those successful applicants that are eligible for execution of a registry agreement at that time.

To proceed, applicants will be asked to provide specified information for purposes of executing the registry agreement:

1. Documentation of the applicant's continued operations instrument (see Specification 8 to the agreement).
2. Confirmation of contact information and signatory to the agreement.
3. Notice of any material changes requested to the terms of the agreement.
4. The applicant must report: (i) any ownership interest it holds in any registrar or reseller of registered names, (ii) if known, any ownership interest that a registrar or reseller of registered names holds in the applicant, and (iii) if the applicant controls, is controlled by, or is under common control with any registrar or reseller of registered names. ICANN retains the right to refer an application to a competition authority prior to entry into the registry agreement if it is determined that the registry-registrar cross-ownership

arrangements might raise competition issues. For this purpose "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit additional updated documentation and information before entering into the registry agreement.

ICANN will begin processing registry agreements one month after the date of the notification to successful applicants. Requests will be handled in the order the complete information is received.

Generally, the process will include formal approval of the agreement without requiring additional Board review, so long as: the application passed all evaluation criteria; there are no material changes in circumstances; and there are no material changes to the base agreement. There may be other cases where the Board requests review of an application.

Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.

The registry agreement can be reviewed in the attachment to this module. Certain provisions in the agreement are labeled as applicable to governmental and intergovernmental entities only. Private entities, even if supported by a government or IGO, would not ordinarily be eligible for these special provisions.

All successful applicants are expected to enter into the agreement substantially as written. Applicants may request and negotiate terms by exception; however, this extends

the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement.

ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.

5.2 Pre-Delegation Testing

Each applicant will be required to complete pre-delegation technical testing as a prerequisite to delegation into the root zone. This pre-delegation test must be completed within the time period specified in the registry agreement.

The purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.

The test is also intended to indicate that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the requirements that follow.

The test elements cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance. At ICANN's discretion, aspects of the applicant's self-certification documentation can be audited either on-site at the services delivery point of the registry or elsewhere as determined by ICANN.

5.2.1 Testing Procedures

The applicant may initiate the pre-delegation test by submitting to ICANN the Pre-Delegation form and accompanying documents containing all of the following information:

- All name server names and IPv4/IPv6 addresses to be used in serving the new TLD data;
- If using anycast, the list of names and IPv4/IPv6 unicast addresses allowing the identification of each individual server in the anycast sets;
- If IDN is supported, the complete IDN tables used in the registry system;
- A test zone for the new TLD must be signed at test time and the valid key-set to be used at the time of testing must be provided to ICANN in the documentation, as well as the TLD DNSSEC Policy Statement (DPS);
- The executed agreement between the selected escrow agent and the applicant; and
- Self-certification documentation as described below for each test item.

ICANN will review the material submitted and in some cases perform tests in addition to those conducted by the applicant. After testing, ICANN will assemble a report with the outcome of the tests and provide that report to the applicant.

Any clarification request, additional information request, or other request generated in the process will be highlighted and listed in the report sent to the applicant.

ICANN may request the applicant to complete load tests considering an aggregated load where a single entity is performing registry services for multiple TLDs.

Once an applicant has met all of the pre-delegation testing requirements, it is eligible to request delegation of its applied-for gTLD.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

5.2.2 Test Elements: DNS Infrastructure

The first set of test elements concerns the DNS infrastructure of the new gTLD. In all tests of the DNS infrastructure, all requirements are independent of whether IPv4 or IPv6 is used. All tests shall be done both over IPv4 and IPv6, with reports providing results according to both protocols.

UDP Support -- The DNS infrastructure to which these tests apply comprises the complete set of servers and network infrastructure to be used by the chosen providers to deliver DNS service for the new gTLD to the Internet. The documentation provided by the applicant must include the results from a system performance test indicating available network and server capacity and an estimate of expected capacity during normal operation to ensure stable service as well as to adequately address Distributed Denial of Service (DDoS) attacks.

Self-certification documentation shall include data on load capacity, latency and network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries responded against an increasing number of queries per second generated from local (to the servers) traffic generators. The table shall include at least 20 data points and loads of UDP-based queries that will cause up to 10% query loss against a randomly selected subset of servers within the applicant's DNS infrastructure. Responses must either contain zone data or be NXDOMAIN or NODATA responses to be considered valid.

Query latency shall be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing information on the transit and peering arrangements for the DNS server locations, listing the AS numbers of the transit providers or peers at each point of presence and available bandwidth at those points of presence.

TCP support -- TCP transport service for DNS queries and responses must be enabled and provisioned for expected load. ICANN will review the capacity self-certification documentation provided by the applicant and will perform TCP reachability and transaction capability tests across a

randomly selected subset of the name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Self-certification documentation shall include data on load capacity, latency and external network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries that generated a valid (zone data, NODATA, or NXDOMAIN) response against an increasing number of queries per second generated from local (to the name servers) traffic generators. The table shall include at least 20 data points and loads that will cause up to 10% query loss (either due to connection timeout or connection reset) against a randomly selected subset of servers within the applicant's DNS infrastructure.

Query latency will be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing records of TCP-based DNS queries from nodes external to the network hosting the servers. These locations may be the same as those used for measuring latency above.

DNSSEC support -- Applicant must demonstrate support for EDNS(0) in its server infrastructure, the ability to return correct DNSSEC-related resource records such as DNSKEY, RRSIG, and NSEC/NSEC3 for the signed zone, and the ability to accept and publish DS resource records from second-level domain administrators. In particular, the applicant must demonstrate its ability to support the full life cycle of KSK and ZSK keys. ICANN will review the self-certification materials as well as test the reachability, response sizes, and DNS transaction capacity for DNS queries using the EDNS(0) protocol extension with the "DNSSEC OK" bit set for a randomly selected subset of all name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Load capacity, query latency, and reachability shall be documented as for UDP and TCP above.

5.2.3 Test Elements: Registry Systems

As documented in the registry agreement, registries must provide support for EPP within their Shared Registration System, and provide Whois service both via port 43 and a web interface, in addition to support for the DNS. This section details the requirements for testing these registry systems.

System performance -- The registry system must scale to meet the performance requirements described in Specification 10 of the registry agreement and ICANN will require self-certification of compliance. ICANN will review the self-certification documentation provided by the applicant to verify adherence to these minimum requirements.

Whois support -- Applicant must provision Whois services for the anticipated load. ICANN will verify that Whois data is accessible over IPv4 and IPv6 via both TCP port 43 and via a web interface and review self-certification documentation regarding Whois transaction capacity. Response format according to Specification 4 of the registry agreement and access to Whois (both port 43 and via web) will be tested by ICANN remotely from various points on the Internet over both IPv4 and IPv6.

Self-certification documents shall describe the maximum number of queries per second successfully handled by both the port 43 servers as well as the web interface, together with an applicant-provided load expectation.

Additionally, a description of deployed control functions to detect and mitigate data mining of the Whois database shall be documented.

EPP Support -- As part of a shared registration service, applicant must provision EPP services for the anticipated load. ICANN will verify conformance to appropriate RFCs (including EPP extensions for DNSSEC). ICANN will also review self-certification documentation regarding EPP transaction capacity.

Documentation shall provide a maximum Transaction per Second rate for the EPP interface with 10 data points corresponding to registry database sizes from 0 (empty) to the expected size after one year of operation, as determined by applicant.

Documentation shall also describe measures taken to handle load during initial registry operations, such as a land-rush period.

IPv6 support -- The ability of the registry to support registrars adding, changing, and removing IPv6 DNS records supplied by registrants will be tested by ICANN. If the registry supports EPP access via IPv6, this will be tested by ICANN remotely from various points on the Internet.

DNSSEC support -- ICANN will review the ability of the registry to support registrars adding, changing, and removing DNSSEC-related resource records as well as the registry's overall key management procedures. In particular, the applicant must demonstrate its ability to support the full life cycle of key changes for child domains. Inter-operation of the applicant's secure communication channels with the IANA for trust anchor material exchange will be verified.

The practice and policy document (also known as the DNSSEC Policy Statement or DPS), describing key material storage, access and usage for its own keys is also reviewed as part of this step.

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

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

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

5.3 Delegation Process

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

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

5.4 Ongoing Operations

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

5.4.1 What is Expected of a Registry Operator

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

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

A registry operator is obligated to:

Operate the TLD in a stable and secure manner. The registry operator is responsible for the entire technical operation of the TLD. As noted in RFC 1591¹:

“The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence. This includes keeping

¹ See <http://www.rfc-editor.org/rfc/rfc1591.txt>

the central IR² (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience.”

The registry operator is required to comply with relevant technical standards in the form of RFCs and other guidelines. Additionally, the registry operator must meet performance specifications in areas such as system downtime and system response times (see Specifications 6 and 10 of the registry agreement).

Comply with consensus policies and temporary policies.

gTLD registry operators are required to comply with consensus policies. Consensus policies may relate to a range of topics such as issues affecting interoperability of the DNS, registry functional and performance specifications, database security and stability, or resolution of disputes over registration of domain names.

To be adopted as a consensus policy, a policy must be developed by the Generic Names Supporting Organization (GNSO)³ following the process in Annex A of the ICANN Bylaws.⁴ The policy development process involves deliberation and collaboration by the various stakeholder groups participating in the process, with multiple opportunities for input and comment by the public, and can take significant time.

Examples of existing consensus policies are the Inter-Registrar Transfer Policy (governing transfers of domain names between registrars), and the Registry Services Evaluation Policy (establishing a review of proposed new registry services for security and stability or competition concerns), although there are several more, as found at <http://www.icann.org/en/general/consensus-policies.htm>.

gTLD registry operators are obligated to comply with both existing consensus policies and those that are developed in the future. Once a consensus policy has been formally adopted, ICANN will provide gTLD registry operators with notice of the requirement to implement the new policy and the effective date.

² IR is a historical reference to “Internet Registry,” a function now performed by ICANN.

³ <http://gns0.icann.org>

⁴ <http://www.icann.org/en/general/bylaws.htm#AnnexA>

In addition, the ICANN Board may, when required by circumstances, establish a temporary policy necessary to maintain the stability or security of registry services or the DNS. In such a case, all gTLD registry operators will be required to comply with the temporary policy for the designated period of time.

For more information, see Specification 1 of the registry agreement.

Implement start-up rights protection measures. The registry operator must implement, at a minimum, a Sunrise period and a Trademark Claims service during the start-up phases for registration in the TLD, as provided in the registry agreement. These mechanisms will be supported by the established Trademark Clearinghouse as indicated by ICANN.

The Sunrise period allows eligible rightsholders an early opportunity to register names in the TLD.

The Trademark Claims service provides notice to potential registrants of existing trademark rights, as well as notice to rightsholders of relevant names registered. Registry operators may continue offering the Trademark Claims service after the relevant start-up phases have concluded.

For more information, see Specification 7 of the registry agreement and the Trademark Clearinghouse model accompanying this module.

Implement post-launch rights protection measures. The registry operator is required to implement decisions made under the Uniform Rapid Suspension (URS) procedure, including suspension of specific domain names within the registry. The registry operator is also required to comply with and implement decisions made according to the Trademark Post-Delegation Dispute Resolution Policy (PDDRP).

The required measures are described fully in the URS and PDDRP procedures accompanying this module. Registry operators may introduce additional rights protection measures relevant to the particular gTLD.

Implement measures for protection of country and territory names in the new gTLD. All new gTLD registry operators are required to provide certain minimum protections for country and territory names, including an initial reservation requirement and establishment of applicable rules and

procedures for release of these names. The rules for release can be developed or agreed to by governments, the GAC, and/or approved by ICANN after a community discussion. Registry operators are encouraged to implement measures for protection of geographical names in addition to those required by the agreement, according to the needs and interests of each gTLD's particular circumstances. (See Specification 5 of the registry agreement).

Pay recurring fees to ICANN. In addition to supporting expenditures made to accomplish the objectives set out in ICANN's mission statement, these funds enable the support required for new gTLDs, including: contractual compliance, registry liaison, increased registrar accreditations, and other registry support activities. The fees include both a fixed component (USD 25,000 annually) and, where the TLD exceeds a transaction volume, a variable fee based on transaction volume. See Article 6 of the registry agreement.

Regularly deposit data into escrow. This serves an important role in registrant protection and continuity for certain instances where the registry or one aspect of the registry operations experiences a system failure or loss of data. (See Specification 2 of the registry agreement.)

Deliver monthly reports in a timely manner. A registry operator must submit a report to ICANN on a monthly basis. The report includes registrar transactions for the month and is used by ICANN for calculation of registrar fees. (See Specification 3 of the registry agreement.)

Provide Whois service. A registry operator must provide a publicly available Whois service for registered domain names in the TLD. (See Specification 4 of the registry agreement.)

Maintain partnerships with ICANN-accredited registrars. A registry operator creates a Registry-Registrar Agreement (RRA) to define requirements for its registrars. This must include certain terms that are specified in the Registry Agreement, and may include additional terms specific to the TLD. A registry operator must provide non-discriminatory access to its registry services to all ICANN-accredited registrars with whom it has entered into an RRA, and who are in compliance with the requirements. This includes providing advance notice of pricing changes to all

registrars, in compliance with the time frames specified in the agreement. (See Article 2 of the registry agreement.)

Maintain an abuse point of contact. A registry operator must maintain and publish on its website a single point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller. A registry operator must also take reasonable steps to investigate and respond to any reports from law enforcement, governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. (See Article 2 and Specification 6 of the registry agreement.)

Cooperate with contractual compliance audits. To maintain a level playing field and a consistent operating environment, ICANN staff performs periodic audits to assess contractual compliance and address any resulting problems. A registry operator must provide documents and information requested by ICANN that are necessary to perform such audits. (See Article 2 of the registry agreement.)

Maintain a Continued Operations Instrument. A registry operator must, at the time of the agreement, have in place a continued operations instrument sufficient to fund basic registry operations for a period of three (3) years. This requirement remains in place for five (5) years after delegation of the TLD, after which time the registry operator is no longer required to maintain the continued operations instrument. (See Specification 8 to the registry agreement.)

Maintain community-based policies and procedures. If the registry operator designated its application as community-based at the time of the application, the registry operator has requirements in its registry agreement to maintain the community-based policies and procedures it specified in its application. The registry operator is bound by the Registry Restrictions Dispute Resolution Procedure with respect to disputes regarding execution of its community-based policies and procedures. (See Article 2 to the registry agreement.)

Have continuity and transition plans in place. This includes performing failover testing on a regular basis. In the event that a transition to a new registry operator becomes necessary, the registry operator is expected to cooperate

by consulting with ICANN on the appropriate successor, providing the data required to enable a smooth transition, and complying with the applicable registry transition procedures. (See Articles 2 and 4 of the registry agreement.)

Make TLD zone files available via a standardized process.

This includes provision of access to the registry's zone file to credentialed users, according to established access, file, and format standards. The registry operator will enter into a standardized form of agreement with zone file users and will accept credential information for users via a clearinghouse. (See Specification 4 of the registry agreement.)

Implement DNSSEC. The registry operator is required to sign the TLD zone files implementing Domain Name System Security Extensions (DNSSEC) in accordance with the relevant technical standards. The registry must accept public key material from registrars for domain names registered in the TLD, and publish a DNSSEC Policy Statement describing key material storage, access, and usage for the registry's keys. (See Specification 6 of the registry agreement.)

5.4.2 What is Expected of ICANN

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

ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations. See <http://www.icann.org/en/compliance/> for more information on current contractual compliance activities.

ICANN's Bylaws require ICANN to act in an open and transparent manner, and to provide equitable treatment among registry operators. ICANN is responsible for maintaining the security and stability of the global Internet, and looks forward to a constructive and cooperative relationship with future gTLD registry operators in furtherance of this goal.

Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

Applicant Doc Prep 1 Month

Contracting – 1 day to 9 months

Pre-Delegation Testing – 1 to 12 months

ICANN provides notice of eligibility to applicant

Applicant prepares documentation for contracting

- Includes:
- Material changes in circumstances
 - Continued Operations instrument
 - Designated contracting parties

Meet process level authorization?

Yes

No – Material change to contract requested

Applicant and ICANN negotiate and agree on contract

Board reviews changes to base agreement

Other, trigger for Board review

Board reviews application

Approve?

No

ICANN and applicant execute registry agreement

Applicant requests initiation of pre-delegation process through TAS

ICANN perform pre-delegation process

Pass?

No

Applicant remedies issues

Yes

Applicant requests initiation of the IANA delegation process through TAS

End

New gTLD Agreement

This document contains the registry agreement associated with the Applicant Guidebook for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process).

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of _____ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and _____, a _____ (“Registry Operator”).

ARTICLE 1.

DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

1.1 Domain and Designation. The Top-Level Domain to which this Agreement applies is _____ (the “TLD”). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2 Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

1.3 Representations and Warranties.

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1 Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the specification at [*see specification 6*] (“Specification 6”) and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

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

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

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

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

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

2.7 Registry Interoperability and Continuity. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6.

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

2.8 Protection of Legal Rights of Third Parties. Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [*see specification 7*]* (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9 Registrars.

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided, that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10 Pricing for Registry Services.

(a) With respect to initial domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited

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

duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations (“Renewal Pricing”). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator’s obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11 Contractual and Operational Compliance Audits.

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

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12 Continued Operations Instrument. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [*see specification 8*].

2.13 Emergency Transition. Registry Operator agrees that in the event that any of the registry functions set forth in Section 6 of Specification 10 fails for a period longer than the emergency threshold for such function set forth in Section 6 of Specification 10, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at _____) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process,

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

provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

2.14 Registry Code of Conduct. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

2.15 Cooperation with Economic Studies. If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold any internal analyses or evaluations prepared by Registry Operator with respect to such data. Any data delivered to ICANN or its designee pursuant to this Section 2.15 shall be fully aggregated and anonymized by ICANN or its designee prior to any disclosure of such data to any third party.

2.16 Registry Performance Specifications. Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 10*]*. Registry Operator shall comply with such Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17 Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

2.18 [Note: For Community-Based TLDs Only] Obligations of Registry Operator to TLD Community. Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration

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

policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [*insert applicable URL*] with respect to disputes arising pursuant to this Section 2.18.]

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1 Open and Transparent. Consistent with ICANN’s expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2 Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3 TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4 Root-zone Information Publication. ICANN’s publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

3.5 Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

ARTICLE 4.

TERM AND TERMINATION

4.1 Term. The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the “Term”).

4.2 Renewal.

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

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

(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

4.3 Termination by ICANN.

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

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

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

(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) *[Applicable to intergovernmental organizations or governmental entities only.]*
ICANN may terminate this Agreement pursuant to Section 7.14.

4.4 Termination by Registry Operator.

(a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

4.5 Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data

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

escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.

[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:

“Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN's designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator's consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.”]

4.6 Effect of Termination. Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this

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

Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

ARTICLE 5.

DISPUTE RESOLUTION

5.1 Cooperative Engagement. Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of communications by either party, must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.

5.2 Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

“Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the

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

arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless an another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.”]

5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

5.4 Specific Performance. Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

ARTICLE 6.

FEES

6.1 Registry-Level Fees. Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US\$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a “Transaction”), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period (the “Transaction Threshold”) and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator shall pay the Registry-

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

Level Fees on a quarterly basis by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

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

6.3 Variable Registry-Level Fee.

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

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

6.4 Adjustments to Fees. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be

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

adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

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

ARTICLE 7.

MISCELLANEOUS

7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

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

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

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

litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.”]

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

7.2 Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator’s sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN’s policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator’s cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [*Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.*]

7.3 Defined Terms. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

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

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

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

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

7.5 Change in Control; Assignment and Subcontracting. Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above, sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.

7.6 Amendments and Waivers.

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable

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

Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(b) If, within two (2) calendar years of the expiration of the Posting Period (the “Approval Period”), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”) and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which may be in electronic form.

(c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an “Exemption Request”). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement; provided, that any such conditions, alternatives or variations shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved

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

Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

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

(e) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (iv) an amendment to the length of the Term.

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

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

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

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

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

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

If to Registry Operator, addressed to:

[]
[]
[]

Telephone:
Facsimile:
Attention:

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

7.9 Entire Agreement. This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

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

7.10 English Language Controls. Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.11 Ownership Rights. Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

7.12 Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

7.13 Court Orders. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement.

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

7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.

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

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, “ICANN Requirements”), may conflict with or violate Applicable Law (hereinafter, a “Potential Conflict”), Registry Operator shall provide detailed notice (a “Notice”) of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In

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

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

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

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

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

* * * * *

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
[]
President and CEO
Date:

[Registry Operator]

By: _____
[]
[]
Date:

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

EXHIBIT A

Approved Services

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. Consensus Policies.

- 1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
 - 1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
 - 1.2.2. functional and performance specifications for the provision of Registry Services;
 - 1.2.3. Security and Stability of the registry database for the TLD;
 - 1.2.4. registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
 - 1.2.5. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
 - 1.2.6. restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:
 - 1.3.1. principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
 - 1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;
 - 1.3.3. reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
 - 1.3.4. maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.
- 1.4. In addition to the other limitations on Consensus Policies, they shall not:

- 1.4.1. prescribe or limit the price of Registry Services;
 - 1.4.2. modify the terms or conditions for the renewal or termination of the Registry Agreement;
 - 1.4.3. modify the limitations on Temporary Policies (defined below) or Consensus Policies;
 - 1.4.4. modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
 - 1.4.5. modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").
- 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
 - 2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
 - 2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2

DATA ESCROW REQUIREMENTS

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

PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
 - 1.1 “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday.
 - 1.2 “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).

2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
 - 2.1 Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
 - 2.2 The other six days of the week, the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.

3. **Escrow Format Specification.**
 - 3.1 **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see [1]. The aforementioned document describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. Registry Operator will use the draft version available at the time of signing the Agreement, if not already an RFC. Once the specification is published as an RFC, Registry Operator will implement that specification, no later than 180 days after. UTF-8 character encoding will be used.

 - 3.2 **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case base to represent that data. These “extension schemas” will be specified as described in [1]. Data related to the “extensions schemas” will be included in the deposit file described in section 3.1. ICANN and the respective Registry shall work together to agree on such new objects’ data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see [2]. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see [3], that are also royalty-free. The process to follow for a data file in original text format is:
- (1) The file should be compressed. The suggested algorithm for compression is ZIP as per RFC 4880.
 - (2) The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
 - (3) The file may be split as necessary if, once compressed and encrypted is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if split is not used, will be called a processed file in this section.
 - (4) A digital signature file will be generated for every processed file using the Registry's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 [2], and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
 - (5) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
 - (6) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in section 8.
5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:
- 5.1 {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
 - 5.2 {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
 - 5.3 {type} is replaced by:
 - (1) "full", if the data represents a Full Deposit;
 - (2) "diff", if the data represents a Differential Deposit;
 - (3) "thin", if the data represents a Bulk Registration Data Access file, as specified in section 3 of Specification 4;
 - 5.4 {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
 - 5.5 {rev} is replaced by the number of revision (or resend) of the file beginning with "0";
 - 5.6 {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".

6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry and ICANN will exchange keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in [1].
8. **Verification Procedure.**
- (1) The signature file of each processed file is validated.
 - (2) If processed files are pieces of a bigger file, the latter is put together.
 - (3) Each file obtained in the previous step is then decrypted and uncompressed.
 - (4) Each data file contained in the previous step is then validated against the format defined in [1].
 - (5) If [1] includes a verification process, that will be applied at this step.
If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.
9. **References.**
- [1] Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
 - [2] OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
 - [3] OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendment thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within ten business days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.
6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
- 6.1 the Registry Agreement has expired without renewal, or been terminated; or
 - 6.2 ICANN failed, with respect to (a) any Full Deposit or (b) five Differential Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; (x) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (y) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent that the Deposit has been received; or
 - 6.3 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Differential Deposits within any calendar month and (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent of verification of a remediated version of such Full Deposit or Differential Deposit; or
 - 6.4 Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
 - 6.5 Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Registry Agreement; or
 - 6.6 a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**
- 7.1 Within twenty-four hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a copy of the verification report generated for each Deposit. Reports will be delivered electronically, as specified from time to time by ICANN.
 - 7.2 If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent must notify, either by email, fax or phone, Registry Operator and ICANN of such nonconformity within twenty-four hours after receiving the non-conformant Deposit. Upon notification of such verification failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.
8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.
9. **Indemnity.** Registry Operator shall indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members, and stockholders ("Escrow Agent Indemnitees")

absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitees in connection with the Escrow Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees thereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, members, and stockholders). Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD to _____ with the following content. ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three months after the end of the month to which the reports relate.

1. Per-Registrar Transactions Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field Name	Description
01	registrar-name	registrar's full corporate name as registered with IANA
02	iana-id	http://www.iana.org/assignments/registrar-ids
03	total-domains	total domains under sponsorship
04	total-nameservers	total name servers registered for TLD
05	net-adds-1-yr	number of domains successfully registered with an initial term of one year (and not deleted within the add grace period)
06	net-adds-2-yr	number of domains successfully registered with an initial term of two years (and not deleted within the add grace period)
07	net-adds-3-yr	number of domains successfully registered with an initial term of three years (and not deleted within the add grace period)
08	net-adds-4-yr	number of domains successfully registered with an initial term of four years (and not deleted within the add grace period)
09	net-adds-5-yr	number of domains successfully registered with an initial term of five years (and not deleted within the add grace period)
10	net-adds-6-yr	number of domains successfully registered with an initial term of six years (and not deleted within the add grace period)
11	net-adds-7-yr	number of domains successfully registered with an initial term of seven years (and not deleted within the add grace period)

12	net-adds-8-yr	number of domains successfully registered with an initial term of eight years (and not deleted within the add grace period)
13	net-adds-9-yr	number of domains successfully registered with an initial term of nine years (and not deleted within the add grace period)
14	net-adds-10-yr	number of domains successfully registered with an initial term of ten years (and not deleted within the add grace period)
15	net-renews-1-yr	number of domains successfully renewed either automatically or by command with a new renewal period of one year (and not deleted within the renew grace period)
16	net-renews-2-yr	number of domains successfully renewed either automatically or by command with a new renewal period of two years (and not deleted within the renew grace period)
17	net-renews-3-yr	number of domains successfully renewed either automatically or by command with a new renewal period of three years (and not deleted within the renew grace period)
18	net-renews-4-yr	number of domains successfully renewed either automatically or by command with a new renewal period of four years (and not deleted within the renew grace period)
19	net-renews-5-yr	number of domains successfully renewed either automatically or by command with a new renewal period of five years (and not deleted within the renew grace period)
20	net-renews-6-yr	number of domains successfully renewed either automatically or by command with a new renewal period of six years (and not deleted within the renew grace period)
21	net-renews-7-yr	number of domains successfully renewed either automatically or by command with a new renewal period of seven years (and not deleted within the renew grace period)
22	net-renews-8-yr	number of domains successfully renewed either automatically or by command with a new renewal period of eight years (and not deleted within the renew grace period)
23	net-renews-9-yr	number of domains successfully renewed either

		automatically or by command with a new renewal period of nine years (and not deleted within the renew grace period)
24	net-renews-10-yr	number of domains successfully renewed either automatically or by command with a new renewal period of ten years (and not deleted within the renew grace period)
25	transfer-gaining-successful	transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically
26	transfer-gaining-nacked	transfers initiated by this registrar that were n'acked by the other registrar
27	transfer-losing-successful	transfers initiated by another registrar that this registrar ack'd – either by command or automatically
28	transfer-losing-nacked	transfers initiated by another registrar that this registrar n'acked
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed
30	transfer-disputed-lost	number of transfer disputes this registrar lost
31	transfer-disputed-noddecision	number of transfer disputes involving this registrar with a split or no decision
32	deleted-domains-grace	domains deleted within the add grace period
33	deleted-domains-nograce	domains deleted outside the add grace period
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2. Registry Functions Activity Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-activity-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars at the end of the reporting period
02	ramp-up-registrars	number of registrars that have received a password for access to OT&E at the end of the reporting period
03	pre-ramp-up-registrars	number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period
04	zfa-passwords	number of active zone file access passwords at the end of the reporting period
05	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
06	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
07	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
08	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
09	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
10	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
11	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
12	srs-dom-check	number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period
13	srs-dom-create	number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period
14	srs-dom-delete	number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period
15	srs-dom-info	number of SRS (EPP and any other interface) domain name “info” requests responded during the reporting period
16	srs-dom-renew	number of SRS (EPP and any other interface) domain name

		“renew” requests responded during the reporting period
17	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP “restore” requests responded during the reporting period
18	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP “restore” requests delivering a restore report responded during the reporting period
19	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name “transfer” requests to approve transfers responded during the reporting period
20	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name “transfer” requests to cancel transfers responded during the reporting period
21	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name “transfer” requests to query about a transfer responded during the reporting period
22	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name “transfer” requests to reject transfers responded during the reporting period
23	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name “transfer” requests to request transfers responded during the reporting period
24	srs-dom-update	number of SRS (EPP and any other interface) domain name “update” requests (not including RGP restore requests) responded during the reporting period
25	srs-host-check	number of SRS (EPP and any other interface) host “check” requests responded during the reporting period
26	srs-host-create	number of SRS (EPP and any other interface) host “create” requests responded during the reporting period
27	srs-host-delete	number of SRS (EPP and any other interface) host “delete” requests responded during the reporting period
28	srs-host-info	number of SRS (EPP and any other interface) host “info” requests responded during the reporting period
29	srs-host-update	number of SRS (EPP and any other interface) host “update” requests responded during the reporting period
30	srs-cont-check	number of SRS (EPP and any other interface) contact “check” requests responded during the reporting period
31	srs-cont-create	number of SRS (EPP and any other interface) contact “create” requests responded during the reporting period

32	srs-cont-delete	number of SRS (EPP and any other interface) contact “delete” requests responded during the reporting period
33	srs-cont-info	number of SRS (EPP and any other interface) contact “info” requests responded during the reporting period
34	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact “transfer” requests to approve transfers responded during the reporting period
35	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact “transfer” requests to cancel transfers responded during the reporting period
36	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact “transfer” requests to query about a transfer responded during the reporting period
37	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact “transfer” requests to reject transfers responded during the reporting period
38	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact “transfer” requests to request transfers responded during the reporting period
39	srs-cont-update	number of SRS (EPP and any other interface) contact “update” requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

SPECIFICATION 4

SPECIFICATION FOR REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services.** Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

1.4. Domain Name Data:

1.4.1. **Query format:** whois EXAMPLE.TLD

1.4.2. **Response format:**

Domain Name: EXAMPLE.TLD
 Domain ID: D1234567-TLD
 WHOIS Server: whois.example.tld
 Referral URL: http://www.example.tld
 Updated Date: 2009-05-29T20:13:00Z
 Creation Date: 2000-10-08T00:45:00Z
 Registry Expiry Date: 2010-10-08T00:44:59Z
 Sponsoring Registrar: EXAMPLE REGISTRAR LLC
 Sponsoring Registrar IANA ID: 5555555
 Domain Status: clientDeleteProhibited
 Domain Status: clientRenewProhibited
 Domain Status: clientTransferProhibited
 Domain Status: serverUpdateProhibited
 Registrant ID: 5372808-ERL
 Registrant Name: EXAMPLE REGISTRANT
 Registrant Organization: EXAMPLE ORGANIZATION
 Registrant Street: 123 EXAMPLE STREET
 Registrant City: ANYTOWN
 Registrant State/Province: AP
 Registrant Postal Code: A1A1A1
 Registrant Country: EX

Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET
Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234
Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Name Server: NS01.EXAMPLEREGISTRAR.TLD
Name Server: NS02.EXAMPLEREGISTRAR.TLD
DNSSEC: signedDelegation
DNSSEC: unsigned
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.5. Registrar Data:

1.5.1. **Query format:** whois "registrar Example Registrar, Inc."

1.5.2. **Response format:**

Registrar Name: Example Registrar, Inc.
Street: 1234 Admiralty Way
City: Marina del Rey
State/Province: CA
Postal Code: 90292
Country: US
Phone Number: +1.3105551212
Fax Number: +1.3105551213

Email: registrar@example.tld
 WHOIS Server: whois.example-registrar.tld
 Referral URL: http://www.example-registrar.tld
 Admin Contact: Joe Registrar
 Phone Number: +1.3105551213
 Fax Number: +1.3105551213
 Email: joeregistrar@example-registrar.tld
 Admin Contact: Jane Registrar
 Phone Number: +1.3105551214
 Fax Number: +1.3105551213
 Email: janeregistrar@example-registrar.tld
 Technical Contact: John Geek
 Phone Number: +1.3105551215
 Fax Number: +1.3105551216
 Email: johngeek@example-registrar.tld
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.6. Nameserver Data:

1.6.1. **Query format:** whois "NS1.EXAMPLE.TLD" or whois "nameserver (IP Address)"

1.6.2. **Response format:**

Server Name: NS1.EXAMPLE.TLD
 IP Address: 192.0.2.123
 IP Address: 2001:0DB8::1
 Registrar: Example Registrar, Inc.
 WHOIS Server: whois.example-registrar.tld
 Referral URL: http://www.example-registrar.tld
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.8. **Searchability.** Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.8.1. Registry Operator will offer searchability on the web-based Directory Service.

1.8.2. Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.8.3. Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.8.4. Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.8.5. Search results will include domain names matching the search criteria.

1.8.6. Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

2. Zone File Access

2.1. Third-Party Access

2.1.1. **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user that will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider (the “CZDA Provider”). Registry Operator will provide access to zone file data per Section 2.1.3 and do so using the file format described in Section 2.1.4. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5.

2.1.2. **Credentialing Requirements.** Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address, and the Internet host machine name and IP address.

2.1.3. **Grant of Access.** Each Registry Operator will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry’s zone data archives. Registry Operator will grant the user a non-exclusive, non-transferable, limited right to access Registry Operator’s Zone File FTP server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using FTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4. **File Format Standard.** Registry Operator will provide zone files using a sub-format of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.
4. Use of /X and /DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.
16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5. **Use of Data by User.** Registry Operator will permit user to use the zone file for lawful purposes; provided that, (a) user takes all reasonable steps to protect against unauthorized access to and use and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.

2.1.6. **Term of Use.** Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

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

2.2 Co-operation

2.2.1. **Assistance.** Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

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

2.4 Emergency Operator Access. Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

3. Bulk Registration Data Access to ICANN

3.1. Periodic Access to Thin Registration Data. In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

3.1.1. Contents. Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), registrar id (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar repository object id (roid), hostname of registrar Whois server, and URL of registrar.

3.1.2. Format. The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

3.1.3. Access. Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

3.2. Exceptional Access to Thick Registration Data. In case of a registrar failure, de-accreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data within 2 business days. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1. of this Specification.

SPECIFICATION 5

SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES

Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve (i.e., Registry Operator shall not register, delegate, use or otherwise make available such labels to any third party, but may register such labels in its own name in order to withhold them from delegation or use) names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

1. **Example. The label “EXAMPLE”** shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations.
2. **Two-character labels.** All two-character labels shall be initially reserved. The reservation of a two-character label string may be released to the extent that Registry Operator reaches agreement with the government and country-code manager. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.
3. **Tagged Domain Names.** Labels may only include hyphens in the third and fourth position if they represent valid internationalized domain names in their ASCII encoding (for example "xn--ndk061n").
4. **Second-Level Reservations for Registry Operations.** The following names are reserved for use in connection with the operation of the registry for the TLD. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the TLD they shall be transferred as specified by ICANN: NIC, WWW, IRIS and WHOIS.
5. **Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:
 - 5.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union
<http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU>;
 - 5.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
 - 5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names may be released to the extent that Registry Operator reaches agreement with the applicable government(s), provided, further, that

Registry Operator may also propose release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN.

SPECIFICATION 6

REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

1. Standards Compliance

1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 4343, and 5966.

1.2. **EPP.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732, 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

1.3. **DNSSEC.** Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in “DPS-framework” (currently in draft format, see <http://tools.ietf.org/html/draft-ietf-dnsop-dnssec-dps-framework>) within 180 days after the “DPS-framework” becomes an RFC.

1.4. **IDN.** If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

1.5. **IPv6.** Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry’s name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow “DNS IPv6 Transport Operational Guidelines” as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g. Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

2. Registry Services

2.1. **Registry Services.** “Registry Services” are, for purposes of the Registry Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. **Wildcard Prohibition.** For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

3. Registry Continuity

3.1. **High Availability.** Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

3.2. **Extraordinary Event.** Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within 24 hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of 48 hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity.** Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

4. Abuse Mitigation

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

4.2. **Malicious Use of Orphan Glue Records.** Registry Operators shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

5. Supported Initial and Renewal Registration Periods

5.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

5.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to any rights protection mechanisms (“RPMs”) that may be mandated from time to time by ICANN. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all ICANN mandated and independently developed RPMs in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements established by ICANN each of the mandatory RPMs set forth in the Trademark Clearinghouse (posted at [url to be inserted when final Trademark Clearinghouse is adopted]), which may be revised by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

- a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and
- b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section [] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6th) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in Section [] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld). The Continued Operations Instrument shall expressly state that ICANN may access the financial resources of the Continued Operations Instrument pursuant to Section 2.13 or Section 4.5 [*insert for government entity*: or Section 7.14] of the Registry Agreement.
2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an “Alternative Instrument”). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.
3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an alternative

instrument that (i) provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operation replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

SPECIFICATION 9

Registry Operator Code of Conduct

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”), to:
 - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
 - b. register domain names in its own right, except for names registered through an ICANN accredited registrar that are reasonably necessary for the management, operations and purpose of the TLD, provided, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Registry Agreement;
 - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running");
 - d. allow any Affiliated registrar to disclose user data to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions; or
 - e. disclose confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.
2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.
3. Registry Operator will conduct internal reviews at least once per calendar year to

ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.

4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1. Definitions

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime (≈ 98%)
	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

3. DNS

- 3.1. **DNS service availability.** Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from “**DNS tests**” to each of their public-DNS registered “**IP addresses**” to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.
- 3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “**DNS tests**” to a name server “**IP address**” during a given time, the name server “**IP address**” will be considered unavailable.
- 3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.4. **TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.5. **DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.
- 3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.
- 3.7. **DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding **SLR**, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.
- 3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP “**DNS test**” to each of the public-DNS registered “**IP addresses**” of the name servers of the domain

name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

- 3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.
- 3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.
- 3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

4. **RDDS**

- 4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.
- 4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based-WHOIS query RTT**”.
- 4.5. **RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.
- 4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.
- 4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is

undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

5. EPP

5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.

5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

- 5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one “IP address“ of the EPP servers of the TLD being monitored and make an “EPP test”; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an “EPP test” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.
- 5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.
- 5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. Emergency Thresholds

The following matrix presents the Emergency Thresholds that, if reached by any of the services mentioned above for a TLD, would cause the Emergency Transition of the Critical Functions as specified in Section 2.13. of this Agreement.

Critical Function	Emergency Threshold
DNS service (all servers)	4-hour downtime / week
DNSSEC proper resolution	4-hour downtime / week
EPP	24-hour downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour downtime / week
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.

7. Emergency Escalation

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6, ICANN’s emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator’s emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the

commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

7.2. Emergency Escalation initiated by Registrars

Registry Operator will maintain an emergency operations departments prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the Registry because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an Emergency Escalation to the emergency operations department of ICANN. ICANN then may initiate an Emergency Escalation with the Registry Operator as explained above.

7.3. Notifications of Outages and Maintenance

In the event that a Registry Operator plans maintenance, they will provide related notice to the ICANN emergency operations department, at least, 24 hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per their contractual obligations with ICANN, on services under SLA and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend Emergency Escalation services for the monitored services involved.

8. Covenants of Performance Measurement

- 8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for DNS and RDDS) or registrars (for EPP).
- 8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

TRADEMARK CLEARINGHOUSE
4 JUNE 2012

1. PURPOSE OF CLEARINGHOUSE

- 1.1 The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated, pertaining to the rights of trademark holders. ICANN will enter into an arms-length contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks.
- 1.2 The Clearinghouse will be required to separate its two primary functions: (i) authentication and validation of the trademarks in the Clearinghouse; and (ii) serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services. Whether the same provider could serve both functions or whether two providers will be determined in the tender process.
- 1.3 The Registry shall only need to connect with one centralized database to obtain the information it needs to conduct its Sunrise or Trademark Claims Services regardless of the details of the Trademark Clearinghouse Service Provider's contract(s) with ICANN.
- 1.4 Trademark Clearinghouse Service Provider may provide ancillary services, as long as those services and any data used for those services are kept separate from the Clearinghouse database.
- 1.5 The Clearinghouse database will be a repository of authenticated information and disseminator of the information to a limited number of recipients. Its functions will be performed in accordance with a limited charter, and will not have any discretionary powers other than what will be set out in the charter with respect to authentication and validation. The Clearinghouse administrator(s) cannot create policy. Before material changes are made to the Clearinghouse functions, they will be reviewed through the ICANN public participation model.
- 1.6 Inclusion in the Clearinghouse is not proof of any right, nor does it create any legal rights. Failure to submit trademarks into the Clearinghouse should not be perceived to be lack of vigilance by trademark holders or a waiver of any rights, nor can any negative influence be drawn from such failure.

2. SERVICE PROVIDERS

- 2.1 The selection of Trademark Clearinghouse Service Provider(s) will be subject to predetermined criteria, but the foremost considerations will be the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability

and security without interference with the integrity or timeliness of the registration process or registry operations.

2.2 Functions – Authentication/Validation; Database Administration. Public commentary has suggested that the best way to protect the integrity of the data and to avoid concerns that arise through sole-source providers would be to separate the functions of database administration and data authentication/validation.

2.2.1 One entity will authenticate registrations ensuring the word marks qualify as registered or are court-validated word marks or word marks that are protected by statute or treaty. This entity would also be asked to ensure that proof of use of marks is provided, which can be demonstrated by furnishing a signed declaration and one specimen of current use.

2.2.2 The second entity will maintain the database and provide Sunrise and Trademark Claims Services (described below).

2.3 Discretion will be used, balancing effectiveness, security and other important factors, to determine whether ICANN will contract with one or two entities - one to authenticate and validate, and the other to, administer in order to preserve integrity of the data.

2.4 Contractual Relationship.

2.4.1 The Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services. ICANN may coordinate or specify interfaces used by registries and registrars, and provide some oversight or quality assurance function to ensure rights protection goals are appropriately met.

2.4.2 The Trademark Clearinghouse Service Provider(s) (authenticator/validator and administrator) will be selected through an open and transparent process to ensure low costs and reliable, consistent service for all those utilizing the Clearinghouse services.

2.4.3 The Service Provider(s) providing the authentication of the trademarks submitted into the Clearinghouse shall adhere to rigorous standards and requirements that would be specified in an ICANN contractual agreement.

2.4.4 The contract shall include service level requirements, customer service availability (with the goal of seven days per week, 24 hours per day, 365 days per year), data escrow requirements, and equal access requirements for all persons and entities required to access the Trademark Clearinghouse database.

- 2.4.5 To the extent practicable, the contract should also include indemnification by Service Provider for errors such as false positives for participants such as Registries, ICANN, Registrants and Registrars.
- 2.5. Service Provider Requirements. The Clearinghouse Service Provider(s) should utilize regional marks authentication service providers (whether directly or through sub-contractors) to take advantage of local experts who understand the nuances of the trademark in question. Examples of specific performance criteria details in the contract award criteria and service-level-agreements are:
 - 2.5.1 provide 24 hour accessibility seven days a week (database administrator);
 - 2.5.2 employ systems that are technically reliable and secure (database administrator);
 - 2.5.3 use globally accessible and scalable systems so that multiple marks from multiple sources in multiple languages can be accommodated and sufficiently cataloged (database administrator and validator);
 - 2.5.4 accept submissions from all over the world - the entry point for trademark holders to submit their data into the Clearinghouse database could be regional entities or one entity;
 - 2.5.5 allow for multiple languages, with exact implementation details to be determined;
 - 2.5.6 provide access to the Registrants to verify and research Trademark Claims Notices;
 - 2.5.7 have the relevant experience in database administration, validation or authentication, as well as accessibility to and knowledge of the various relevant trademark laws (database administrator and authenticator); and
 - 2.5.8 ensure through performance requirements, including those involving interface with registries and registrars, that neither domain name registration timeliness, nor registry or registrar operations will be hindered (database administrator).

3. CRITERIA FOR TRADEMARK INCLUSION IN CLEARINGHOUSE

- 3.1 The trademark holder will submit to one entity – a single entity for entry will facilitate access to the entire Clearinghouse database. If regional entry points are used, ICANN will publish an information page describing how to locate regional submission points. Regardless of the entry point into the Clearinghouse, the authentication procedures established will be uniform.
- 3.2 The standards for inclusion in the Clearinghouse are:
 - 3.2.1 Nationally or regionally registered word marks from all jurisdictions.
 - 3.2.2 Any word mark that has been validated through a court of law or other judicial proceeding.

- 3.2.3 Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.
 - 3.2.4 Other marks that constitute intellectual property.
 - 3.2.5 Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.
- 3.3 The type of data supporting entry of a registered word mark into the Clearinghouse must include a copy of the registration or the relevant ownership information, including the requisite registration number(s), the jurisdictions where the registrations have issued, and the name of the owner of record.
- 3.4 Data supporting entry of a judicially validated word mark into the Clearinghouse must include the court documents, properly entered by the court, evidencing the validation of a given word mark.
- 3.5 Data supporting entry into the Clearinghouse of word marks protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.
- 3.6 Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any given registry operator chooses to provide.
- 3.7 Registrations that include top level extensions such as “icann.org” or “.icann” as the word mark will not be permitted in the Clearinghouse regardless of whether that mark has been registered or it has been otherwise validated or protected (e.g., if a mark existed for icann.org or .icann, neither will not be permitted in the Clearinghouse).
- 3.8 All mark holders seeking to have their marks included in the Clearinghouse will be required to submit a declaration, affidavit, or other sworn statement that the information provided is true and current and has not been supplied for an improper purpose. The mark holder will also be required to attest that it will keep the information supplied to the Clearinghouse current so that if, during the time the mark is included in the Clearinghouse, a registration gets cancelled or is transferred to another entity, or in the case of a court- or Clearinghouse-validated mark the holder abandons use of the mark, the mark holder has an affirmative obligation to notify the Clearinghouse. There will be penalties for failing to keep information current. Moreover, it is anticipated that there will be a process whereby registrations can be

removed from the Clearinghouse if it is discovered that the marks are procured by fraud or if the data is inaccurate.

- 3.9 As an additional safeguard, the data will have to be renewed periodically by any mark holder wishing to remain in the Clearinghouse. Electronic submission should facilitate this process and minimize the cost associated with it. The reason for periodic authentication is to streamline the efficiencies of the Clearinghouse and the information the registry operators will need to process and limit the marks at issue to the ones that are in use.

4. USE OF CLEARINGHOUSE DATA

- 4.1 All mark holders seeking to have their marks included in the Clearinghouse will have to consent to the use of their information by the Clearinghouse. However, such consent would extend only to use in connection with the stated purpose of the Trademark Clearinghouse Database for Sunrise or Trademark Claims services. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways without permission. There shall be no bar on the Trademark Clearinghouse Service Provider or other third party service providers providing ancillary services on a non-exclusive basis.
- 4.2 In order not to create a competitive advantage, the data in the Trademark Clearinghouse should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms if the mark holders agree. Accordingly, two licensing options will be offered to the mark holder: (a) a license to use its data for all required features of the Trademark Clearinghouse, with no permitted use of such data for ancillary services either by the Trademark Clearinghouse Service Provider or any other entity; or (b) license to use its data for the mandatory features of the Trademark Clearinghouse and for any ancillary uses reasonably related to the protection of marks in new gTLDs, which would include a license to allow the Clearinghouse to license the use and data in the Trademark Clearinghouse to competitors that also provide those ancillary services. The specific implementation details will be determined, and all terms and conditions related to the provision of such services shall be included in the Trademark Clearinghouse Service Provider's contract with ICANN and subject to ICANN review.
- 4.3 Access by a prospective registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant. Misuse of the data by the service providers would be grounds for immediate termination.

5. DATA AUTHENTICATION AND VALIDATION GUIDELINES

- 5.1 One core function for inclusion in the Clearinghouse would be to authenticate that the data meets certain minimum criteria. As such, the following minimum criteria are suggested:
- 5.1.1 An acceptable list of data authentication sources, i.e. the web sites of patent and trademark offices throughout the world, third party providers who can obtain information from various trademark offices;
 - 5.1.2 Name, address and contact information of the applicant is accurate, current and matches that of the registered owner of the trademarks listed;
 - 5.1.3 Electronic contact information is provided and accurate;
 - 5.1.4 The registration numbers and countries match the information in the respective trademark office database for that registration number.
- 5.2 For validation of marks by the Clearinghouse that were not protected via a court, statute or treaty, the mark holder shall be required to provide evidence of use of the mark in connection with the bona fide offering for sale of goods or services prior to application for inclusion in the Clearinghouse. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use.

6. MANDATORY RIGHTS PROTECTION MECHANISMS

All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch or initial launch period rights protection mechanisms (RPMs). These RPMs, at a minimum, must consist of a Trademark Claims service and a Sunrise process.

- 6.1 Trademark Claims service
- 6.1.1 New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that registration is open for general registration.
 - 6.1.2 A Trademark Claims service is intended to provide clear notice to the prospective registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants (Trademark Claims Notice). A form that describes the required elements is attached. The specific statement by

prospective registrant warrants that: (i) the prospective registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

- 6.1.3 The Trademark Claims Notice should provide the prospective registrant access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder. These links (or other sources) shall be provided in real time without cost to the prospective registrant. Preferably, the Trademark Claims Notice should be provided in the language used for the rest of the interaction with the registrar or registry, but it is anticipated that at the very least in the most appropriate UN-sponsored language (as specified by the prospective registrant or registrar/registry).
- 6.1.4 If the domain name is registered in the Clearinghouse, the registrar (again through an interface with the Clearinghouse) will promptly notify the mark holders(s) of the registration after it is effectuated.
- 6.1.5 The Trademark Clearinghouse Database will be structured to report to registries when registrants are attempting to register a domain name that is considered an "Identical Match" with the mark in the Clearinghouse. "Identical Match" means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no "marks contained" would qualify for inclusion.

6.2 Sunrise service

- 6.2.1 Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match to the name to be registered during Sunrise.
- 6.2.2 Sunrise Registration Process. For a Sunrise service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and

incorporate a Sunrise Dispute Resolution Policy (SDRP).

- 6.2.3 The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section 7.2 below), (ii) optional registry elected requirements re: international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.
- 6.2.4 The proposed SDRP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.
- 6.2.5 The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

7. PROTECTION FOR MARKS IN CLEARINGHOUSE

The scope of registered marks that must be honored by registries in providing Trademarks Claims services is broader than those that must be honored by registries in Sunrise services.

- 7.1 For Trademark Claims services - Registries must recognize and honor all word marks that have been or are: (i) nationally or regionally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion. No demonstration of use is required.
- 7.2 For Sunrise services - Registries must recognize and honor all word marks: (i) nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

8. COSTS OF CLEARINGHOUSE

Costs should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.

TRADEMARK NOTICE

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below.

Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country. [in bold italics or all caps]

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration.

If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below. The following [number] Trademarks are listed in the Trademark Clearinghouse:

1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

[with links to the TM registrations as listed in the TM Clearinghouse]

2. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant:

Trademark Registrant Contact:

***** [with links to the TM registrations as listed in the TM Clearinghouse]

X. 1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

**UNIFORM RAPID SUSPENSION SYSTEM (“URS”)
4 JUNE 2012**

DRAFT PROCEDURE

1. Complaint

1.1 Filing the Complaint

- a) Proceedings are initiated by electronically filing with a URS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.
- b) Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees will be non-refundable.
- c) One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related. There will not be a minimum number of domain names imposed as a prerequisite to filing.

1.2 Contents of the Complaint

The form of the Complaint will be simple and as formulaic as possible. There will be a Form Complaint. The Form Complaint shall include space for the following:

- 1.2.1 Name, email address and other contact information for the Complaining Party (Parties).
- 1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.
- 1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).
- 1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.
- 1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.
- 1.2.6 A statement of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

- a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce - was submitted to, and validated by, the Trademark Clearinghouse)
- b. Proof of use may also be submitted directly with the URS Complaint.

and

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

- a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or
- b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
- c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

1.2.7 A box in which the Complainant may submit up to 500 words of explanatory free form text.

1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

2. Fees

2.1 URS Provider will charge fees to the Complainant. Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider.

2.2 Complaints listing fifteen (15) or more disputed domain names registered by the same registrant will be subject to a Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

3. Administrative Review

3.1 Complaints will be subjected to an initial administrative review by the URS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a *prima facie* case has been established.

3.2 The Administrative Review shall be conducted within two (2) business days of submission of the Complaint to the URS Provider.

3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.

3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

4. Notice and Locking of Domain

4.1 Upon completion of the Administrative Review, the URS Provider must immediately notify the registry operator (via email) ("Notice of Complaint") after the Complaint has been deemed compliant with the filing requirements. Within 24 hours of receipt of the Notice of Complaint from the URS Provider, the registry operator shall "lock" the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The registry operator will notify the URS Provider immediately upon locking the domain name ("Notice of Lock").

4.2 Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint, sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the potential

effects if the Registrant fails to respond and defend against the Complaint. Notices must be clear and understandable to Registrants located globally. The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the registrant's country or territory.

- 4.3 All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.
- 4.4 The URS Provider shall also electronically notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.

5. The Response

- 5.1 A Registrant will have 14 calendar days from the date the URS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the URS Provider. Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.
- 5.2 No filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) days following a Determination. For Responses filed more than thirty (30) days after a Determination, the Registrant should pay a reasonable non-refundable fee for re-examination, plus a Response Fee as set forth in section 2.2 above if the Complaint lists twenty-six (26) or more disputed domain names against the same registrant. The Response Fee will be refundable to the prevailing party.
- 5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the URS Provider if there is a good faith basis for doing so. In no event shall the extension be for more than seven (7) calendar days.
- 5.4 The Response shall be no longer than 2,500 words, excluding attachments, and the content of the Response should include the following:
 - 5.4.1 Confirmation of Registrant data.
 - 5.4.2 Specific admission or denial of each of the grounds upon which the Complaint is based.
 - 5.4.3 Any defense which contradicts the Complainant's claims.
 - 5.4.4 A statement that the contents are true and accurate.
- 5.5 In keeping with the intended expedited nature of the URS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.
- 5.6 Once the Response is filed, and the URS Provider determines that the Response is compliant with the filing requirements of a Response (which shall be on the same day),

the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the URS Provider, for review and Determination. All materials submitted are considered by the Examiner.

- 5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:
- 5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
 - 5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or
 - 5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

- 5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:
- 5.8.1 The domain name is generic or descriptive and the Registrant is making fair use of it.
 - 5.8.2 The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.
 - 5.8.3 Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.
 - 5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.
- 5.9 Other factors for the Examiner to consider:
- 5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner must review each case on its merits.
 - 5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS.

Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

5.9.2.1. the nature of the domain name;

5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and

5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility.

6. Default

- 6.1 If at the expiration of the 14-day answer period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.
- 6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.
- 6.3 All Default cases proceed to Examination for review on the merits of the claim.
- 6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.
- 6.5 If a Response is filed after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.
- 6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the Registry Operator to unlock the name and return full control of the domain name registration to the Registrant.

7. Examiners

- 7.1 One Examiner selected by the Provider will preside over a URS proceeding.
- 7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in URS proceedings. Specifically, Examiners shall be provided with instructions on the URS elements and defenses and how to conduct the examination of a URS proceeding.

- 7.3 Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid “forum or examiner shopping.” URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, non-performance, or malfeasance) to be determined on a case by case analysis.

8. Examination Standards and Burden of Proof

- 8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:
- 8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed; and
- 8.1.2.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.
- 8.1.2.2 Proof of use may also be submitted directly with the URS Complaint.
- 8.1.2 The Registrant has no legitimate right or interest to the domain name; and
- 8.1.3 The domain was registered and is being used in a bad faith.
- 8.2 The burden of proof shall be clear and convincing evidence.
- 8.3 For a URS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS).
- 8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark.
- 8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the URS proceeding will be terminated without prejudice, e.g., a UDRP, court proceeding or

another URS may be filed. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.

- 8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP.

9. Determination

- 9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.
- 9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider's website. However, there should be no other preclusive effect of the Determination other than the URS proceeding to which it is rendered.
- 9.3 If the Complainant does not satisfy the burden of proof, the URS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.
- 9.4 Determinations resulting from URS proceedings will be published by the service provider in a format specified by ICANN.
- 9.5 Determinations shall also be emailed by the URS Provider to the Registrant, the Complainant, the Registrar, and the Registry Operator, and shall specify the remedy and required actions of the registry operator to comply with the Determination.
- 9.6 To conduct URS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a fourteen (14) day Response period (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) business days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than five (5) days after the Response is filed. Implementation details will be developed to accommodate the needs of service providers once they are selected. (The tender offer for potential service providers will indicate that timeliness will be a factor in the award decision.)

10. Remedy

- 10.1 If the Determination is in favor of the Complainant, the decision shall be immediately transmitted to the registry operator.

- 10.2 Immediately upon receipt of the Determination, the registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The URS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the Whois shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.
- 10.3 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.
- 10.4 No other remedies should be available in the event of a Determination in favor of the Complainant.

11. Abusive Complaints

- 11.1 The URS shall incorporate penalties for abuse of the process by trademark holders.
- 11.2 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) “deliberate material falsehood,” that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.
- 11.3 A Complaint may be deemed abusive if the Examiner determines:
 - 11.3.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
 - 11.3.2 (i) the claims or other assertions were not warranted by any existing law or the URS standards; or (ii) the factual contentions lacked any evidentiary support
- 11.4 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.
- 11.5 Two findings of “deliberate material falsehood” shall permanently bar the party from utilizing the URS.
- 11.6 URS Providers shall be required to develop a process for identifying and tracking barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.

- 11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.
- 11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

12. Appeal

- 12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.
- 12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.
- 12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor of the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.
- 12.4 An appeal must be filed within 14 days after a Determination is issued and any Response must be filed 14 days after an appeal is filed.
- 12.5 If a respondent has sought relief from Default by filing a Response within six months (or the extended period if applicable) of issuance of initial Determination, an appeal must be filed within 14 days from date the second Determination is issued and any Response must be filed 14 days after the appeal is filed.
- 12.6 Notice of appeal and findings by the appeal panel shall be sent by the URS Provider via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator.
- 12.7 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

13. Other Available Remedies

The URS Determination shall not preclude any other remedies available to the appellant, such as UDRP (if appellant is the Complainant), or other remedies as may be available in a court of competition jurisdiction. A URS Determination for or against a party shall not prejudice the

party in UDRP or any other proceedings.

14. Review of URS

A review of the URS procedure will be initiated one year after the first Examiner Determination is issued. Upon completion of the review, a report shall be published regarding the usage of the procedure, including statistical information, and posted for public comment on the usefulness and effectiveness of the procedure.

TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the trademark holder and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover Trademark post-delegation dispute resolution proceedings generally. To the extent more than one Trademark PDDRP provider ("Provider") is selected to implement the Trademark PDDRP, each Provider may have additional rules that must be followed when filing a Complaint. The following are general procedures to be followed by all Providers.

2.2 In the Registry Agreement, the registry operator agrees to participate in all post-delegation procedures and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be submitted electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a trademark holder (which may include either registered or unregistered marks as defined below) claiming that one or more of its marks have been infringed, and thereby the Complainant has been harmed, by the registry operator’s manner of operation or use of the gTLD.
- 5.2 Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial “threshold” review (“Threshold Review Panel”).

6. Standards

For purposes of these standards, “registry operator” shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

6.1 Top Level:

A complainant must assert and prove, by clear and convincing evidence, that the registry operator’s affirmative conduct in its operation or use of its gTLD string that is identical or confusingly similar to the complainant’s mark, causes or materially contributes to the gTLD doing one of the following:

(a) taking unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(b) impairing the distinctive character or the reputation of the complainant's mark; or

(c) creating a likelihood of confusion with the complainant's mark.

An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark.

6.2 Second Level

Complainants are required to prove, by clear and convincing evidence that, through the registry operator’s affirmative conduct:

(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and

(b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which:

(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(ii) impairs the distinctive character or the reputation of the complainant's mark, or

(iii) creates a likelihood of confusion with the complainant's mark.

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such as enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

7. Complaint

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

7.2 Content:

7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, and any relevant evidence, which shall include:
- (a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.
 - (b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
 - (c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.
 - (d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) its willingness to meet to resolve the issue.
 - (e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.
 - (f) Copies of any documents that the Complainant considers to evidence its basis for relief, including evidence of current use of the Trademark at issue in the Complaint and domain name registrations.
 - (g) A statement that the proceedings are not being brought for any improper purpose.
 - (h) A statement describing how the registration at issue has harmed the trademark owner.
- 7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.
- 7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

8. Administrative Review of the Complaint

- 8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.
- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

9. Threshold Review

- 9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and the Complaint has been deemed compliant with procedural rules.
- 9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:
 - 9.2.1 The Complainant is a holder of a word mark that: (i) is nationally or regionally registered and that is in current use; or (ii) has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty at the time the PDDRP complaint is filed;
 - 9.2.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse
 - 9.2.1.2 Proof of use may also be submitted directly with the Complaint.
 - 9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;
 - 9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein
OR

The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

- 9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and its willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.
- 9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.
- 9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.
- 9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.
- 9.6 Provider shall electronically serve the Threshold Determination on all parties.
- 9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.
- 9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider will commence the proceedings on the merits.

10. Response to the Complaint

- 10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.
- 10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.
- 10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

- 10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.
- 10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

11. Reply

- 11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

12. Default

- 12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.
- 12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.
- 12.4 All Default cases shall proceed to Expert Determination on the merits.

13. Expert Panel

- 13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 13.2 The Provider shall appoint a one-person Expert Panel, unless any party requests a three- member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.
- 13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Providers rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.

- 13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

14. Costs

- 14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.
- 14.2 The Complainant shall be required to pay the filing fee as set forth above in the “Complaint” section, and shall be required to submit the full amount of the Provider estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant’s share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator’s share if the registry operator prevails.
- 14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

15. Discovery

- 15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel’s own accord, or upon request from the Parties.
- 15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.
- 15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

16. Hearings

- 16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

- 16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.
- 16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.
- 16.4 All dispute resolution proceedings will be conducted in English.

17. Burden of Proof

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

18. Remedies

- 18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.
- 18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:
- 18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:
- (a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or
 - (b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;
- 18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

- 18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.
- 18.5 The Expert Panel may also determine whether the Complaint was filed “without merit,” and, if so, award the appropriate sanctions on a graduated scale, including:
 - 18.5.1 Temporary bans from filing Complaints;
 - 18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and
 - 18.5.3 Permanent bans from filing Complaints after being banned temporarily.
- 18.6 Imposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.

19. The Expert Panel Determination

- 19.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 19.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for that Determination. The Expert Determination should be publicly available and searchable on the Provider’s web site.
- 19.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Panel’s Determination.
- 19.4 The Expert Determination shall state which party is the prevailing party.
- 19.5 While the Expert Determination that a registry operator is liable under the standards of the Trademark PDDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

20. Appeal of Expert Determination

- 20.1 Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the Trademark PDDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 20.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20

days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

- 20.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 20.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 20.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 20.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 20.7 The prevailing party shall be entitled to an award of costs of appeal.
- 20.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

21. Challenge of a Remedy

- 21.1 ICANN shall not implement a remedy for violation of the Trademark PDDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.
- 21.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.
- 21.3 If ICANN decides to implement a remedy for violation of the Trademark PDDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement the remedy in furtherance of the Trademark PDDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

- 21.4 The registry operator may challenge ICANN's imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the PDDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.
- 21.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

22. Availability of Court or Other Administrative Proceedings

- 22.1 The Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 22.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same Parties, facts and circumstances as the Trademark PDDRP was instituted prior to the filing date of the Complaint in the Trademark PDDRP, the Provider shall suspend or terminate the Trademark PDDRP.

REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)¹
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the harmed established institution and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover these dispute resolution proceedings generally. To the extent more than one RRDRP provider (“Provider”) is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.

2.2 In any new community-based gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be filed electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

¹ Initial complaints that a Registry has failed to comply with registration restrictions shall be processed through a Registry Restriction Problem Report System (RRPRS) using an online form similar to the Whois Data Problem Report System (WDPRS) at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator shall receive a copy of the complaint and will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant will have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Failure by the Registry to address the complaint to complainant’s satisfaction does not itself give the complainant standing to file an RRDRP complaint.

- 4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.
- 4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a harmed established institution as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement.
- 5.2 Established institutions associated with defined communities are eligible to file a community objection. The “defined community” must be a community related to the gTLD string in the application that is the subject of the dispute. To qualify for standing for a community claim, the Complainant must prove both: it is an established institution, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.
- 5.3 Complainants must have filed a claim through the Registry Restriction Problem Report System (RRPRS) to have standing to file an RRDRP.
- 5.4 The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

6. Standards

- 6.1 For a claim to be successful, the claims must prove that:
 - 6.1.1 The community invoked by the objector is a defined community;
 - 6.1.2 There is a strong association between the community invoked and the gTLD label or string;
 - 6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;
 - 6.1.4 There is a measureable harm to the Complainant and the community named by the objector.

7. Complaint

- 7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

7.2 Content:

- 7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.
- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, which must include:
 - 7.2.3.1 The particular registration restrictions in the Registry Agreement with which the registry operator is failing to comply; and
 - 7.2.3.2 A detailed explanation of how the registry operator's failure to comply with the identified registration restrictions has caused harm to the complainant.
- 7.2.4 A statement that the proceedings are not being brought for any improper purpose.
- 7.2.5 A statement that the Complainant has filed a claim through the RRPRS and that the RRPRS process has concluded.
- 7.2.6 A statement that Complainant has not filed a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) complaint relating to the same or similar facts or circumstances.

7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

7.5 At the same time the Complaint is filed, the Complainant will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

8. Administrative Review of the Complaint

8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.

- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

9. Response to the Complaint

- 9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.
- 9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.
- 9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- 9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.
- 9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.
- 9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

10 Reply

- 10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

11. Default

- 11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.
- 11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.
- 11.4 All Default cases shall proceed to Expert Determination on the merits.

12. Expert Panel

- 12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.
- 12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.
- 12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

13. Costs

- 13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the administrative fees, including the Filing and Response Fee, of the Provider, and the Expert Panel fees, and are intended to be reasonable.
- 13.2 The Complainant shall be required to pay the Filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the other Provider-estimated administrative fees, including the Response Fee, and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

- 13.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred, including the Filing Fee. Failure to do so shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.
- 13.4 If the Panel declares the registry operator to be the prevailing party, the Provider shall reimburse the registry operator for its Response Fee.

14. Discovery/Evidence

- 14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence.
- 14.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 14.3 Without a specific request from the Parties, but only in extraordinary circumstances, the Expert Panel may request that the Provider appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

15. Hearings

- 15.1 Disputes under this RRDRP will usually be resolved without a hearing.
- 15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.
- 15.3 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.
- 15.4 Hearings should last no more than one day, except in the most exceptional circumstances.
- 15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.
- 15.6 All dispute resolution proceedings will be conducted in English.

16. Burden of Proof

The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

17. Recommended Remedies

- 17.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 17.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.
- 17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its promised limitations, including:
- 17.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations; except that the remedial measures shall not:
- (a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or
 - (b) direct actions by the registry operator that are contrary to those required under the registry agreement
- 17.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 17.3.3 In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.
- 17.3 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

18. The Expert Determination

- 18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 18.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its

Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.

- 18.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.
- 18.4 The Expert Determination shall state which party is the prevailing party.
- 18.5 While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

19. Appeal of Expert Determination

- 19.1 Either party shall have a right to seek a de novo appeal of the Expert Determination based on the existing record within the RDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."
- 19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 19.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 19.7 The prevailing party shall be entitled to an award of costs of appeal.
- 19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

20. Breach

- 20.1 If the Expert determines that the registry operator is in breach, ICANN will then proceed to notify the registry operator that it is in breach. The registry operator will be given the opportunity to cure the breach as called for in the Registry Agreement.

- 20.2 If registry operator fails to cure the breach then both parties are entitled to utilize the options available to them under the registry agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.
- 20.3 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

21. Availability of Court or Other Administrative Proceedings

- 21.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 21.2 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 6

4 June 2012

Module 6

Top-Level Domain Application – Terms and Conditions

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval rejection or withdrawal of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.
7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other

materials prepared in connection with the evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion. Applicant acknowledges that ICANN will handle personal information collected in accordance with its gTLD Program privacy statement <http://newgtlds.icann.org/en/applicants/agb/program-privacy>, which is incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct these background screening activities. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:
 - a. Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;
 - b. Applicant may be required to obtain specific government records directly and supply those records to ICANN for review;
 - c. Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization;

- d. Applicant may be requested to supply certain information in the original language as well as in English.
9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.
11. Applicant authorizes ICANN to:
 - a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
 - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.

12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.
13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and evaluation of its application to represent ICANN adverse to Applicant in the matter.
14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process, including the process for withdrawal of applications, at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to

such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

Reference Material 6.

[X Homepage](#)

Root Zone Database

The Root Zone Database represents the delegation details of top-level domains, including gTLDs such as .com, and country-code TLDs such as .uk. As the manager of the DNS root zone, IANA is responsible for coordinating these delegations in accordance with its [policies and procedures](#).

Much of this data is also available via the WHOIS protocol at whois.iana.org.

Domain	Type	Sponsoring Organisation
.ac	country-code	Network Information Center (AC Domain Registry) c/o Cable and Wireless (Ascension Island)
.ad	country-code	Andorra Telecom
.ae	country-code	Telecommunication Regulatory Authority (TRA)
.aero	sponsored	Societe Internationale de Telecommunications Aeronautique (SITA INC USA)
.af	country-code	Ministry of Communications and IT
.ag	country-code	UHSA School of Medicine
.ai	country-code	Government of Anguilla
.al	country-code	Electronic and Postal Communications Authority - AKEP
.am	country-code	Internet Society
.an	country-code	University of The Netherlands Antilles
.ao	country-code	Faculdade de Engenharia da Universidade Agostinho Neto
.aq	country-code	Mott and Associates
.ar	country-code	Presidencia de la Nación – Secretaría Legal y Técnica
.arpa	infrastructure	Internet Assigned Numbers Authority
.as	country-code	AS Domain Registry
.asia	sponsored	DotAsia Organisation Ltd.
.at	country-code	nic.at GmbH
.au	country-code	.au Domain Administration (auDA)
.aw	country-code	SETAR
.ax	country-code	Ålands landskapsregering
.az	country-code	IntraNS
.ba	country-code	Universtiy Telinformatic Centre (UTIC)
.bb	country-code	Government of Barbados Ministry of Economic Affairs and Development Telecommunications Unit
.bd	country-code	Ministry of Post & Telecommunications Bangladesh Secretariat
.be	country-code	DNS BE vzw/asbl
.bf	country-code	ARCE-Autorité de Régulation des Communications Electroniques
.bg	country-code	Register.BG
.bh	country-code	Telecommunications Regulatory Authority (TRA)
.bi	country-code	Centre National de l'Informatique
.biz	generic-restricted	NeuStar, Inc.
.bj	country-code	Benin Telecoms S.A.
.bl	country-code	Not assigned
.bm	country-code	Registry General Ministry of Labour and Immigration
.bn	country-code	Telekom Brunei Berhad
.bo	country-code	Agencia para el Desarrollo de la Información de la Sociedad en Bolivia
.bq	country-code	Not assigned
.br	country-code	Comite Gestor da Internet no Brasil
.bs	country-code	The College of the Bahamas
.bt	country-code	Ministry of Information and Communications
.bv	country-code	UNINETT Norid A/S
.bw	country-code	University of Botswana
.by	country-code	Reliable Software Inc.
.bz	country-code	University of Belize
.ca	country-code	Canadian Internet Registration Authority (CIRA) Autorite Canadienne pour les Enregistrements Internet (ACEI)
.cat	sponsored	Fundacio puntCAT
.cc	country-code	eNIC Cocos (Keeling) Islands Pty. Ltd. d/b/a Island Internet Services
.cd	country-code	Office Congolais des Postes et Télécommunications - OCPT
.cf	country-code	Societe Centrafricaine de Telecommunications (SOCATEL)
.cg	country-code	ONPT Congo and Interpoint Switzerland
.ch	country-code	SWITCH The Swiss Education & Research Network
.ci	country-code	INP-HB Institut National Polytechnique Felix Houphouet Boigny
.ck	country-code	Telecom Cook Islands Ltd.
.cl	country-code	NIC Chile (University of Chile)
.cm	country-code	Cameroon Telecommunications (CAMTEL)
.cn	country-code	Computer Network Information Center, Chinese Academy of Sciences
.co	country-code	.CO Internet S.A.S.
.com	generic	VeriSign Global Registry Services
.coop	sponsored	DotCooperation LLC
.cr	country-code	National Academy of Sciences Academia Nacional de Ciencias
.cu	country-code	CENIAInternet Industria y San Jose Capitolio Nacional
.cv	country-code	Agência Nacional das Comunicações (ANAC)
.cw	country-code	University of the Netherlands Antilles
.cx	country-code	Christmas Island Internet Administration Limited
.cy	country-code	University of Cyprus
.cz	country-code	CZ.NIC, z.s.p.o
.de	country-code	DENIC eG
.dj	country-code	Djibouti Telecom S.A
.dk	country-code	Dansk Internet Forum
.dm	country-code	DotDM Corporation
.do	country-code	Pontificia Universidad Catolica Madre y Maestra Recinto Santo Tomas de Aquino
.dz	country-code	CERIST
.ec	country-code	NIC.EC (NICEC) S.A.
.edu	sponsored	EDUCAUSE
.ee	country-code	National Institute of Chemical Physics and Biophysics

Domain	Type	Sponsoring Organisation
.eg	country-code	Egyptian Universities Network (EUN) Supreme Council of Universities
.eh	country-code	Not assigned
.er	country-code	Eritrea Telecommunication Services Corporation (EriTel)
.es	country-code	Red.es
.et	country-code	Ethio telecom
.eu	country-code	EURid vzw/asbl
.fi	country-code	Finnish Communications Regulatory Authority
.fj	country-code	The University of the South Pacific IT Services
.fk	country-code	Falkland Islands Government
.fm	country-code	FSM Telecommunications Corporation
.fo	country-code	FO Council
.fr	country-code	AFNIC (NIC France) - Immeuble International
.ga	country-code	Agence Nationale des Infrastructures Numériques et des Fréquences (ANINF)
.gb	country-code	Reserved Domain - IANA
.gd	country-code	The National Telecommunications Regulatory Commission (NTRC)
.ge	country-code	Caucasus Online
.gf	country-code	Net Plus
.gg	country-code	Island Networks Ltd.
.gh	country-code	Network Computer Systems Limited
.gi	country-code	Sapphire Networks
.gl	country-code	TELE Greenland A/S
.gm	country-code	GM-NIC
.gn	country-code	Centre National des Sciences Halieutiques de Boussoura
.gov	sponsored	General Services Administration Attn: QTDC, 2E08 (.gov Domain Registration)
.gp	country-code	Networking Technologies Group
.gq	country-code	GETESA
.gr	country-code	ICS-FORTH GR
.gs	country-code	Government of South Georgia and South Sandwich Islands (GSGSSI)
.gt	country-code	Universidad del Valle de Guatemala
.gu	country-code	University of Guam Computer Center
.gw	country-code	Fundação IT & MEDIA Universidade de Bissao
.gy	country-code	University of Guyana
.hk	country-code	Hong Kong Internet Registration Corporation Ltd.
.hm	country-code	HM Domain Registry
.hn	country-code	Red de Desarrollo Sostenible Honduras
.hr	country-code	CARNet - Croatian Academic and Research Network
.ht	country-code	Consortium FDS/RDDH
.hu	country-code	Council of Hungarian Internet Providers (CHIP)
.id	country-code	IDNIC-PPAU Mikroelektronika
.ie	country-code	University College Dublin Computing Services Computer Centre
.il	country-code	Internet Society of Israel
.im	country-code	Isle of Man Government
.in	country-code	National Internet Exchange of India
.info	generic	Afilias Limited
.int	sponsored	Internet Assigned Numbers Authority
.io	country-code	IO Top Level Domain Registry Cable and Wireless
.iq	country-code	Communications and Media Commission (CMC)
.ir	country-code	Institute for Research in Fundamental Sciences
.is	country-code	ISNIC - Internet Iceland Ltd.
.it	country-code	IIT - CNR
.je	country-code	Island Networks (Jersey) Ltd.
.jm	country-code	University of West Indies
.jo	country-code	National Information Technology Center (NITC)
.jobs	sponsored	Employ Media LLC
.jp	country-code	Japan Registry Services Co., Ltd.
.ke	country-code	Kenya Network Information Center (KeNIC)
.kg	country-code	AsiaInfo Telecommunication Enterprise
.kh	country-code	Ministry of Post and Telecommunications
.ki	country-code	Ministry of Communications, Transport, and Tourism Development
.km	country-code	Comores Telecom
.kn	country-code	Ministry of Finance, Sustainable Development Information & Technology
.kp	country-code	Star Joint Venture Company
.kr	country-code	Korea Internet & Security Agency (KISA)
.kw	country-code	Ministry of Communications
.ky	country-code	The Information and Communications Technology Authority
.kz	country-code	Association of IT Companies of Kazakhstan
.la	country-code	Lao National Internet Committee (LANIC), Ministry of Posts and Telecommunications
.lb	country-code	American University of Beirut Computing and Networking Services
.lc	country-code	University of Puerto Rico
.li	country-code	Universitaet Liechtenstein
.lk	country-code	Council for Information Technology LK Domain Registrar
.lr	country-code	Data Technology Solutions, Inc.
.ls	country-code	National University of Lesotho
.lt	country-code	Kaunas University of Technology Information Technology Development Institute
.lu	country-code	RESTENA
.lv	country-code	University of Latvia Institute of Mathematics and Computer Science Department of Network Solutions (DNS)
.ly	country-code	General Post and Telecommunication Company
.ma	country-code	Agence Nationale de Réglementation des Télécommunications (ANRT)
.mc	country-code	Gouvernement de Monaco Direction des Communications Electroniques
.md	country-code	MoldData S.E.
.me	country-code	Government of Montenegro
.mf	country-code	Not assigned
.mg	country-code	NIC-MG (Network Information Center Madagascar)
.mh	country-code	Cabinet Office
.mil	sponsored	DoD Network Information Center
.mk	country-code	Ministry of Foreign Affairs
.ml	country-code	Agence des Technologies de l'Information et de la Communication
.mm	country-code	Ministry of Communications, Posts & Telegraphs
.mn	country-code	Datacom Co., Ltd.
.mo	country-code	Bureau of Telecommunications Regulation (DSRT)

Domain	Type	Sponsoring Organisation
.mobi	sponsored	Afilias Technologies Limited dba dotMobi
.mp	country-code	Saipan Datacom, Inc.
.mq	country-code	MEDIASERV
.mr	country-code	University of Nouakchott
.ms	country-code	MNI Networks Ltd.
.mt	country-code	NIC (Malta)
.mu	country-code	Internet Direct Ltd
.museum	sponsored	Museum Domain Management Association
.mv	country-code	Dhiraagu Pvt. Ltd. (DHIVEHINET)
.mw	country-code	Malawi Sustainable Development Network Programme (Malawi SDNP)
.mx	country-code	NIC-Mexico ITESM - Campus Monterrey
.my	country-code	MYNIC Berhad
.mz	country-code	Centro de Informatica de Universidade Eduardo Mondlane
.na	country-code	Namibian Network Information Center
.name	generic-restricted	VeriSign Information Services, Inc.
.nc	country-code	Office des Postes et Telecommunications
.ne	country-code	SONITEL
.net	generic	VeriSign Global Registry Services
.nf	country-code	Norfolk Island Data Services
.ng	country-code	Nigeria Internet Registration Association
.ni	country-code	Universidad Nacional del Ingermiera Centro de Computo
.nl	country-code	SIDN (Stichting Internet Domeinregistratie Nederland)
.no	country-code	UNINETT Norid A/S
.np	country-code	Mercantile Communications Pvt. Ltd.
.nr	country-code	CENPAC NET
.nu	country-code	The IUSN Foundation
.nz	country-code	InternetNZ
.om	country-code	Telecommunications Regulatory Authority (TRA)
.org	generic	Public Interest Registry (PIR)
.pa	country-code	Universidad Tecnologica de Panama
.pe	country-code	Red Cientifica Peruana
.pf	country-code	Gouvernement de la Polynésie française
.pg	country-code	PNG DNS Administration Vice Chancellors Office The Papua New Guinea University of Technology
.ph	country-code	PH Domain Foundation
.pk	country-code	PKNIC
.pl	country-code	Research and Academic Computer Network
.pm	country-code	AFNIC (NIC France) - Immeuble International
.pn	country-code	Pitcairn Island Administration
.post	sponsored	Universal Postal Union
.pr	country-code	Gauss Research Laboratory Inc.
.pro	generic-restricted	Registry Services Corporation dba RegistryPro
.ps	country-code	Ministry Of Telecommunications & Information Technology, Government Computer Center.
.pt	country-code	Fundação para a Computação Científica Nacional
.pw	country-code	Micronesia Investment and Development Corporation
.py	country-code	NIC-PY
.qa	country-code	The Supreme Council of Information and Communication Technology (ictQATAR)
.re	country-code	AFNIC (NIC France) - Immeuble International
.ro	country-code	National Institute for R&D in Informatics
.rs	country-code	Serbian National Register of Internet Domain Names (RNIDS)
.ru	country-code	Coordination Center for TLD RU
.rw	country-code	Rwanda Information Communication and Technology Association (RICTA)
.sa	country-code	Communications and Information Technology Commission
.sb	country-code	Solomon Telekom Company Limited
.sc	country-code	VCS Pty Ltd
.sd	country-code	Sudan Internet Society
.se	country-code	The Internet Infrastructure Foundation
.sg	country-code	Singapore Network Information Centre (SGNIC) Pte Ltd
.sh	country-code	Government of St. Helena
.si	country-code	Academic and Research Network of Slovenia (ARNES)
.sj	country-code	UNINETT Norid A/S
.sk	country-code	SK-NIC, a.s.
.sl	country-code	Sierratel
.sm	country-code	Telecom Italia San Marino S.p.A.
.sn	country-code	Universite Cheikh Anta Diop NIC Senegal
.so	country-code	Ministry of Post and Telecommunications
.sr	country-code	Telesur
.ss	country-code	Not assigned
.st	country-code	Tecnisys
.su	country-code	Russian Institute for Development of Public Networks (ROSNIROS)
.sv	country-code	SVNet
.sx	country-code	SX Registry SA B.V.
.sy	country-code	National Agency for Network Services (NANS)
.sz	country-code	University of Swaziland Department of Computer Science
.tc	country-code	Melrex TC
.td	country-code	Société des télécommunications du Tchad (SOTEL TCHAD)
.tel	sponsored	Telnic Ltd.
.tf	country-code	AFNIC (NIC France) - Immeuble International
.tg	country-code	Cafe Informatique et Telecommunications
.th	country-code	Thai Network Information Center Foundation
.tj	country-code	Information Technology Center
.tk	country-code	Telecommunication Tokelau Corporation (Teletok)
.tl	country-code	Ministry of Infrastructure Information and Technology Division
.tm	country-code	TM Domain Registry Ltd
.tn	country-code	Agence Tunisienne d'Internet
.to	country-code	Government of the Kingdom of Tonga H.R.H. Crown Prince Tupouto'a c/o Consulate of Tonga
.tp	country-code	-
.tr	country-code	Middle East Technical University Department of Computer Engineering
.travel	sponsored	Tralliance Registry Management Company, LLC.
.tt	country-code	University of the West Indies Faculty of Engineering
.tv	country-code	Ministry of Finance and Tourism

Domain	Type	Sponsoring Organisation
.tw	country-code	Taiwan Network Information Center (TWNIC)
.tz	country-code	Tanzania Network Information Centre (tzNIC)
.ua	country-code	Communication Systems Ltd
.ug	country-code	Uganda Online Ltd.
.uk	country-code	Nominet UK
.um	country-code	Not assigned
.us	country-code	NeuStar, Inc.
.uy	country-code	SeCIU - Universidad de la Republica
.uz	country-code	Computerization and Information Technologies Developing Center UZINFOCOM
.va	country-code	Holy See Secretariat of State Department of Telecommunications
.vc	country-code	Ministry of Telecommunications, Science, Technology and Industry
.ve	country-code	Comisión Nacional de Telecomunicaciones (CONATEL)
.vg	country-code	Pinebrook Developments Ltd
.vi	country-code	Virgin Islands Public Telecommunications System c/o COBEX Internet Services
.vn	country-code	Ministry of Information and Communications of Socialist Republic of Viet Nam
.vu	country-code	Telecom Vanuatu Limited
.wf	country-code	AFNIC (NIC France) - Immeuble International
.ws	country-code	Government of Samoa Ministry of Foreign Affairs & Trade
.測試	test	Internet Assigned Numbers Authority
.परीक्षा	test	Internet Assigned Numbers Authority
.한국	country-code	KISA (Korea Internet & Security Agency)
.ভারত	country-code	National Internet Exchange of India
.बांग्ला	country-code	Not assigned
.испытание	test	Internet Assigned Numbers Authority
.kaz	country-code	Association of IT Companies of Kazakhstan
.срб	country-code	Serbian National Register of Internet Domain Names (RNIDS)
.இஸ்ரே	test	Internet Assigned Numbers Authority
.சிங்கப்பூர்	country-code	Singapore Network Information Centre (SGNIC) Pte Ltd
.юуу	test	Internet Assigned Numbers Authority
.中国	country-code	China Internet Network Information Center
.中國	country-code	China Internet Network Information Center
.ಭಾರತ	country-code	National Internet Exchange of India
.ලංකා	country-code	LK Domain Registry
.測試	test	Internet Assigned Numbers Authority
.भारत	country-code	National Internet Exchange of India
.भारत	country-code	National Internet Exchange of India
.آزمایشی	test	Internet Assigned Numbers Authority
.பரிட்சை	test	Internet Assigned Numbers Authority
.укр	country-code	Ukrainian Network Information Centre (UANIC), Inc.
.香港	country-code	Hong Kong Internet Registration Corporation Ltd.
.δοκιμή	test	Internet Assigned Numbers Authority
.اختبار	test	Internet Assigned Numbers Authority
.台湾	country-code	Taiwan Network Information Center (TWNIC)
.台灣	country-code	Taiwan Network Information Center (TWNIC)
.MOH	country-code	Not assigned
.الجزائر	country-code	CERIST
.عمان	country-code	Telecommunications Regulatory Authority (TRA)
.ایران	country-code	Not assigned
.امارات	country-code	Telecommunications Regulatory Authority (TRA)
.پاکستان	country-code	Not assigned
.الأردن	country-code	National Information Technology Center (NITC)
.بھارت	country-code	National Internet Exchange of India
.المغرب	country-code	Agence Nationale de Réglementation des Télécommunications (ANRT)
.السعودية	country-code	Communications and Information Technology Commission
.سودان	country-code	Not assigned
.مليسيا	country-code	MYNIC Berhad
.გე	country-code	Not assigned
.ไทย	country-code	Thai Network Information Center Foundation
.سورية	country-code	National Agency for Network Services (NANS)
.pф	country-code	Coordination Center for TLD RU
.تونس	country-code	Agence Tunisienne d'Internet
.भारत	country-code	National Internet Exchange of India
.مصر	country-code	National Telecommunication Regulatory Authority - NTRA
.قطر	country-code	Supreme Council for Communications and Information Technology (ictQATAR)
.இலங்கை	country-code	LK Domain Registry
.இந்தியா	country-code	National Internet Exchange of India
.新加坡	country-code	Singapore Network Information Centre (SGNIC) Pte Ltd
.فلسطين	country-code	Ministry of Telecom & Information Technology (MTIT)
.テスト	test	Internet Assigned Numbers Authority
.xxx	sponsored	ICM Registry LLC
.ye	country-code	TeleYemen
.yt	country-code	AFNIC (NIC France) - Immeuble International
.za	country-code	ZA Domain Name Authority
.zm	country-code	ZAMNET Communication Systems Ltd.
.zw	country-code	Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ)

Reference Material 7.

Internet Corporation for Assigned Names and Numbers

NEWS & PRESS (/EN/NEWS) › ANNOUNCEMENTS (/EN/NEWS/ANNOUNCEMENTS)

Public Comment Forum for Terms of Reference for New gTLDs

6 December 2005

Updated 22 December 2005

The ICANN (Internet Corporation for Assigned Names and Numbers) bylaws require a public comment period of 20 days following the initiation of a gNSO Policy-Development Process (PDP (Policy Development Process)). <<http://www.icann.org/general/archive-bylaws/bylaws-08apr05.htm#AnnexA>> (<http://www.icann.org/general/archive-bylaws/bylaws-08apr05.htm#AnnexA>)

ICANN (Internet Corporation for Assigned Names and Numbers) has opened a Public Comment Forum for the below Terms of Reference for New gTLDs . The "Issues Report" for this PDP (Policy Development Process) is available at <<http://gnso.icann.org/issues/new-gtlds/gnso-issues-rpt-gtlds-05dec05.pdf>> (<http://gnso.icann.org/issues/new-gtlds/gnso-issues-rpt-gtlds-05dec05.pdf>).

The public comment period is from 6 December 2005 to 31 January 2005. Comments may be submitted to the email address <new-gtlds-pdp-comments@icann.org> (<mailto:new-gtlds-pdp-comments@icann.org>).

Comments submitted may be viewed at <<http://forum.icann.org/lists/new-gtlds-pdp-comments>> (<http://forum.icann.org/lists/new-gtlds-pdp-comments>)

gNSO Home Page (<http://gnso.icann.org>)

Call for comments on gNSO web site (<http://gnso.icann.org/comments-request>)

Terms of reference for new gTLDs

1. Should new generic top level domain names be introduced?

- a. Given the information provided here and any other relevant information available to the GNSO (Generic Names Supporting Organization), the GNSO (Generic Names Supporting Organization) should assess whether there is sufficient support within the Internet community to enable the introduction of new top level domains. If this is the case the following additional terms of reference are applicable.

2. Selection Criteria for New Top Level Domains

- a. Taking into account the existing selection criteria from previous top level domain application processes and relevant criteria in registry services re-allocations, develop modified or new criteria which specifically address ICANN (Internet Corporation for Assigned Names and Numbers)'s goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top level domains can meet demands for broader use of the Internet in developing countries.
- b. Examine whether preferential selection criteria (e.g. sponsored) could be developed which would encourage new and innovative ways of addressing the needs of Internet users.
- c. Examine whether additional criteria need to be developed which address ICANN (Internet Corporation for Assigned Names and Numbers)'s goals of ensuring the security and stability of the Internet.

3. Allocation Methods for New Top Level Domains

- a. Using the experience gained in previous rounds, develop allocation methods for selecting new top level domain names.

- b. Examine the full range of allocation methods including auctions, ballots, first-come first-served and comparative evaluation to determine the methods of allocation that best enhance user choice while not compromising predictability and stability.
- c. Examine how allocation methods could be used to achieve ICANN (Internet Corporation for Assigned Names and Numbers)'s goals of fostering competition in domain name registration services and encouraging a diverse range of registry services providers.

4. Policy to Guide Contractual Conditions for New Top Level Domains

- a. Using the experience of previous rounds of top level domain name application processes and the recent amendments to registry services agreements, develop policies to guide the contractual criteria which are publicly available prior to any application rounds.
- b. Determine what policies are necessary to provide security and stability of registry services.
- c. Determine appropriate policies to guide a contractual compliance programme for registry services.

Announcements (</en/news/announcements>)

Public Comment (</en/news/public-comment>)

For Journalists (</en/news/press>)

Newsletter (</en/news/newsletter>)

Correspondence (</en/news/correspondence>)

Presentations (</en/news/presentations/archive>)

In Focus (</en/news/in-focus>)

Dashboard (<https://charts.icann.org/public/>)

RSS Feeds (</en/news/rss>)

RFPs (</en/news/rfps>)

Litigation (</en/news/litigation>)

Independent Review Process (</en/news/irp>)

Stay Connected

Your email address please.

News Alerts: HTML Plain Text

Newsletter: HTML Plain Text

Compliance Newsletter: HTML Plain Text

Policy Update: HTML Plain Text

Subscribe

Follow us @icann (<https://twitter.com/#!/icann/>)

Videos (<http://www.youtube.com/icannnews>)

Photos on Flickr (<http://www.flickr.com/photos/icann/>)

Facebook (<http://www.facebook.com/icannorg>)

ICANN Blog (<http://blog.icann.org/>)

Community Wiki (<https://community.icann.org/>)

Planet ICANN (</en/groups/planet-icann>)

RSS Feeds (</en/news/rss>)

© 2014 Internet Corporation For Assigned Names and Numbers. [Press \(/news/press\)](/news/press) | [Site Map \(/sitemap\)](/sitemap) | [Privacy Policy \(/help/privacy\)](/help/privacy)

ICANN Network

myICANN (<http://www.myicann.org/>)

ASO (<http://aso.icann.org>)

ALAC (<http://www.atlarge.icann.org>)

ccNSO (<http://ccnso.icann.org>)

GAC (<http://gac.icann.org>)

GNSO (<http://gnso.icann.org>)

RSSAC (</en/groups/rssac>)

SSAC (</en/groups/ssac>)

Community Wiki (<http://community.icann.org>)

Meetings (<http://meetings.icann.org>)

New gTLDs (<http://newgtlds.icann.org>)

WHOIS (<http://whois.icann.org>)

Help

(</en/help>)

Acronym Helper

Reference Material 8.



GNSO Issues Report

Introduction of New Top-Level Domains

GNSO ISSUES REPORT.....1

INTRODUCTION OF NEW TOP-LEVEL DOMAINS.....1

[Summary.....3](#)

B. Objective.....4

[3. Background.....5](#)

[4. Whether to introduce new top-level domains.....9](#)

[A. Summary of Previous Selection Criteria.....15](#)

[B. Selection Criteria 2000 Generic and Sponsored Top-Level Domain Process.....19](#)

[5. Selection Criteria 2004 Sponsored Top-Level Domain Process.....23](#)

[6. Selection Criteria .ORG Contract Reassignment.....27](#)

[7. Selection Criteria .NET Reassignment.....32](#)

[8. Contractual Conditions.....38](#)

[9. Allocation Methods.....45](#)

[10. Relevance.....51](#)

[C. Staff Recommendation.....51](#)

[D. Proposed Working Group Terms of Reference.....52](#)



Policy Development 2

New Top-Level Domains

Reference List.....59



Summary

1. As requested by the GNSO Council at its 22 September 2005 teleconference (<http://gnso.icann.org/meetings/minutes-gnso-22sep05.shtml>), this document sets out past decisions on the policy for implementing new top-level domains, provides relevant references and sets out other considerations in four issue areas. These issue areas are whether to introduce new gTLDs, selection criteria, allocation methods and contractual conditions.
2. It is recommended that the GNSO launch a focused policy development process, in close consultation with the broader ICANN community including the Government Advisory Committee (on the public policy aspects of new top-level domains) and the ccNSO (on internationalized domain names). The report proposes draft Terms of Reference for this work.



B. Objective

1. This report is designed to give the GNSO Council the information necessary to make a decision about whether to proceed with a policy development process on a new top-level domain strategy. It should be read in conjunction with the Background Report on Internationalized Domain Names which is being prepared for a separate process to be undertaken in conjunction with the ccNSO.
2. The GNSO Guidelines for Issues Reports have been used to frame this document. In particular, the Issues Report describes the key issues, provides directly relevant background and links; recommends whether to proceed with the policy development process and proposes Terms of Reference for a GNSO Working Group.



3. Background

1. The GNSO is tasked with determining whether to continue to introduce new gTLDs and, if this determination is affirmative, developing robust policy to enable the selection and allocation of new top-level domains.
2. Following discussions at the ICANN meeting in Luxemburg on the strategy for introduction of new gTLDs, ICANN staff and the GNSO Council have cooperated to compile decisions and documents relating to the introduction of new top-level domain names. The compilation covers main documents and decisions since 2000. The latest version is available at <http://gnso.icann.org/issues/new-gtlds/new-tlds-31aug05.htm>. This compilation has been the subject of discussions on the GNSO Council mailing list and the source for an analysis in table format available at:
<http://www.gnso.icann.org/mailing-lists/archives/council/msg01249.html>.
3. On 1 September 2005 a process proposal was presented at the GNSO Council meeting. At this meeting, the Council recalled the



New Top-Level Domains
Whether to introduce new TLDs

original Names Council recommendation of 18-19 April 2000, which stated:

“The Names Council determines that the report of Working Group C and related comments indicate that there exists a consensus for the introduction of new gTLDs in a measured and responsible manner. The Names Council therefore recommends to the ICANN Board that it establish a policy for the introduction of new gTLDs in a measured and responsible manner, giving due regard in the implementation of that policy to:

(a) promoting orderly registration of names during the initial phases;

(b) minimizing the use of gTLDs to carry out infringements of intellectual property rights;

and (c) recognizing the need for ensuring user confidence in the technical operation of the new TLD and the DNS as a whole.

Because there is no recent experience in introducing new gTLDs, we recommend to the Board that a limited number of new top-level domains be introduced initially and that the future introduction of additional top-level domains be done only after careful evaluation of the initial introduction.”

4. The view of the Council was that ICANN should complete the evaluation of the introduction of a limited number of new top-level domains, as described in the report from the New TLD Evaluation Process Planning Task Force. The report (<http://www.icann.org/committees/ntepptf/final-report-31jul02.htm>) described four aspects to evaluate (technical, business, legal, and process). Part of the evaluation dealing with Policy and Legal issues



New Top-Level Domains
Whether to introduce new TLDs

was completed in July 2004 (<http://icann.org/tlds/new-gtld-eval-31aug04.pdf>). Further experience is also available as additional sponsored top-level domains are introduced in 2005 (for example, .travel, .mobi, and .jobs). The Council considered that the evaluation work could proceed in parallel with development of a comprehensive new gTLD policy, with the expectation that the evaluation would be complete before any final policy recommendations were presented to the Board for approval.

5. At a conference call on 22 September 2005 (<http://gns0.icann.org/meetings/agenda-gns0-22sep05.htm>) the Council resolved to request ICANN Staff to produce an Issues Report. On the basis of the Issues Report, a decision would be made to conduct a policy development process on the introduction of new top-level domain names. The issues report should cover the following core issues: whether to continue to introduce new gTLDs; the criteria for approving applications for new gTLDs; the allocation method for choosing new gTLDs and the contractual conditions for new gTLDs.
6. The GNSO Council determined that the Issues Report would cover all four issue areas, with a presumption of an affirmative answer to



New Top-Level Domains
Whether to introduce new TLDs

the first issue area; the question whether to introduce new TLDs.

This document is prepared in response to this request, with four parts corresponding to the issues listed above. The rules for Issues Reports also require that ICANN Staff provide confirmation of the relevance of the work to the GNSO and to the ICANN community. Finally, in compliance with the Issues Report Guidelines, ICANN Staff are required to provide draft Working Group Terms of Reference. These are found at the end of this document.

7. The GNSO Council made a simultaneous request for ICANN Staff to provide a separate background document featuring existing documents and decisions associated with the introduction of internationalized domain names at the top-level. This work would be considered in view of a policy development process to be conducted jointly by the GNSO and ccNSO.
8. In addition to the compilation of ICANN documents mentioned above, reference material is available in studies and reports by other entities such as the OECD, WIPO, the National Research Council and Summit Strategies International which can be found in the Reference List at the end of the document.



4. Whether to introduce new top-level domains

9. The work of the DNSO (later to evolve into GNSO and ccNSO) preceding the two-step “proof of concept” introduction of gTLDs produced a policy supporting the introduction of new gTLDs in a measured and responsible manner. Although this was a policy established for a temporary purpose, there is implicit recognition that additional gTLDs would be introduced, subject to evaluation of initial introductions. The evaluation has been made, but not completely, and a conclusion needs to be firmly drawn as to whether new TLDs shall continue to be introduced.
10. As stated above, the GNSO Council has determined that finalizing the evaluation is not seen as a prerequisite for starting working on the other elements of the GNSO Council resolution of 22 September 2005. Accordingly, work can proceed in parallel on these two fronts. Constituencies and other members of the ICANN community will be invited to review the submissions that they made to the original new gTLD policy development process in 1999 and 2000 and thereafter, and consider whether the limited introduction of new gTLDs has changed their views in any significant way.



New Top-Level Domains
Whether to introduce new TLDs

11. A short recapitulation of the emergence of top-level domains is provided in the following sections. Prior to ICANN's establishment, Dr. Jon Postel introduced the first generic top-level domains, implying a semantic structuring of the DNS with .COM intended for business users, .ORG for non-profit organizations, .NET intended for network users etc. During the early and mid-1990s, as country code TLDs were being delegated, the root zone was expanding by 10-20 TLDs or more per year for nearly a decade. From 1994 to 1996, 40 or more TLDs were added each year.
12. ICANN was established in November 1998. At the time, the .COM, .NET and .ORG gTLDs were commonly available for registration, while .INT, .EDU, .MIL and .GOV were available for registration by specific communities only. In addition, approximately 246 country code top-level domains were available for countries and territories to enable registrations of local domain names. A full list of all current TLDs, maintained by IANA, can be found at <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>.
13. Since 1998 the industry has gone through an unprecedented development. The Internet is available across the globe and the number of users is approaching 1 billion. Internet access and use is



New Top-Level Domains
Whether to introduce new TLDs

now seen as mission critical for many users. ICANN itself has also changed substantially with an increase in the complexity and volume of its work and adaptation of its staffing, organization and working methods.

14. With respect to gTLDs, there are at present nine additional top-level domains. The registry agreements can all be found at <http://www.icann.ORG/registries/agreements.htm> and a full listing of all the registries can be found at <http://www.icann.ORG/registries/listing.html>. A further set of gTLDs will be added as new sponsored top-level domain agreements are signed during the course of 2005.
15. The market for domain names shows continued signs of growth. Domain name market data can be found in a variety of sources, for example in VeriSign's latest report, found at: <http://www.verisign.com/stellent/groups/public/documents/newsletter/030725.pdf>.
16. An article in DNJournal.com, at <http://dnjournal.com/columns/50million.htm>, foresees that if the 30% growth rate experienced in the year 2005 continues, the number of gTLD domain name registrations would double to 100 million in less



New Top-Level Domains
Whether to introduce new TLDs

than 3 years. Usage patterns are developing and studies from both the OECD and the NRC show that proven demand for new top-level domains is inconclusive, with contentions about advantages claimed by some in stark contrast to the drawbacks purported by others. The NRC report elaborates at some length on the advantages and drawbacks. The NRC Report also states that, from a security and stability perspective, the introduction of “tens” of new TLDs per year could be done without risks. The report calls for predictability in the introduction of new top-level domains by publishing time schedules as well as applying measures to follow-up and stop the process if need be.

CONSIDERATIONS

17. The decision whether to introduce new top-level domains is informed by reviewing previous constituency statements (see the full list of reports in the Reference List); examining external studies and reports and taking account of developments in Internet use and the domain name registration industry. Some additional considerations are outlined below.



New Top-Level Domains
Whether to introduce new TLDs

18. Introduction of new gTLDs remains a matter of controversy in the Internet community. Additional TLDs are requested by many that see a business opportunity in running a new TLD. Whether there is true market demand for new TLDs from end-users is another matter and is likely to be conditional on multiple factors. There are also negative aspects associated with the introduction of new gTLDs such as the risk of marketplace confusion and additional costs for trade mark protection for intellectual property right holders.
19. While there seems to be a reasonable consensus within the Internet community that a measured introduction of additional TLDs can be undertaken with negligible risks for the security and stability of the Internet, assessments of suitable addition rates do vary. It should be noted in this context that the processes associated with TLD management/administration may set stricter limits than plain security/stability/technical considerations regarding how many TLDs can be added within a given time frame or how many can be maintained after their creation.
20. Additional information can be found in IETF documents, inter alia from [RFC 3071](#) , which provides a different typology of domain



New Top-Level Domains
Whether to introduce new TLDs

names and domain use, and from [RFC 3467](#), which elaborates on the uses of the domain name system.

21. Regardless of the chosen approach, the possibility of measuring the success or failure of the approach should be considered.

Accordingly, there is a need to foresee methods to evaluate, correct and possibly halt the process as appropriate.



A. Summary of Previous Selection Criteria

22. The following sections describe selection criteria which have been used in four previous ICANN TLD assignment processes. They provide a baseline for selection criteria to be applied in future allocations of new TLDs. Further work needs to be done to identify areas where modified or new criteria could be developed. Whilst some similarities exist across each of the four examples, the sections below illustrate the differences in each of the processes. In the interim, analysis of the evaluation of each of the four processes has been left out.

23. Previous GNSO work concluded that TLD strings should be proposed by the applicants and not prescribed by ICANN. However, there is also a need to develop policy that may place possible limits on strings that can be used at the top-level. Further discussion is required about establishing vetting processes which are objective and robust.

24. The selection criteria fit within the categories outlined below and are discussed in detail in the following sections:



25. Technical: The requirement to maintain the Internet's security and stability has been paramount. Through each successive round, the technical criteria have become more stringent and detailed. The technical criteria are designed to ensure that the registry meets all of ICANN's stability and security obligations, enables effective resolution of all domain names and reflects best practice technical developments. These criteria have evolved significantly over the last several years to now include requirements to conduct registry services with strong expectations of data and equipment security; the use of the latest software and hardware; the best technical personnel and ongoing commitment to technical improvements that reflect ICANN's requirements to run a stable and secure Internet architecture.

26. Financial and Business: The provision of detailed financial and business plans feature as critical selection criteria which have become more exacting and subject to, for example, international accounting standards, through each subsequent round. The criteria range across the provision of evidence that the applicant is financially viable over the long term; revenue and pricing models that demonstrate detailed understanding of the domain name



registration business; evidence of sufficient qualified staffing;
customer service commitments in languages other than English on
a 24/7/365 basis; innovative service offerings and the willingness to
contribute to ICANN's budget objectives.

27. Legal and Regulatory: These criteria are difficult to analyze as each round had different objectives. The criteria revolve around commitments to ICANN's policy development process; to ICANN's consensus based decision making; to compliance with California-based contractual arrangements; and to public notification of terms and conditions of contracts. However, enhancement of competition in domain name registration services at the registry and registrar level, enhancing the diversity and utility of the domain name system and strengthening policy development procedures have also been key themes.

28. Community Expectations: ICANN's diverse community has very differing expectations but some central themes have emerged. Public comment periods on both selection criteria and evaluation methods are expected. ICANN processes have included deliberate periods of public comment during which the Internet community is able to comment on applicants and their application data. In



addition, applicants are able to ask questions and receive answers about the process which are posted on the ICANN's website. The public comment archives provide useful examples of the kinds of questions that were raised during the comment period. These comments were taken into account by the evaluators, particularly in the sTLD process and the .NET process. See, for example, <http://www.icann.org/org/tlds/net-rfp/net-rfp-public-comments.htm>.

29. Application Processes: The application process has become more stringent and robust with a shift to on-line application processes and full cost recovery fees for applicants. In addition, specific probity arrangements that prevent applicants influencing ICANN Board and Staff members have been established. There are also requirements for willingness to enter negotiations on the basis of draft contracts that set out standard terms and conditions and for availability to conduct follow-up evaluation negotiations.

30. External factors: The common element in the analysis of external factors is that whatever action ICANN takes to expand or modify the domain name space, there is sure to be intense interest from all areas of the Internet community in addition to the Government Advisory Committee and other ICANN entities.



B. Selection Criteria 2000 Generic and Sponsored Top-Level Domain Process

31. On 16 July 2000 the ICANN Board voted on a resolution (<http://www.icann.ORG/tlds/new-tld-resolutions-16jul00.htm#00.460>) to enable the introduction of a limited number of sponsored and unsponsored top-level domains.
32. The 2000 round of new TLDs applications resulted in the introduction of .biz, .info, .name and .pro as unsponsored top-level names and .aero, .museum and .coop as sponsored top-level domains. The formal documentation can be found at <http://www.icann.ORG/yokohama/new-tld-topic.htm> .
33. Instructions for applicants and early discussion about the initial selection criteria can be found at <http://www.icann.ORG/tlds/new-tld-application-instructions-15aug00.htm>. Forty five applications were received in the process. The key criteria in this initial round included the areas set out below.
34. Technical: These criteria can be found at <http://www.icann.ORG/tlds/application-process-03aug00.htm#1e>



and included a technical capabilities plan including “the following topics ...physical plants, hardware, software, facility and data security, bandwidth/Internet connectivity, system outage prevention, system restoration capabilities and procedures, information systems security, load capacity, scalability, data escrow and backup capabilities and procedures, Whois service, zone file editing procedures, technical and other support, billing and collection, management and employees, staff size/expansion capability, and provisions for preserving stability in the event of registry failure.

Required supporting documentation included: company references, diagrams of systems (including security) at each location, personnel resumes and references”.

35. Financial and Business: These criteria were contained in sections relating to the provision of business plans and required “detailed, verified business and financial information about the proposed registry”; company information, current and past business operations, registry/Internet related experience and activities, mission, target market, expected costs/expected budget, expected demand, capitalization, insurance, revenue model, marketing plan, use of registrars and other marketing channels, management and



employees, staff size/expansion capability, long-term commitment/registry failure provisions.

36. Legal and Regulatory: These criteria revolved around the treatment of (then) existing gTLD policies and proposals how new TLDs would be treated. There were no explicit requirements to commit to ICANN's policy development processes. However, explicit plans were expected to address name registration policies and the explanation of why applicants could argue that their application was unique and responded to unmet demand.

37. Community Expectations: There was a lot of discussion within the community about what top-level domains ought to be chosen, the history of which can be found at <http://www.icann.org.org/announcements/icann-pr16nov00.htm>.

38. Application Processes: The application process required the payment of a USD 50,000 non-refundable fee. The application materials differentiated between sponsored and unsponsored applications; required a "fitness disclosure", application for specific dispensation to hold material confidential and hard copies of application material delivered to ICANN's offices. There was a



publicly posted question and answer period and a public comment period.

39. External factors: At the time of the 2000 round, the Internet boom was at its height. There was a lot of industry interest in the potential to expand the domain name space which is evidenced by the number of applications ICANN received and the robust discussion which took place about the selection of seven new TLDs.



5. Selection Criteria 2004 Sponsored Top-Level Domain Process

40. The second process is the sponsored top-level domain round held in 2004 which, so far, has enabled the introduction of .mobi, .travel, .cat and .jobs. Other applications are still under consideration and include .post, .xxx, .tel (pulver), .tel and .asia.

41. The selection criteria for the 2004 sTLD round were posted on ICANN's website and, for the first time, an electronic website based application process was used to collect applicant information. ICANN provided a set of explanatory notes; set out what applicants needed to do to comply with the application process; provided a forum for answering questions about the application process and posted a timeline for applicants to follow.

42. One of the key characteristics in this process was the criteria for establishing a sponsoring community and organisation that would be responsible for domain name registration policies applicable for the top-level domain.



43. Technical: The minimum technical criteria were contained in Part E of the application material. Applicants were required to demonstrate their technical competence by showing how they would, for example, conduct registry operations; what kind of registrar-registry protocols would be required; how zone files would be managed; what facilities would be provided; how data escrow would be handled; what technical support would be available and how data and systems recovery would be managed.

44. Financial and Business: These criteria were contained in Part C and D of the application material which required detailed business plans and financial models. The business plan required appropriate staff to be identified; a marketing plan, plans for registrar management and appropriate fee structures. Most importantly, applicants were required to show why their application was unique and innovative; added community value to the domain name space, enhanced the diversity of the Internet and enriched global communities. In addition, applicants were expected to show how their operations would protect the rights of others through compliance with dispute resolution mechanisms and compliant registration systems.



45. Legal and Regulatory: A key element of the sponsored top-level domain application process was the requirement that applicants adequately define and demonstrate the support of a sponsored TLD community with evidence from a supporting organisation. The applicants were required to demonstrate that the proposed sponsoring organisation was appropriate for the purpose, would participate in ICANN's policy development processes and had support from the broader community.

46. Community Expectations: In this RFP, there were specific efforts made to diversify the domain name space; to demonstrate the attractiveness of different kinds of domain name spaces and to have different policy making processes that would be the responsibility of the sponsoring organisations. The public comments submitted for the sTLD process can be found at <http://forum.icann.ORG/lists/stld-rfp-general>.

47. Application Processes: Part F of the application material contained an Application Checklist to assist applicants in ensuring that their application materials complied with all sections of the RFP.



48. External factors: There were a number of special factors which arose throughout the application process including the status of regional geographic specific sTLDs; the treatment of identical string applications and the influence of the GAC principles of national governments with respect to public policy questions relating to some applications. The sTLD process is ongoing.



6. Selection Criteria .ORG Contract Reassignment

49. The reassignment of the .ORG contract took place during 2002 with the final agreement between Public Internet Registry and ICANN being signed on 3 December 2002. PIR commenced operation on 1 January 2003. There is a wide range of material available on the ICANN website including the selection criteria, application material, staff evaluations and public comments on the process. These are found at <http://www.icann.org.org/tlds/org/rfp-20may02.htm>.

50. The final contract can be found at <http://www.icann.org.org/tlds/agreements/org/>. (Note that the contract is a very large file with numerous appendices.)

51. The key selection criteria for the .ORG contract were contained in an on-line “proposal form” which applicants were required to fill out and submit in hard copy. Ten applications were received by ICANN in a competitive tender process.

52. The selection criteria <http://www.icann.org.org/tlds/org/criteria.htm> on the .ORG reassignment focus on the “need to preserve a stable,



well functioning .ORG registry”, “ability to comply with ICANN’s policies”, “enhancement of competition for registration services”, “differentiation of the .ORG TLD”, “inclusion of mechanisms for promoting the registry’s operation in a manner that is responsive to the needs, concerns, and views of the noncommercial Internet user community”, “level of support for the proposal from .ORG registrants”, “the type, quality, and cost of the registry services proposed”, “ability and commitment to support, function in, and adapt protocol changes in the shared registry system”, “transition considerations”, “ability to meet and commitment to comply with the qualification and use requirements of the VeriSign endowment and proposed use of the endowment” and “the completeness of the proposals submitted and the extent to which they demonstrate realistic plans and sound analysis”. These criteria are consistent with, in particular, those applied in the .NET reassignment. The following sections set out the specifics of the selection criteria.

53. Technical: The RFP made specific reference to the size and complexity of the .ORG registry. In 2002 there were 2,700,000 domain names in the .ORG registry. The RFP asked specifically for applications from companies that already offered registry services



and who could demonstrate the capacity to run a “domain-name registry of significant scale”. The Technical Plan included specific information about transition planning. Other technical requirements were an explanation of registry-registrar models; database capabilities; data escrow and backup; physical facilities; publicly accessible WHOIS; technical support and compliance with technical specifications in RFCs.

54. Financial and Business: The .ORG selection criteria focused specifically on the following key areas: equivalent access for registrars, enhancement of competition, differentiation of the .ORG TLD (also relevant in the “community expectations” section) and supporting documentation (setting out the applicant’s business information, annual reports, business references and community support).

55. Legal and Regulatory: The .ORG RFP required applicants to comply with a draft agreement which was posted during the RFP process, available at <http://www.icann.ORG/announcements/announcement-24oct02.htm>. In addition, applicants were expected to agree to



requirements to comply with ICANN's published policies and to participate actively in new policy development initiatives.

56. Community Expectations: Responsiveness to the non-commercial Internet user community was a key selection criterion in the .ORG reassignment. Management of the USD 5 million .ORG endowment and provision of indications of community support also fit into this category.

57. Application Processes: The .ORG applicants were required to pay a fee of USD 35,000 in addition to the cost of preparing the application form. Eleven applications were received. The applicants used the application question period and public comments about the applications were received through the ICANN website. A "fitness disclosure" was also required in addition to a formal statement identifying materials that would remain confidential. The general information about applicants and the statement of information about applicants refers specifically to the emphasis placed on the applicants' ability to operate a large registry including identifying any outsourcing arrangements.



58. External factors: Key external factors were the management of the VeriSign endowment, the transition of a very large existing database and support for the non-profit sector: The process for effecting changes to the .ORG registry services agreement can be found at <http://www.icann.org.org/announcements/announcement-22apr02.htm>.



7. Selection Criteria .NET Reassignment

59. The fourth example of a process with strict selection criteria was the reassignment of the .NET contract. The .NET registry had approximately six million registered domain names. The GNSO had recommended a distinction between absolute and relative criteria. The absolute criteria were developed with the broader ICANN community to “ensure that the .NET top-level Domain is administered at a very high level of safety, security, efficiency and fairness.” Each applicant had to satisfy all the absolute criteria. Comparisons were then made on the basis of the relative criteria and how well each applicant responded to those criteria.
60. There were five applicants for the .NET contract – VeriSign, NeuStar (as Sentan Registry Services), Afilias, DENIC and CORE. VeriSign was determined to be the successor operator after a comprehensive evaluation process.
61. The current version of the contract can be found at <http://www.icann.org/org/tlds/agreements/net/net-registry-agreement-01jul05.pdf> . A public comment period ran until 10 October 2005 on proposed amendments to the .NET contract.



Reference to the public comment period can be found at

<http://www.icann.org.org/announcements/announcement-22sep05.htm>.

62. In the RFP, there was a strong focus on absolute technical criteria, similar to those applied in the .ORG reassignment.
63. Technical: These criteria were absolute and included requirements for explicit descriptions (and substantiation) of existing registry operations; a “burdens and benefits” analysis of registry plans and all technical components of planned registry services. In addition, applicants were expected to provide detailed information on name server functional specifications; patch, update and upgrade policies; performance specifications; service level agreements, WHOIS specifications and data escrow arrangements. Explicit compliance with a range of RFCs was also required in addition to the provision of information about technical capabilities; sourcing of expert staff and highly detailed technical plans for ongoing operation in addition to detailed technical migration plans.
64. Security and stability of operations was a critical element of the absolute selection criteria. This included technical and business



failure contingency plans in addition to robust transition and migration plans.

65. Financial and Business: These criteria ranged across the provision of information about directors, officers, key staff and number of employees; the kind of organization and its core business. In addition, applicants were expected to provide pricing plans and demonstrate financial strength and long term viability. A detailed business plan was required, including staffing plans, expense models and cash availability.

66. Legal and Regulatory: These criteria included commitments to ICANN's existing consensus policies and compliance with all future consensus policies; a focus on increasing the competitive supply of registry services and innovative registry services

67. Community Expectations: ICANN processes include deliberate periods of public comment during which the Internet community can state their views. The .NET process outcome was contested and the public comment archives can be found at

<http://www.icann.ORG/tlds/net-rfp/net-rfp-public-comments.htm>.



68. Application Processes: The application process for the .NET contract required payment of a USD 200,000 application fee (with a graduated refund payable depending on the number of applicants). Each unsuccessful applicant received a USD 150,000 refund. There were procedures for non-compliant proposals and a requirement that portions of the application material be made public (and then commented upon by members of the ICANN community). Probity and conflict of interest measures were put in place to prevent applicants from attempting to influence ICANN Board and Staff members.

CONSIDERATIONS

69. Doubts have been expressed about whether it is necessary for ICANN to qualify new gTLDs on the basis of support and sponsorship by a community; the provision of business and financial plans and addition of new value to the name space. The NRC report suggests pre-qualification of applicants on technical capability, basic financial viability, and adherence to registrant protection standards and compliance to ICANN policies.



70. As stated earlier, the presumption is that it should be left to the imagination of potential bidders to propose strings for new gTLDs. From that perspective, an essential aspect to analyze is what character strings are acceptable and under what conditions. This relates to elements such as string length, technical, linguistic, cultural or even political aspects. There is a case for investigating whether there are any external authoritative sources that could be useful for vetting purposes, where both negative and positive list approaches can be considered.
71. The GAC has stated clear views on how to consider certain strings for TLDs, inter alia in a letter to ICANN dated 3 April 2005 (<http://www.icann.org/correspondence/tarmizi-to-twomey-03apr05.htm>)
72. There are examples of negative list approaches concerning domain names on the second level, which may be of relevance also for TLD strings. Reserved names lists are also mentioned in the chapter on contractual conditions. A recent addition on this topic is [the reserved names list](#) for .EU that is now published, covering country names of EU Member States in a plurality of languages.



73. The selection criteria previously used can be assessed for future selection processes from both an overall perspective and from a detailed perspective on each criterion. It is clear that ICANN should strive for process simplicity, especially since simplicity is an integral element of ensuring predictability in its processes.



8. Contractual Conditions

74. This section sets out analysis of the key contractual conditions relating to the initial 2000 round of new TLDs, the conditions for the new sTLDs and the contractual arrangements for the .ORG and .NET reassignment processes. The analysis is not intended to be comprehensive across each of the sets of agreements but rather to identify key points and areas where the agreements have evolved.
75. As noted above in the Selection Criteria section, contractual conditions have evolved to reflect the growing maturity of ICANN's organisation and the changing commercial environment in which registries operate. A list of all gTLDs can be found at <http://www.icann.ORG/registries/listing.htm> . All contracts between ICANN and gTLD operators and sponsors can be found at <http://www.icann.ORG/registries/agreements.htm>.
76. The change in approach for the 2005 TLD agreements was designed to streamline the agreement structure and to allow additional flexibility. Basic provisions have been reduced to key points; repetitious items have been removed and appendices have been simplified or eliminated altogether.



77. Other changes from the 2001 generic and sponsored top-level domain agreements include those set out in the following sections.
78. Obligations of Parties: The provisions have been simplified to eliminate clauses that repeated ICANN's mission as set out in the Bylaws. In addition, clauses relating to limitations around certain business practices by registry operators have been eliminated where they are overly prescriptive. Registry operator's obligations have been reduced to those covenants that are of fundamental interest to ICANN.
79. Consensus Policies: The old agreements provided a framework for the development of "consensus policies" including topics on which policies applicable to the registry operator may be developed. Since the original agreements were drafted in 2001, ICANN's restructuring and industry changes have had a significant effect on the way in which ICANN's policy development processes have been codified through the Bylaws. In the new form agreement, the reference to "consensus policies" includes all existing policies as of the date of the agreement, and all policies later developed through the policy development process, as part of ICANN's Bylaws. Some scoping of the development of policies under the agreement is included in the



2005 agreements. However, the Bylaws are intended to be the authoritative guide on the due process and procedure for the development of consensus policies.

80. Zone File Access: The updated registry agreements continue to obligate registry operators to provide zone file access to ICANN and to provide a free copy of the zone file to requesting parties.

81. Reserved Names: The identification of reserved top-level domain strings is simplified in two ways. One, a list on the IANA website that is updated from time to time and two, a list of names reserved from registration consistent with the relevant appendix which would be updated as needed.

82. Registry-Registrar Relationships: The existing framework of agreements for registry operators requires them to do business with (and only with) all ICANN-accredited registrars as well as mandating “equal access” to registry services and resources. The new .NET registry agreement continues this practice. The new .NET agreement prohibits registries from acting as registrars. However, registries may provide for volume discounts, marketing support and other incentive programs provided that the same



opportunity to qualify for those discounts and programs is available to all registrars.

83. Data Escrow: The 2001 registry agreement required data escrow (zone file copy) by the registry operator. In addition, the 2001 agreement also specified by appendix both the specifications for the data escrow and the form of data escrow agreement. The new .NET agreement also has this requirement.

84. WHOIS Policy: WHOIS policies (including consideration of public WHOIS, requirements for independent providers and ICANN's specifications) remained unchanged in the .NET agreement.

85. Functional and Performance Specifications: The functional and performance specifications were set out in Appendix C to the 2001 TLD agreements. The 2005 agreements set forth the specifications in Appendix 7.

86. Notice and Process for Proposed Registry Services & Product Changes: ICANN's pre-2005 registry agreements did not describe a procedure for ICANN to follow in considering registry requests to introduce new services or otherwise modify the registry agreement. A GNSO policy development process was launched in 2003 to



assist ICANN with developing such a procedure. The work of that GNSO PDP has been incorporated into all recent ICANN registry agreements

87. Dispute Resolution: The provisions governing dispute resolution contain mandatory arbitration provisions and also impose requirements that parties engage in co-operative discussions before proceeding to any arbitration demand. It is important to note that the intention of amending these provisions is to resolve any disputes through early informal processes (although these are mandated procedures). The new .NET provisions also contain specific performance provisions which give options to remedy non-performance through measures other than contract termination.

88. Termination Provisions: ICANN's termination rights revolve around an understanding of uncured and fundamental and material breaches of enumerated provisions relating to registry operator performance including those conditions relating to preserving security and stability; complying with consensus policies; handling of registry data; compliance with the process for approval of new registry services or material changes to existing services; and payment of ICANN fees.



89. Fees and Pricing: These conditions relate to fixed registry fees, transaction based fees and variable fees (essentially pass through of registrar fees when not collected from registrars directly).
90. Term of Agreement and Renewal: These conditions specify the time period for the gTLD assignment and conditions for renewal of the agreement.

CONSIDERATIONS

91. With the current contractual conditions as a starting point, there is a need to select essential contract conditions on which policy decisions are possible. In addition, there is an opportunity to identify policy aspects on new suggestions for contractual provisions.
92. ICANN is moving towards simplification of the registry contracts and standardized contracts could also be considered. Such aspects are especially appropriate to consider if a large number of new top-level domain names are to be added to the root level. A detailed proposal to simplify current agreements has been introduced during a public comment period. When reviewing the contractual conditions, past and current policy debates on TLD use could be



considered. An example would be the discussions about to what extent sponsored TLD registries should be able to set and change policies for domain name registration.

93. Currently, the contractual conditions feature cancellation of the contract as the principal sanction available. This “nuclear option” is clearly only applicable in extreme cases of non-compliance and has never been used. Some recent registry contracts, however, feature arbitration with other sanction possibilities for the compliance regime and such approaches could be considered further.

94. Suggestions put forward in the WIPO report to safeguard the interests of IPR holders are relevant to domain name registration rules.

95. IETF findings and proposals provide input for reviewing certain contractual conditions. Examples are the technical best practices for TLD zones that the DNSOP working group has elaborated and the results from the CRISP working group relating to WHOIS.



9. Allocation Methods

96. There are technical, processing and maintenance limits on the number of new gTLDs that could be introduced within a given time frame. The number of applications that meet stipulated selection criteria may exceed these limits, calling for an allocation method to handle such situations. Accordingly, policy choices about allocation methods need to be made. The policy choices should consider that combinations of such options are possible and could be related to different purposes. [check on RFC reference to numbers of TLDs that can be added]
97. There is a number of allocation methods to choose from and these methods can be grouped into the following categories; sequential or first-come/first-served, random selections in the form of ballots or lotteries, auction models (with increasing or decreasing bidding) and comparative evaluations, commonly known as “beauty contests”.
98. To date, ICANN has only used comparative evaluation methods. These evaluation procedures have differed in the details, by applying different criteria as explained in the selection criteria



chapter above. Evaluations have been performed in different ways; in-house, with mixed teams or by external consultants.

99. In the 2000 “proof-of-concept” round, ICANN used a comparative hearing process conducted by ICANN Staff and Board to select 7 out of the 44 applicants on the respective merits of their cases in fulfilling the specified selection criteria.

100. In the 2004 round for sponsored gTLDs, ICANN issued an open invitation for any applicants to propose new sponsored top-level domains. This time, ICANN engaged a project manager, selected by competitive bidding and assisted by three review panels, to determine whether the selection criteria were fulfilled or not. Allocation of a TLD to an applicant was to be conditional only upon fulfillment of these criteria. This process was designed to have an objective evaluation by experts insulated from lobbying by applicants, who were prohibited from contacting the evaluator. The intention was further to avoid lobbying pressure on ICANN Staff and Board as well as to minimize the risk for potential criticism about subjectivity in the process.



101. The .ORG reassignment was conducted in 2002 as a competitive tender process based on an open RFP with the selection criteria as specified in the previous chapter. Eleven applications were received and the evaluation was performed using a multi-team approach. The evaluation tasks were distributed by topic between consultants, constituencies and ICANN staff (as described in an evaluation report at: <http://www.icann.org/tlds/org/preliminary-evaluation-report-19aug02.htm>). PIR was selected as the proposed new registry for this gTLD and the ICANN Board resolved in accordance with this proposal.

102. The .NET reassignment was conducted in 2004-2005 as a competitive tender process based on an open RFP with the selection criteria specified in the previous chapter. Five bids were received and the evaluation was conducted by an outside consultant, assigned to this task through competitive bidding and selection by ICANN Staff and Board. The final evaluation and recommendation by the consultant is available at: <http://www.icann.org/announcements/announcement-28mar05.htm>.

CONSIDERATIONS



103. It should be recognized that the final decision to allocate a gTLD lies with the ICANN Board, where contractual arrangements are taken into account for the final approval. This implies that judgments can sometimes become complex, especially when an application attracts intense community and media interest. The .NET reassignment is a case in point, where the Board followed the consultant's recommendation to reappoint VeriSign as registry for .NET. However, community concerns were raised about the contractual conditions which, in response to those concerns, have been renegotiated, posted for public comment and presented to the Board.

104. ICANN has considerable experience in comparative evaluation methods. Two other allocation methods mentioned initially, first-come/first-served and random selection, are self-explanatory. ICANN has no experience of either model or of using auctions. Information about auction methods can be found in a variety of publications a selection of which are found in the Reference List.

105. The choice of allocation method has significance only if the number of valid applications is higher than the number of available slots for new TLDs. With criteria defined for a successful



application, it could be considered reasonable to accept them on a first-come/first-served as long as they meet the criteria, provided that the number of such applications is lower than, or equal to, the number of available slots for new TLDs. However, experience with “land rush” effects in domain name registrations show that first-come/first-served does not work when many valid applications are supplied at the same time. With this in mind, it is prudent to foresee the need for another allocation method from the outset.

106. The NRC report states that “If new gTLDs are to be created, the currently employed comparative hearing or expert evaluation processes should not be assumed to be the only processes for selecting their operators” and suggests that if the number of qualified applicants turns out to be less than the number of available slots, all would be chosen; if not, a market-based selection process, i.e. an auction, could be used to select among the applicants. The report further contends that “because of the wide range of intents and corresponding designs of such processes, they must be carefully designed, drawing on the wide range of previous experience in the design of auctions”.



107. In the process of determining the preferred allocation method, ICANN is constrained by some legal requirements that may limit the options for choosing allocation methods. Such limitations need to be investigated in parallel as soon as preferred allocation methods start to emerge in the selection process.



10.Relevance

108. Issues surrounding the creation of new top-level domains and the policies for undertaking that work are directly relevant to the GNSO's mission and the ICANN Bylaws. It is anticipated that very close consultation will take place between other parts of ICANN's organisation including the ccNSO, the Government Advisory Committee and expert technical working groups.

109. This work will have a lasting value and applicability and will establish a framework for future decision making. The work will also have an impact on existing policies for registry services.

C. Staff Recommendation

110. It is recommended that the GNSO launch a focused policy development process on the issues outlined in the 22 September 2005 resolution in close consultation with the broader ICANN community including the Government Advisory Committee (on the public policy aspects of new top-level domains) and the ccNSO on (internationalized domain names).



D. Proposed Working Group Terms of Reference

111. The draft Working Group Terms of Reference reflects very diverse objectives across the ICANN community. The GNSO is tasked with determining whether to continue to introduce new gTLDs and, if that is affirmative, developing robust policy to enable the selection and allocation of new top-level domains. The proposed Terms of Reference found below could be used as a guide for further work.

112. Term of Reference One: Should new top-level domain names be introduced?

- (a) Given the information provided here and any other relevant information available to the GNSO, the GNSO should assess whether there is sufficient support within the Internet community to enable the introduction of new top-level domains. If this is the case the following additional terms of reference are applicable.

113. Term of Reference Two: Selection Criteria for New top-level Domains



New Top-Level Domains
Staff Recommendations & Proposed Terms of Reference

- (a) Using the existing selection criteria from previous top-level domain application processes and relevant criteria in registry services re-allocations, develop modified or new criteria which specifically address ICANN's goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top-level domains can meet demands for broader use of the Internet in developing countries.
- (b) Examine whether preferential selection criteria could be developed which would encourage new and innovative ways of addressing the needs of Internet users.
- (c) Examine whether distinctions between restricted, unrestricted, sponsored and unsponsored top-level domains are necessary and how the choice of distinctions meets the interests of relevant stakeholders.
- (d) Examine whether additional criteria need to be developed which address ICANN's goals of ensuring the security and stability of the Internet.



- (e) Examine whether additional criteria can be developed to normalize and simplify the administrative process of selecting and implementing new top-level domains.

114. Term of Reference Three: Allocation Methods for New Top-Level Domains

- (a) Using the experience gained in previous rounds of top-level domain name application processes, develop modified or new criteria which simplify and standardize the allocation methods for selecting new top-level domain names.
- (b) Examine the full range of allocation methods including auctions, ballots and comparative evaluation processes to determine the most predictable and stable method of implementing additions to the Internet root.
- (c) Examine how allocation methods could be used to achieve ICANN's goals of fostering competition in domain name registration services and encouraging a diverse range of registry services providers.



115. Term of Reference Four: Contractual Conditions for New Top-Level Domains

- (a) Using the experience of previous rounds of top-level domain name application processes and the recent amendments to registry services agreements, develop modified or new contractual criteria which are publicly available prior to any application rounds.
- (b) Examine whether additional contractual conditions are necessary to improve ICANN's contractual compliance regime to provide predictability and security of registry services.
- (c) Examine whether a registry services code of conduct, in addition to contractual conditions, would improve a compliance regime which is easily understandable and recognizes differences in approaches to offering registry services whilst, at the same time, ensuring the stability and security of the Internet.

116. At the Council meeting on 28 November 2005, it was resolved to adopt Terms of Reference as follows:



New Top-Level Domains
Staff Recommendations & Proposed Terms of Reference

117. Should new generic top-level domain names be introduced?

- (a) Given the information provided here and any other relevant information available to the GNSO, the GNSO should assess whether there is sufficient support within the Internet community to enable the introduction of new top-level domains. If this is the case the following additional terms of reference are applicable.

118. Selection Criteria for New Top-Level Domains

- (a) Taking into account the existing selection criteria from previous top-level domain application processes and relevant criteria in registry services re-allocations, develop modified or new criteria which specifically address ICANN's goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top-level domains can meet demands for broader use of the Internet in developing countries.
- (b) Examine whether preferential selection criteria (e.g. sponsored) could be developed which would encourage



New Top-Level Domains
Staff Recommendations & Proposed Terms of Reference

new and innovative ways of addressing the needs of Internet users.

- (c) Examine whether additional criteria need to be developed which address ICANN's goals of ensuring the security and stability of the Internet.

119. Allocation Methods for New Top-Level Domains

- (a) Using the experience gained in previous rounds, develop allocation methods for selecting new top-level domain names.
- (b) Examine the full range of allocation methods including auctions, ballots, first-come first-served and comparative evaluation to determine the methods of allocation that best enhance user choice while not compromising predictability and stability.
- (c) Examine how allocation methods could be used to achieve ICANN's goals of fostering competition in domain name registration services and encouraging a diverse range of registry services providers.



120. Policy to Guide Contractual Conditions for New Top-Level Domains

- (a) Using the experience of previous rounds of top-level domain name application processes and the recent amendments to registry services agreements, develop policies to guide the contractual criteria which are publicly available prior to any application rounds.
- (b) Determine what policies are necessary to provide security and stability of registry services.
- (c) Determine appropriate policies to guide a contractual compliance programme for registry services.



Reference List

Davis and Holt, *Experimental Economics*, Princeton University Press, Princeton: 1993. (Materials for auction models is also available at the University of Haifa website <http://www.gsb.haifa.ac.il>)

DNJournal, *Global TLD Registrations Pass 50 Million as New Users Stream Online*. July 30 2005. On line version at <http://dnjournal.com/columns/50million.htm>.

Johnson, David and Susan Crawford, *Old Delusions and new TLDs*, comments submitted 13 November 2002 as part of ICANN Amsterdam meeting topic (<http://www.icann.org/amsterdam/gtld-action-plan-topic.htm>). On line version available at <http://forum.icann.org/gtld-plan-comments/general/msg00003.html>.

Johnson, David and Susan Crawford, *A Concrete "Thin Contract Proposal"*, submitted 23 August 2003 as comments on new TLD contracts. On line version including proposed draft contract available at <http://forum.icann.org/mtg-cmts/stld-rfp-comments/general/msg00039.html>.

Klensin, John, *RFC 3071 (Reflections on the DNS, [RFC 1591](#), and Categories of Domains)*. 2001. On line version at <http://rfc.net/rfc3071.html>.

Klensin, John, *RFC 3467 (Role of the Domain Name System)*. 2003. On line version at <http://rfc.net/rfc3467.html>.

National Research Council, *Signposts in Cyberspace: The Domain Name System and Internet Navigation*, Committee on Internet Navigation and the Domain Name System: Technical Alternatives and Policy Implications; Washington, DC: 2005. ISBN: 0-309-09640-5. Executive summary found at http://www.nap.edu/execsumm_pdf/11258.pdf).

New Top-Level Domains
Reference List

Organisation for Economic Cooperation and Development, *Generic Top-Level Domain Names: Market Development and Allocation Issues*. Working Party on Telecommunications and Information Services Policies. Paris: 2004.

DSTI/ICCP/TISP(2004)/2Final. On line version at <http://www.oecd.org/dataoecd/56/34/32996948.pdf>.

Summit Strategies International, *Evaluation of the New gTLDs: Policy and Legal Issues*, August 2004. On line version at <http://icann.org/tlds/new-gtld-eval-31aug04.pdf>. On line version of presentation at ICANN's Rome meeting <http://www.icann.org/presentations/sapiro-forum-rome-04mar04.pdf>.

VeriSign, *The Domain Name Industry Brief*, Volume 2, Issue 2, May 2005. On line version at <http://www.verisign.com/stellent/groups/public/documents/newsletter/030725.pdf>

World Intellectual Property Organisation, *New Generic Top-Level Domains: Intellectual Property Considerations*, WIPO Arbitration and Mediation Center, 2004. On line version at <http://arbiter.wipo.int/domains/reports/newgtld-ip/index.html>.

ICANN Links

GNSO gTLDs Committee Final Report on New gTLDs, May- June 2003

9 May, v4: <http://www.dnso.org/dnso/notes/20030509.gTLDs-committee-conclusions-v4.html>

21 May, v5: <http://www.dnso.org/dnso/notes/20030521.gTLDs-committee-conclusions-v5.html>

02 Jun, v6: <http://www.dnso.org/dnso/notes/20030602.gTLDs-committee-conclusions-v6.html>

12 Jun, v7: <http://www.dnso.org/dnso/notes/20030612.gTLDs-committee-conclusions-v7-1.html>

IANA alphabetical listing of all TLD domains - <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>.

List of Registry Agreements <http://www.icann.ORG/registries/agreements.htm>



List of Registries

<http://www.icann.ORG/registries/listing.html>.

Reference Material 9.

Internet Corporation for Assigned Names and Numbers

[GROUPS \(/EN/GROUPS\)](#) › [BOARD \(/EN/GROUPS/BOARD\)](#) › [DOCUMENTS \(/EN/GROUPS/BOARD/DOCUMENTS\)](#)

Adopted Board Resolutions | Paris

26 June 2008

- Approval of Minutes
- [GNSO \(Generic Names Supporting Organization\) Recommendations on New gTLDs](#)
- [IDNC \(Internationalized Domain Name\) / IDN Fast-track](#)
- [GNSO \(Generic Names Supporting Organization\) Recommendation on Domain Tasting](#)
- Approval of Operating Plan and Budget for Fiscal Year 2008-2009
- Update on Draft Amendments to the Registrar Accreditation Agreement
- Approval of PIR Request to Implement [DNSSEC \(DNS Security Extensions\)](#) in .ORG
- [ICANN \(Internet Corporation for Assigned Names and Numbers\) Board of Directors' Code of Conduct](#)
- Ratification of Selection of Consultant to Conduct Independent Review of the Board
- Appointment of Independent Review Working Groups
- Update on Independent Reviews of [ICANN \(Internet Corporation for Assigned Names and Numbers\) Structures](#)
- Board Committee Assignment Revisions
- Approval of BGC Recommendations on [GNSO \(Generic Names Supporting Organization\) Improvements](#)
- Receipt of Report of President's Strategy Committee Consultation
- Selection of Mexico City for March 2009 [ICANN \(Internet Corporation for Assigned Names and Numbers\) Meeting](#)
- Review of Paris Meeting Structure
- Board Response to Discussions Arising from Paris Meeting
- [ICANN \(Internet Corporation for Assigned Names and Numbers\) At-Large Summit Proposal](#)
- Other Business
- Thanks to Steve Conte
- Thanks to Sponsors
- Thanks to Local Hosts, Staff, Scribes, Interpreters, Event Teams, and Others

Approval of Minutes

Resolved (2008.06.26.01), the minutes of the Board Meeting of 29 May 2008 are approved. <[<http://www.icann.org/minutes/prelim-report-29may08.htm \(/minutes/prelim-report-29may08.htm\)>](http://www.icann.org/minutes/prelim-report-29may08.htm (/minutes/prelim-report-29may08.htm))>

[| back to top |](#)

[GNSO \(Generic Names Supporting Organization\) Recommendations on New gTLDs](#)

Whereas, the [GNSO \(Generic Names Supporting Organization\)](#) initiated a policy development process on the introduction of New gTLDs in December 2005. <[Whereas, the \[GNSO \\(Generic Names Supporting Organization\\)\]\(#\) Committee on the Introduction of New gTLDs addressed a range of difficult technical, operational, legal, economic, and policy questions, and facilitated widespread participation and public comment throughout the process.](http://gns0.icann.org/issues/new-gtlds/ (http://gns0.icann.org/issues/new-gtlds/)>></p></div><div data-bbox=)

Whereas, the [GNSO \(Generic Names Supporting Organization\)](#) successfully completed its policy development process on

the Introduction of New gTLDs and on 7 September 2007, and achieved a Supermajority vote on its 19 policy recommendations. <<http://gnso.icann.org/meetings/minutes-gnso-06sep07.shtml> (<http://gnso.icann.org/meetings/minutes-gnso-06sep07.shtml>)>

Whereas, the Board instructed staff to review the GNSO (Generic Names Supporting Organization) recommendations and determine whether they were capable of implementation.

Whereas, staff has engaged international technical, operational and legal expertise to provide counsel on details to support the implementation of the Policy recommendations and as a result, ICANN (Internet Corporation for Assigned Names and Numbers) cross-functional teams have developed implementation details in support of the GNSO (Generic Names Supporting Organization)'s policy recommendations, and have concluded that the recommendations are capable of implementation.

Whereas, staff has provided regular updates to the community and the Board on the implementation plan. <<http://icann.org/topics/new-gtld-program.htm> (<http://icann.org/topics/new-gtld-program.htm>)>

Whereas, consultation with the DNS (Domain Name System) technical community has led to the conclusion that there is not currently any evidence to support establishing a limit to how many TLDs can be inserted in the root based on technical stability concerns. <<http://www.icann.org/topics/dns-stability-draft-paper-06feb08.pdf> ([/topics/dns-stability-draft-paper-06feb08.pdf](http://www.icann.org/topics/dns-stability-draft-paper-06feb08.pdf))>

Whereas, the Board recognizes that the process will need to be resilient to unforeseen circumstances.

Whereas, the Board has listened to the concerns about the recommendations that have been raised by the community, and will continue to take into account the advice of ICANN (Internet Corporation for Assigned Names and Numbers)'s supporting organizations and advisory committees in the implementation plan.

Resolved (2008.06.26.02), based on both the support of the community for New gTLDs and the advice of staff that the introduction of new gTLDs is capable of implementation, the Board adopts the GNSO (Generic Names Supporting Organization) policy recommendations for the introduction of new gTLDs <<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm> (<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>)>.

Resolved (2008.06.26.03), the Board directs staff to continue to further develop and complete its detailed implementation plan, continue communication with the community on such work, and provide the Board with a final version of the implementation proposals for the board and community to approve before the new gTLD (generic Top Level Domain) introduction process is launched.

| [back to top](#) |

IDNC (Internationalized Domain Name) / IDN Fast-track

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board recognizes that the "IDNC (Internationalized Domain Name) Working Group" developed, after extensive community comment, a final report on feasible methods for timely (fast-track) introduction of a limited number of IDN ccTLDs associated with ISO (International Organization for Standardization) 3166-1 two-letter codes while an overall, long-term IDN ccTLD (Country Code Top Level Domain) policy is under development by the ccNSO (Country Code Names Supporting Organization).

Whereas, the IDNC (Internationalized Domain Name) Working Group has concluded its work and has submitted recommendations for the selection and delegation of "fast-track" IDN ccTLDs and, pursuant to its charter, has taken into account and was guided by consideration of the requirements to:

- Preserve the security and stability of the DNS (Domain Name System);
- Comply with the IDNA protocols;
- Take input and advice from the technical community with respect to the implementation of IDNs (Internationalized Domain Names); and
- Build on and maintain the current practices for the delegation of ccTLDs, which include the current IANA (Internet Assigned Numbers Authority) practices.

Whereas, the IDNC (Internationalized Domain Name) Working Group's high-level recommendations require implementation planning.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) is looking closely at interaction with the final IDN ccTLD (Country Code Top Level Domain) PDP (Policy Development Process) process and potential risks, and intends to implement IDN ccTLDs using a procedure that will be resilient to unforeseen circumstances.

Whereas, staff will consider the full range of implementation issues related to the introduction of IDN ccTLDs associated with the ISO (International Organization for Standardization) 3166-1 list, including means of promoting adherence to technical

standards and mechanisms to cover the costs associated with IDN ccTLDs.

Whereas, the Board intends that the timing of the process for the introduction of IDN ccTLDs should be aligned with the process for the introduction of New gTLDs.

Resolved (2008.06.26.04), the Board thanks the members of the IDNC (Internationalized Domain Name) WG (Working Group) for completing their chartered tasks in a timely manner.

Resolved (2008.06.26.05), the Board directs staff to: (1) post the IDNC (Internationalized Domain Name) WG (Working Group) final report for public comments; (2) commence work on implementation issues in consultation with relevant stakeholders; and (3) submit a detailed implementation report including a list of any outstanding issues to the Board in advance of the ICANN (Internet Corporation for Assigned Names and Numbers) Cairo meeting in November 2008.

| [back to top](#) |

GNSO (Generic Names Supporting Organization) Recommendation on Domain Tasting

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) community stakeholders are increasingly concerned about domain tasting, which is the practice of using the add grace period (AGP (Add Grace Period)) to register domain names in bulk in order to test their profitability.

Whereas, on 17 April 2008, the GNSO (Generic Names Supporting Organization) Council approved, by a Supermajority vote a motion to prohibit any gTLD (generic Top Level Domain) operator that has implemented an AGP (Add Grace Period) from offering a refund for any domain name deleted during the AGP (Add Grace Period) that exceeds 10% of its net new registrations in that month, or fifty domain names, whichever is greater. <<http://gns0.icann.org/meetings/minutes-gns0-17apr08.shtml> (<http://gns0.icann.org/meetings/minutes-gns0-17apr08.shtml>)>

Whereas, on 25 April 2008, the GNSO (Generic Names Supporting Organization) Council forwarded its formal "Report to the ICANN (Internet Corporation for Assigned Names and Numbers) Board - Recommendation for Domain Tasting" <<http://gns0.icann.org/issues/domain-tasting/domain-tasting-board-report-gns0-council-25apr08.pdf> (<http://gns0.icann.org/issues/domain-tasting/domain-tasting-board-report-gns0-council-25apr08.pdf>)>, which outlines the full text of the motion and the full context and procedural history of this proceeding.

Whereas, the Board is also considering the Proposed FY 09 Operating Plan and Budget <<http://www.icann.org/financials/fiscal-30jun09.htm> ([/financials/fiscal-30jun09.htm](http://www.icann.org/financials/fiscal-30jun09.htm))>, which includes (at the encouragement of the GNSO (Generic Names Supporting Organization) Council) a proposal similar to the GNSO (Generic Names Supporting Organization) policy recommendation to expand the applicability of the ICANN (Internet Corporation for Assigned Names and Numbers) transaction fee in order to limit domain tasting.

Resolved (2008.06.26.06), the Board adopts the GNSO (Generic Names Supporting Organization) policy recommendation on domain tasting, and directs staff to implement the policy following appropriate comment and notice periods on the implementation documents.

| [back to top](#) |

Approval of Operating Plan and Budget for Fiscal Year 2008-2009

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) approved an update to the Strategic Plan in December 2007. <<http://www.icann.org/strategic-plan/> ([/strategic-plan](http://www.icann.org/strategic-plan/))>

Whereas, the Initial Operating Plan and Budget Framework for fiscal year 2009 was presented at the New Delhi ICANN (Internet Corporation for Assigned Names and Numbers) meeting and was posted in February 2008 for community consultation. <<http://www.icann.org/announcements/announcement-2-04feb08.htm> ([/announcements/announcement-2-04feb08.htm](http://www.icann.org/announcements/announcement-2-04feb08.htm))>

Whereas, community consultations were held to discuss and obtain feedback on the Initial Framework.

Whereas, the draft FY09 Operating Plan and Budget was posted for public comment in accordance with the Bylaws on 17 May 2008 based upon the Initial Framework, community consultation, and consultations with the Board Finance Committee. A slightly revised version was posted on 23 May 2008. <<http://www.icann.org/financials/fiscal-30jun09.htm> ([/financials/fiscal-30jun09.htm](http://www.icann.org/financials/fiscal-30jun09.htm))>

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) has actively solicited community feedback and consultation with ICANN (Internet Corporation for Assigned Names and Numbers)'s constituencies. <<http://forum.icann.org/lists/op-budget-fy2009/> (<http://forum.icann.org/lists/op-budget-fy2009/>)>

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board Finance Committee has discussed,

and guided staff on, the FY09 Operating Plan and Budget at each of its regularly scheduled monthly meetings.

Whereas, the final FY09 Operating Plan and Budget was posted on 26 June 2008. <<http://www.icann.org/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf> (/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf)>

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board Finance Committee met in Paris on 2 June 2008 to discuss the FY09 Operating Plan and Budget, and recommended that the Board adopt the FY09 Operating Plan and Budget.

Whereas, the President has advised that the FY09 Operating Plan and Budget reflects the work of staff and community to identify the plan of activities, the expected revenue, and resources necessary to be spent in fiscal year ending 30 June 2009.

Whereas, continuing consultation on the budget has been conducted at ICANN (Internet Corporation for Assigned Names and Numbers)'s meeting in Paris, at constituency meetings, and during the public forum.

Resolved (2008.06.26.07), the Board adopts the Fiscal Year 2008-2009 Operating Plan and Budget. <<http://www.icann.org/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf> (/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf)>

| [back to top](#) |

Update on Draft Amendments to the Registrar Accreditation Agreement

(For discussion only.)

| [back to top](#) |

Approval of PIR Request to Implement DNSSEC (DNS Security Extensions) in .ORG

Whereas, Public Interest Registry has submitted a proposal to implement DNS (Domain Name System) Security Extensions (DNSSEC (DNS Security Extensions)) in .ORG. <<http://icann.org/registries/rsep/pir-request-03apr08.pdf> (<http://icann.org/registries/rsep/pir-request-03apr08.pdf>)>

Whereas, staff has evaluated the .ORG DNSSEC (DNS Security Extensions) proposal as a new registry service via the Registry Services Evaluation Policy <<http://icann.org/registries/rsep/> (<http://icann.org/registries/rsep/>)>, and the proposal included a requested amendment to Section 3.1(c)(i) of the .ORG Registry Agreement <<http://icann.org/tlds/agreements/org/proposed-org-amendment-23apr08.pdf> (<http://icann.org/tlds/agreements/org/proposed-org-amendment-23apr08.pdf>)> which was posted for public comment along with the PIR proposal.

Whereas, the evaluation under the threshold test of the Registry Services Evaluation Policy <<http://icann.org/registries/rsep/rsep.html> (<http://icann.org/registries/rsep/rsep.html>)> found a likelihood of security and stability issues associated with the proposed implementation. The RSTEP (Registry Services Technical Evaluation Panel) Review Team considered the proposal and found that there was a risk of a meaningful adverse effect on security and stability, which could be effectively mitigated by policies, decisions and actions to which PIR has expressly committed in its proposal or could be reasonably required to commit. <<http://icann.org/registries/rsep/rstep-report-pir-dnssec-04jun08.pdf> (<http://icann.org/registries/rsep/rstep-report-pir-dnssec-04jun08.pdf>)>

Whereas, the Chair of the SSAC (Security and Stability Advisory Committee) has advised that RSTEP (Registry Services Technical Evaluation Panel)'s thorough investigation of every issue that has been raised concerning the security and stability effects of DNSSEC (DNS Security Extensions) deployment concludes that effective measures to deal with all of them can be taken by PIR, and that this conclusion after exhaustive review greatly increases the confidence with which DNSSEC (DNS Security Extensions) deployment in .ORG can be undertaken.

Whereas, PIR intends to implement DNSSEC (DNS Security Extensions) only after extended testing and consultation.

Resolved (2008.06.26.08), that PIR's proposal to implement DNSSEC (DNS Security Extensions) in .ORG is approved, with the understanding that PIR will continue to cooperate and consult with ICANN (Internet Corporation for Assigned Names and Numbers) on details of the implementation. The President and the General Counsel are authorized to enter the associated amendment to the .ORG Registry Agreement, and to take other actions as appropriate to enable the deployment of DNSSEC (DNS Security Extensions) in .ORG.

| [back to top](#) |

ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors' Code of Conduct

Whereas, the members of ICANN (Internet Corporation for Assigned Names and Numbers)'s Board of Directors are committed to maintaining a high standard of ethical conduct.

Whereas, the Board Governance Committee has developed a Code of Conduct to provide the Board with guiding principles for conducting themselves in an ethical manner.

Resolved (2008.06.26.09), the Board directs staff to post the newly proposed ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors' Code of Conduct for public comment, for consideration by the Board as soon as feasible. [Reference to PDF will be inserted when posted.]

[| back to top |](#)

Ratification of Selection of Consultant to Conduct Independent Review of the Board

Whereas, the Board Governance Committee has recommended that Boston Consulting Group be selected as the consultant to perform the independent review of the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

Whereas, the BGC's recommendation to retain BCG was approved by the Executive Committee during its meeting on 12 June 2008.

Resolved (2008.06.26.10), the Board ratifies the Executive Committee's approval of the Board Governance Committee's recommendation to select Boston Consulting Group as the consultant to perform the independent review of the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

[| back to top |](#)

Appointment of Independent Review Working Groups

Whereas, the Board Governance Committee has recommended that several working groups should be formed to coordinate pending independent reviews of ICANN (Internet Corporation for Assigned Names and Numbers) structures.

Resolved (2008.06.26.11), the Board establishes the following independent review working groups:

- ICANN (Internet Corporation for Assigned Names and Numbers) Board Independent Review Working Group: Amadeu Abril i Abril, Roberto Gaetano (Chair), Steve Goldstein, Thomas Narten, Rajasekhar Ramaraj, Rita Rodin, and Jean Jacques Subrenat.
- DNS (Domain Name System) Root Server System Advisory Committee (RSSAC) Independent Review Working Group: Harald Alvestrand (Chair), Steve Crocker and Bruce Tonkin.
- Security and Stability Advisory Committee (SSAC (Security and Stability Advisory Committee)) Independent Review Working Group: Robert Blokzijl, Dennis Jennings (Chair), Reinhard Scholl and Suzanne Woolf.

[| back to top |](#)

Update on Independent Reviews of ICANN (Internet Corporation for Assigned Names and Numbers) Structures

(For discussion only.)

[| back to top |](#)

Board Committee Assignment Revisions

Whereas, the Board Governance Committee has recommended that the membership of several Board should be revised, and that all other committees should remain unchanged until the 2008 Annual Meeting.

Resolved (2008.06.26.12), the membership of the Audit, Finance, and Reconsideration committees are revised as follows:

- Audit Committee: Raimundo Beca, Demi Getschko, Dennis Jennings, Njeri Rionge and Rita Rodin (Chair).
- Finance Committee: Raimundo Beca, Peter Dengate Thrush, Steve Goldstein, Dennis Jennings, Rajasekhar Ramaraj (Chair), and Bruce Tonkin (as observer).
- Reconsideration Committee: Susan Crawford (Chair), Demi Getschko, Dennis Jennings, Rita Rodin, and Jean-Jacques Subrenat.

[| back to top |](#)

Approval of BGC Recommendations on GNSO (Generic Names Supporting Organization) Improvements

Whereas, Article IV, Section 4 of ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws calls for periodic reviews of the performance and operation of ICANN (Internet Corporation for Assigned Names and Numbers)'s structures |

an entity or entities independent of the organization under review.

Whereas, the Board created the "Board Governance Committee GNSO (Generic Names Supporting Organization) Review Working Group" (Working Group) to consider the independent review of the GNSO (Generic Names Supporting Organization) and other relevant input, and recommend to the Board Governance Committee a comprehensive proposal to improve the effectiveness of the GNSO (Generic Names Supporting Organization), including its policy activities, structure, operations and communications.

Whereas, the Working Group engaged in extensive public consultation and discussions, considered all input, and developed final report <<http://www.icann.org/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf> (/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf)> containing a comprehensive and exhaustive list of proposed recommendations on GNSO (Generic Names Supporting Organization) improvements.

Whereas, the Board Governance Committee determined that the GNSO (Generic Names Supporting Organization) Improvements working group had fulfilled its charter and forwarded the final report to the Board for consideration.

Whereas, a public comment forum was held open for 60 days to receive, consider and summarize <<http://forum.icann.org/lis/gnso-improvements-report-2008/msg00033.html> (<http://forum.icann.org/lists/gnso-improvements-report-2008/msg00033.html>)> public comments on the final report.

Whereas, the GNSO (Generic Names Supporting Organization) Council and Staff have worked diligently over the past few months to develop a top-level plan for approaching the implementation of the improvement recommendations, as requested by the Board at its New Delhi meeting.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) has a continuing need for a strong structure for developing policies that reflect to the extent possible a consensus of all stakeholders in the community including ICANN (Internet Corporation for Assigned Names and Numbers)'s contracted parties.

Resolved (2008.06.26.13), the Board endorses the recommendations of the Board Governance Committee's GNSO (Generic Names Supporting Organization) Review Working Group, other than on GNSO (Generic Names Supporting Organization) Council restructuring, and requests that the GNSO (Generic Names Supporting Organization) convene a small working group on Council restructuring including one representative from the current NomCom appointees, one member from each constituency and one member from each liaison-appointing advisory committee (if that advisory committee so desires) and that this group should reach consensus and submit a consensus recommendation on Council restructuring by no later than 25 July 2008 for consideration by the ICANN (Internet Corporation for Assigned Names and Numbers) Board as soon as possible, but no later than the Board's meeting in August 2008.

| [back to top](#) |

Receipt of Report of President's Strategy Committee Consultation

Whereas, the Chairman of the Board requested that the President's Strategy Committee undertake a process on how to strengthen and complete the ICANN (Internet Corporation for Assigned Names and Numbers) multi-stakeholder model.

Whereas, the PSC has developed three papers that outline key areas and possible responses to address them: "Transition Action Plan," "Improving Institutional Confidence in ICANN (Internet Corporation for Assigned Names and Numbers)," and "FAQ." <<http://icann.org/en/announcements/announcement-16jun08-en.htm> (<http://icann.org/en/announcements/announcement-16jun08-en.htm>) >

Whereas, these documents and the proposals contained in them have been discussed at ICANN (Internet Corporation for Assigned Names and Numbers)'s meeting in Paris.

Whereas, a dedicated webpage has been launched to provide the community with information, including regular updates <<http://icann.org/jpa/iic/> (<http://icann.org/jpa/iic/>)>.

Resolved (2008.06.26.14), the Board thanks the President's Strategy Committee for its work to date, and instructs ICANN (Internet Corporation for Assigned Names and Numbers) staff to undertake the public consultation recommended in the action plan, and strongly encourages the entire ICANN (Internet Corporation for Assigned Names and Numbers) community to participate in the continuing consultations on the future of ICANN (Internet Corporation for Assigned Names and Numbers) by reviewing and submitting comments to the PSC by 31 July 2008.

Selection of Mexico City for March 2009 ICANN (Internet Corporation for Assigned Names and Numbers) Meeting

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) intends to hold its first meeting for calendar year 2009 in the Latin America region;

Whereas, the Mexican Internet Association (AMIPCI) has agreed to host the meeting;

Resolved (2008.06.26.15), the Board accepts the AMIPCI proposal to host ICANN (Internet Corporation for Assigned Names and Numbers)'s 34th global meeting in Mexico City, in March 2009.

Review of Paris Meeting Structure

(For discussion only.)

| [back to top](#) |

Board Response to Discussions Arising from Paris Meeting

(For discussion only.)

| [back to top](#) |

ICANN (Internet Corporation for Assigned Names and Numbers) At-Large Summit Proposal

Whereas, at the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in New Delhi in February 2008, the Board resolved to direct staff to work with the ALAC (At-Large Advisory Committee) to finalise a proposal to fund an ICANN (Internet Corporation for Assigned Names and Numbers) At-Large Summit, for consideration as part of the 2008-2009 operating plan and budget process. <<http://www.icann.org/minutes/resolutions-15feb08.htm> (/minutes/resolutions-15feb08.htm)>

Whereas, potential funding for such a summit has been identified in the FY09 budget. <<http://www.icann.org/financials/fiscal-30jun09.htm> (/financials/fiscal-30jun09.htm)>

Whereas, a proposal for the Summit was completed and submitted shortly before the ICANN (Internet Corporation for Assigned Names and Numbers) Meeting in Paris.

Resolved (2008.06.26.16), the Board approves the proposal to hold an ICANN (Internet Corporation for Assigned Names and Numbers) At-Large Summit as a one-time special event, and requests that the ALAC (At-Large Advisory Committee) work with ICANN (Internet Corporation for Assigned Names and Numbers) Staff to implement the Summit in a manner that achieves efficiency, including considering the Mexico meeting as the venue.

Resolved (2008.06.26.17), with the maturation of At-Large and the proposal for the At-Large Summit's objectives set out, the Board expects the ALAC (At-Large Advisory Committee) to look to more self-funding for At-Large travel in the fiscal year 2010 plan, consistent with the travel policies of other constituencies.

| [back to top](#) |

Other Business

(TBD)

| [back to top](#) |

Thanks to Steve Conte

Whereas, Steve Conte has served as an employee of ICANN (Internet Corporation for Assigned Names and Numbers) for over five years.

Whereas, Steve has served ICANN (Internet Corporation for Assigned Names and Numbers) in a number of roles, currently as ICANN (Internet Corporation for Assigned Names and Numbers)'s Chief Security Officer, but also as a vital support to the Board and its work at meetings.

Whereas, Steve has given notice to ICANN (Internet Corporation for Assigned Names and Numbers) that he has accepted new position with the Internet Society (ISOC (Internet Society)), and that his employment with ICANN (Internet Corporation for Assigned Names and Numbers) will conclude at the end of this meeting.

Whereas, Steve is of gentle nature, possessed of endless patience and fierce integrity, a love of music, and great dedication to the Internet and those who nurture it.

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board wishes to recognize Steve for his service to ICANN (Internet Corporation for Assigned Names and Numbers) and the global Internet community. In particular, Steve has tirelessly and with good nature supported the past 19 ICANN (Internet Corporation for Assigned Names and Numbers) meetings and his extraordinary efforts have been most appreciated.

Resolved (2008.06.26.18), the ICANN (Internet Corporation for Assigned Names and Numbers) Board formally thanks Steve

Conte for his service to ICANN (Internet Corporation for Assigned Names and Numbers), and expresses its good wishes to Steve for his work with ISOC (Internet Society) and all his future endeavors.

[| back to top |](#)

Thanks to Sponsors

The Board extends its thanks to all sponsors of this meeting:

L'Association Française pour le Nommege Internet en Coopération (AFNIC (Association Franaise pour le Nommege Internet en Coopration)), France Télécom, Groupe Jutheu Husson, Stichting Internet Domeinregistratie Nederland (SIDN), Association Marocaine des Professionnels des Telecommunications (MATI), Afiliis Limited, Deutsches Network Information Center (DENIC), The European Registry of Domain Names (EURid), European Domain Name Registration (EuroDNS), INDOM, Toit de la Grande Arche Parvis de la Défense, Musee de L'informatique, NeuStar, Inc., Public Interest Registry, VeriSign, Inc., AusRegistry, Fundació puntCAT, Council of European National Top Level Domain Registries (CENTR (Council of European National Top level domain Registries)), China Internet Network Information Center (CNNIC), Institut National de Recherche en Informatique et en Automatique (INRIA), InterNetX, Key-Systems GmbH, Directi Internet Solutions Pvt. Ltd. d/b/a PublicDomainRegistry.com, Nask, Nominet UK, The Internet Infrastructure Foundation (.SE), Registry ASP, Amen, DotAsia Organisation Ltd., Domaine FR, Golog, Iron Mountain Intellectual Property Management, Inc., Nameaction, Inc., NIC (Network Information Center).AT Internet Verwaltungs und Betriebsgesellschaft m.b.H, UNINETT Norid A/S, IIT – CNR (Registro del ccTLD (Country Code Top Level Domain).it), Renater, Domaine.info, and ICANNWiki.

[| back to top |](#)

Thanks to Local Hosts, Staff, Scribes, Interpreters, Event Teams, and Others

The Board wishes to extend its thanks to the local host organizers, AGIFEM, its President Daniel Dardailler, Vice-President Pierre Bonis and CEO Sebastien Bachollet, as well as Board Members from Afnic, Amen, Domaine.fr, Eurodns, Indom, Internet Society France, Internet fr, Namebay, Renater, and W3C (World Wide Web Consortium).

The Board would also like to thank Eric Besson, the Minister for Forward Planning, Assessment of Public Policies and Development of the Digital Economy for his participation in the Welcome Ceremony and the Welcome Cocktail.

The Board thanks the Au Toit de la Grande Arche , its president, Francis Bouvier, and Directeur, Philippe Nieuwbourg, and Bertrand Delanoë, Maire de Paris, and Jean-Louis Missika, adjoint au Maire de Paris for their hospitality at the social event at the ICANN (Internet Corporation for Assigned Names and Numbers) Paris meeting.

The Board expresses its appreciation to the scribes Laura Brewer, Teri Darrenougue, Jennifer Schuck, and Charles Motter and to the entire ICANN (Internet Corporation for Assigned Names and Numbers) staff for their efforts in facilitating the smooth operation of the meeting. ICANN (Internet Corporation for Assigned Names and Numbers) would particularly like to acknowledge the many efforts of Michael Evans for his assistance in organizing the past eighteen public board meetings and many other smaller events for the ICANN (Internet Corporation for Assigned Names and Numbers) community.

The Board also wishes to express its appreciation to VeriLan Events Services, Inc. for technical support, Auvitec and Prosn for audio/visual support, Calliope Interpreters France for interpretation, and France Telecom for bandwidth. Additional thanks are given to the Le Meridien Montparnasse for this fine facility, and to the event facilities and support.

The Board also wishes to thank all those who worked to introduce a Business Access Agenda for the first time at this meetir Ayesha Hassan of the International Chamber of Commerce, Marilyn Cade, and ICANN (Internet Corporation for Assigned Names and Numbers) Staff.

The members of the Board wish to especially thank their fellow Board Member Jean-Jacques Subrenat for his assistance in making the arrangements for this meeting in Paris, France.

[| back to top |](#)

[Board \(/en/groups/board\)](#)

[Meetings \(/en/groups/board/meetings\)](#)

[Documents \(/en/groups/board/documents\)](#)

[Board & Chair Self-Appraisal \(/en/groups/board/documents/appraisals\)](#)

[Board Compensation Election \(/en/groups/board/documents/ce\)](#)

[Procedure Manual \(/en/groups/board/documents/draft-procedure-manual-09oct12-en\)](/en/groups/board/documents/draft-procedure-manual-09oct12-en)

[Resolutions Wiki \(https://community.icann.org/display/tap/ICANN+Board+Resolutions\)](https://community.icann.org/display/tap/ICANN+Board+Resolutions)

[Statements of Interest \(/en/groups/board/documents/sois\)](/en/groups/board/documents/sois)

[Audit Committee \(/en/groups/board/audit\)](/en/groups/board/audit)

[Board Governance Committee \(/en/groups/board/governance\)](/en/groups/board/governance)

[Compensation Committee \(/en/groups/board/compensation\)](/en/groups/board/compensation)

[Executive Committee \(/en/groups/board/executive\)](/en/groups/board/executive)

[Finance Committee \(/en/groups/board/finance\)](/en/groups/board/finance)

[New gTLD Program Committee \(/en/groups/board/new-gtld\)](/en/groups/board/new-gtld)

[Risk Committee \(/en/groups/board/risk\)](/en/groups/board/risk)

[Structural Improvements Committee \(/en/groups/board/improvements\)](/en/groups/board/improvements)

[ALAC \(http://www.atlarge.icann.org\)](http://www.atlarge.icann.org)

[ASO \(http://aso.icann.org\)](http://aso.icann.org)

[ccNSO \(http://ccnso.icann.org\)](http://ccnso.icann.org)

[GAC \(http://gac.icann.org\)](http://gac.icann.org)

[GNSO \(http://gnso.icann.org\)](http://gnso.icann.org)

[IETF \(/en/groups/ietf\)](/en/groups/ietf)

[NRO \(http://www.nro.net\)](http://www.nro.net)

[NomCom \(/en/groups/nomcom\)](/en/groups/nomcom)

[RSSAC \(/en/groups/rssac\)](/en/groups/rssac)

[SSAC \(/en/groups/ssac\)](/en/groups/ssac)

[Technical Liaison Group \(/en/groups/tlg\)](/en/groups/tlg)

[Other Groups \(/en/groups/other\)](/en/groups/other)

[Past Groups \(/en/groups/past\)](/en/groups/past)

[Organizational Reviews \(/en/groups/reviews\)](/en/groups/reviews)

Stay Connected

Your email address please.

News Alerts: HTML Plain Text

Newsletter: HTML Plain Text

Compliance Newsletter: HTML Plain Text

Policy Update: HTML Plain Text

Subscribe

Follow us @icann (<https://twitter.com/#!/icann/>)

Videos (<http://www.youtube.com/icannnews>)

Photos on Flickr (<http://www.flickr.com/photos/icann/>)

Facebook (<http://www.facebook.com/icannorg>)

ICANN Blog (<http://blog.icann.org/>)

Community Wiki (<https://community.icann.org/>)

Planet ICANN (</en/groups/planet-icann>)

RSS Feeds (</en/news/rss>)

© 2014 Internet Corporation For Assigned Names and Numbers. [Press \(/news/press\)](/news/press) | [Site Map \(/sitemap\)](/sitemap) | [Privacy Policy \(/help/privacy\)](/help/privacy)

ICANN Network

myICANN (<http://www.myicann.org/>)

ASO (<http://aso.icann.org>)

ALAC (<http://www.atlarge.icann.org>)

ccNSO (<http://ccnso.icann.org>)

GAC (<http://gac.icann.org>)

GNSO (<http://gnso.icann.org>)

RSSAC (</en/groups/rssac>)

SSAC (</en/groups/ssac>)

Community Wiki (<http://community.icann.org>)

Meetings (<http://meetings.icann.org>)

New gTLDs (<http://newgtlds.icann.org>)

WHOIS (<http://whois.icann.org>)

Help

(</en/help>)

Acronym Helper

Reference Material 10.

Internet Corporation for Assigned Names and Numbers

GROUPS (/EN/GROUPS) › BOARD (/EN/GROUPS/BOARD) › DOCUMENTS (/EN/GROUPS/BOARD/DOCUMENTS)

Approved Board Resolutions | Singapore

2

[Español \(/es/groups/board/documents/resolutions-20jun11-es.htm\)](/es/groups/board/documents/resolutions-20jun11-es.htm)

[Français \(/fr/groups/board/documents/resolutions-20jun11-fr.htm\)](/fr/groups/board/documents/resolutions-20jun11-fr.htm)

[Русский \(/ru/groups/board/documents/resolutions-20jun11-ru.htm\)](/ru/groups/board/documents/resolutions-20jun11-ru.htm)

[中文 \(/zh/groups/board/documents/resolutions-20jun11-zh.htm\)](/zh/groups/board/documents/resolutions-20jun11-zh.htm)

[العربية \(/ar/groups/board/documents/resolutions-20jun11-ar.htm\)](/ar/groups/board/documents/resolutions-20jun11-ar.htm)

20 June 2011

1. Approval of the New gTLD (generic Top Level Domain) Program

Whereas, on 28 November 2005, the GNSO (Generic Names Supporting Organization) Council voted unanimously to initiate a policy development process on the introduction of new gTLDs.

Whereas, the GNSO (Generic Names Supporting Organization) Committee on the Introduction of New gTLDs addressed a range of difficult technical, operational, legal, economic, and political questions, and facilitated widespread participation and public comment throughout the policy development process.

Whereas, on 6 September 2007, the GNSO (Generic Names Supporting Organization) Council approved by a supermajority vote a motion supporting the 19 recommendations, as a whole, set out in the Final Report of the ICANN (Internet Corporation for Assigned Names and Numbers) Generic Names Supporting Organisation on the Introduction of New Generic Top-Level Domains going forward to the ICANN (Internet Corporation for Assigned Names and Numbers) Board <<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07>> <<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>>.

Whereas, the Board instructed staff to review the GNSO (Generic Names Supporting Organization) recommendations and determine whether they were capable of implementation, and staff engaged international technical, operational and legal expertise to support the implementation of the policy recommendations and develop implementation plans for the GNSO (Generic Names Supporting Organization)'s policy recommendations.

Whereas, on 26 June 2008, the Board adopted the GNSO (Generic Names Supporting Organization) policy recommendations for the introduction of new gTLDs and directed staff to further develop and complete a detailed implementation plan, continue communication with the community on such matters, and provide the Board with a final version of the implementation proposals for the board and community to approve before the launching of the new gTLD (generic Top Level Domain) application process <http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171>.

Whereas, staff has made implementation details publicly available in the form of draft gTLD (generic Top Level Domain) Applicant Guidebook and supporting materials for public discussion and comment.

Whereas, the first draft of the Applicant Guidebook was published on 23 October 2008 <<http://www.icann.org/en/topics/new-gtlds/comments-en.htm>>, and the Guidebook has undergone continued substantial revisions based on stakeholder input on multiple drafts.

Whereas, the Board has conducted intensive consultations with the Governmental Advisory Committee (including in Brussels in February 2011, in San Francisco in March 2011, by telephone in May 2011, and in Singapore on 19 June 2011), resulting in substantial agreement on a wide range of issues noted by the GAC (Governmental Advisory Committee), and the Board has directed revisions to the Applicant Guidebook to reflect such agreement.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) received letters from the United States Department of Commerce and the European Commission addressing the issue of registry-registrar cross-ownership, and the Board considered the concerns expressed therein. The Board agrees that the potential abuse of significant

market power is a serious concern, and discussions with competition authorities will continue.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) has consulted with the GAC (Governmental Advisory Committee) to find mutually acceptable solutions on areas where the implementation of policy is not consistent with GAC (Governmental Advisory Committee) advice, and where necessary has identified its reasons for not incorporating the advice in particular areas, as required by the Bylaws; see <http://www.icann.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf> (</en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf>)> [PDF, 103 KB].

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) community has dedicated countless hours to the review and consideration of numerous implementation issues, by the submission of public comments, participation in working groups, and other consultations.

Whereas, the Board has listened to the input that has been provided by the community, including the supporting organizations and advisory committees, throughout the implementation process.

Whereas, careful analysis of the obligations under the Affirmation of Commitments and the steps taken throughout the implementation process indicates that ICANN (Internet Corporation for Assigned Names and Numbers) has fulfilled the commitments detailed in the Affirmation <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm> (</en/documents/affirmation-of-commitments-30sep09-en.htm>)>.

Whereas, the Applicant Guidebook posted on 30 May 2011 <http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm> (</en/topics/new-gtlds/comments-7-en.htm>)> includes updates resulting from public comment and from recent GAC (Governmental Advisory Committee) advice.

Whereas, the draft New gTLDs Communications Plan <http://www.icann.org/en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf> (</en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf>)> [PDF, 486 KB] forms the basis of the global outreach and education activities that will be conducted leading up to and during the execution of the program in each of the ICANN (Internet Corporation for Assigned Names and Numbers) geographic regions.

Whereas, the Draft FY12 Operating Plan and Budget <http://www.icann.org/en/announcements/announcement-17may11-en.htm> (</en/announcements/announcement-17may11-en.htm>)> includes a New gTLD (generic Top Level Domain) Program Launch Scenario, and the Board is prepared to approve the expenditures included in Section 7 of the Draft FY12 Operating Plan and Budget.

Whereas, the Board considers an applicant support program important to ensuring an inclusive and diverse program, and will direct work to implement a model for providing support to potential applicants from developing countries.

Whereas, the Board's Risk Committee has reviewed a comprehensive risk assessment associated with implementing the New gTLD (generic Top Level Domain) Program, has reviewed the defined strategies for mitigating the identified risks, and will review contingencies as the program moves toward launch.

Whereas, the Board has reviewed the current status and plans for operational readiness and program management within ICANN (Internet Corporation for Assigned Names and Numbers).

Resolved (2011.06.20.01), the Board authorizes the President and CEO to implement the new gTLD (generic Top Level Domain) program which includes the following elements:

1. the 30 May 2011 version of the Applicant Guidebook <http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm> (</en/topics/new-gtlds/comments-7-en.htm>)>, subject to the revisions agreed to with the GAC (Governmental Advisory Committee) on 19 June 2011, including: (a) deletion of text in Module 3 concerning GAC (Governmental Advisory Committee) advice to remove references indicating that future Early Warnings or Advice must contain particular information or take specified forms; (b) incorporation of text concerning protection for specific requested Red Cross and IOC names for the top level only during the initial application round, until the GNSO (Generic Names Supporting Organization) and GAC (Governmental Advisory Committee) develop policy advice based on the global public interest, and (c) modification of the "loser pays" provision in the URS to apply to complaints involving 15 (instead of 26) or more domain names with the same registrant; the Board authorizes staff to make further updates and changes to the Applicant Guidebook as necessary and appropriate, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process, and to prominently publish notice of such changes;
2. the Draft New gTLDs Communications Plan as posted at <http://www.icann.org/en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf> (</en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf>)> [PDF, 486 KB], as may be revised and elaborated as necessary and appropriate;

3. operational readiness activities to enable the opening of the application process;
4. a program to ensure support for applicants from developing countries, with a form, structure and processes to be determined by the Board in consultation with stakeholders including: (a) consideration of the GAC (Governmental Advisory Committee) recommendation for a fee waiver corresponding to 76 percent of the \$185,000 USD evaluation fee, (b) consideration of recommendations of the ALAC (At-Large Advisory Committee) and GNSO (Generic Names Supporting Organization) as chartering organizations of the Joint Applicant Support (JAS) Working Group, (c) designation of a budget of up to \$2 million USD for seed funding, and creating opportunities for other parties to provide matching funds, and (d) the review of additional community feedback, advice from ALAC (At-Large Advisory Committee), and recommendations from the GNSO (Generic Names Supporting Organization) following their receipt of a Final Report from the JAS Working Group (requested in time to allow staff to develop an implementation plan for the Board's consideration at its October 2011 meeting in Dakar, Senegal), with the goal of having a sustainable applicant support system in place before the opening of the application window;
5. a process for handling requests for removal of cross-ownership restrictions on operators of existing gTLDs who want to participate in the new gTLD (generic Top Level Domain) program, based on the "Process for Handling Requests for Removal of Cross-Ownership Restrictions for Existing gTLDs" <<http://www.icann.org/en/announcements/announcement-02may11-en.htm>>, as modified in response to comments <<http://www.icann.org/en/tlds/process-cross-ownership-gtlds-en.htm>> (a redline of the Process to the earlier proposal is provided at <<http://www.icann.org/en/minutes/process-cross-ownership-restrictions-gtlds-20jun11-en.pdf>> [PDF, 97 KB]); consideration of modification of existing agreements to allow cross-ownership with respect to the operation of existing gTLDs is deferred pending further discussions including with competition authorities;
6. the expenditures related to the New gTLD (generic Top Level Domain) Program as detailed in section 7 of the Draft FY12 Operating Plan and Budget <<http://www.icann.org/en/announcements/announcement-17may11-en.htm>>; and
7. the timetable as set forth in the attached graphic <<http://www.icann.org/en/minutes/timeline-new-gtld-program-20jun11.pdf>> [PDF, 167 KB], elements of which include the New gTLD (generic Top Level Domain) application window opening on 12 January 2012 and closing on 12 April 2012, with the New gTLD (generic Top Level Domain) Communications Plan beginning immediately.

Resolved (2011.06.20.02), the Board and the GAC (Governmental Advisory Committee) have completed good faith consultations in a timely and efficient manner under the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, Article XI, Section 2.j. As the Board and the GAC (Governmental Advisory Committee) were not able to reach a mutually acceptable solution on a few remaining issues, pursuant to ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, Article XI, Section 2.k, the Board incorporates and adopts as set forth in the document describing the remaining areas of difference between ICANN (Internet Corporation for Assigned Names and Numbers)'s Board and the GAC (Governmental Advisory Committee) <<http://www.icann.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf>> [PDF, 103 KB] the reasons why the GAC (Governmental Advisory Committee) advice was not followed. The Board's statement is without prejudice to the rights or obligations of GAC (Governmental Advisory Committee) members with regard to public policy issues falling within their responsibilities.

Resolved (2011.06.20.03), the Board wishes to express its deep appreciation to the ICANN (Internet Corporation for Assigned Names and Numbers) community, including the members of the GAC (Governmental Advisory Committee), for the extraordinary work it has invested in crafting the New gTLD (generic Top Level Domain) Program in furtherance of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and core values, and counts on the community's ongoing support in executing and reviewing the program.

Rationale for Resolutions 2011.06.20.01-2011.06.20.03

* Note: The Rationale is not final until approved with the minutes of the Board meeting.

Rationale for Approval of the Launch of the New gTLD (generic Top Level Domain) Program (/en/minutes/rationale-board-approval-new-gtld-program-launch-20jun11-en.pdf) [PDF, 624 KB]

[Board \(/en/groups/board\)](#)

[Meetings \(/en/groups/board/meetings\)](#)

[Documents \(/en/groups/board/documents\)](#)

[Board & Chair Self-Appraisal \(/en/groups/board/documents/appraisals\)](#)

[Board Compensation Election \(/en/groups/board/documents/ce\)](#)

[Procedure Manual \(/en/groups/board/documents/draft-procedure-manual-09oct12-en\)](#)

[Resolutions Wiki \(https://community.icann.org/display/tap/ICANN+Board+Resolutions\)](https://community.icann.org/display/tap/ICANN+Board+Resolutions)

[Statements of Interest \(/en/groups/board/documents/sois\)](#)

[Audit Committee \(/en/groups/board/audit\)](#)

[Board Governance Committee \(/en/groups/board/governance\)](#)

[Compensation Committee \(/en/groups/board/compensation\)](#)

[Executive Committee \(/en/groups/board/executive\)](#)

[Finance Committee \(/en/groups/board/finance\)](#)

[New gTLD Program Committee \(/en/groups/board/new-gtld\)](#)

[Risk Committee \(/en/groups/board/risk\)](#)

[Structural Improvements Committee \(/en/groups/board/improvements\)](#)

[ALAC \(http://www.atlarge.icann.org\)](http://www.atlarge.icann.org)

[ASO \(http://aso.icann.org\)](http://aso.icann.org)

[ccNSO \(http://ccnso.icann.org\)](http://ccnso.icann.org)

[GAC \(http://gac.icann.org\)](http://gac.icann.org)

[GNSO \(http://gnso.icann.org\)](http://gnso.icann.org)

[IETF \(/en/groups/ietf\)](#)

[NRO \(http://www.nro.net\)](http://www.nro.net)

[NomCom \(/en/groups/nomcom\)](#)

[RSSAC \(/en/groups/rssac\)](#)

[SSAC \(/en/groups/ssac\)](#)

[Technical Liaison Group \(/en/groups/tlg\)](#)

[Other Groups \(/en/groups/other\)](#)

[Past Groups \(/en/groups/past\)](#)

[Organizational Reviews \(/en/groups/reviews\)](#)

Stay Connected

News Alerts: HTML Plain Text

Newsletter: HTML Plain Text

Compliance Newsletter: HTML Plain Text

Policy Update: HTML Plain Text

Subscribe

Follow us @icann (<https://twitter.com/#!/icann/>)

Videos (<http://www.youtube.com/icannnews>)

Photos on Flickr (<http://www.flickr.com/photos/icann/>)

Facebook (<http://www.facebook.com/icannorg>)

ICANN Blog (<http://blog.icann.org/>)

Community Wiki (<https://community.icann.org/>)

Planet ICANN (</en/groups/planet-icann/>)

RSS Feeds (</en/news/rss>)

© 2014 Internet Corporation For Assigned Names and Numbers. [Press \(/news/press\)](/news/press) | [Site Map \(/sitemap\)](/sitemap) | [Privacy Policy \(/help/privacy\)](/help/privacy)

ICANN Network

myICANN (<http://www.myicann.org/>)

ASO (<http://aso.icann.org>)

ALAC (<http://www.atlarge.icann.org>)

ccNSO (<http://ccnso.icann.org>)

GAC (<http://gac.icann.org>)

GNSO (<http://gnso.icann.org>)

RSSAC (</en/groups/rssac>)

SSAC (</en/groups/ssac>)

Community Wiki (<http://community.icann.org>)

Meetings (<http://meetings.icann.org>)

New gTLDs (<http://newgtlds.icann.org>)

WHOIS (<http://whois.icann.org>)

Help

(</en/help>)

Acronym Helper

Reference Material 11.

ICANN Board Rationales for the Approval of the Launch of the New gTLD Program

*Note: The Rationales are not final until approved with the minutes of the Board meeting.

Table of Contents

ICANN Board Rationales

1. Program Launch.....	4
2. Evaluation Process.....	8
3. Fees.....	16
4. Geographic Names.....	30
5. Mitigating Malicious Conduct.....	46
6. Objection Process.....	64
7. Root Zone Scaling.....	79
8. String Similarity and String Contention.....	93
9. Trademark Protection.....	107

1. ICANN Board Rationale for the Approval of the Launch of the New gTLD Program

1. ICANN Board Rationale for the Approval of the Launch of the New gTLD Program

I. WHY NEW gTLDs ARE BEING INTRODUCED

New gTLDs are being introduced because the community has asked for them. The launch of the new generic top-level domain (gTLD) program will allow for more innovation, choice and change to the Internet’s addressing system, now constrained by only 22 gTLDs. In a world with over 2 billion Internet users – and growing – diversity, choice and competition are key to the continued success and reach of the global network. New gTLDs will bring new protections to consumers (as well as brand holders and others) that do not exist today in the Domain Name System (DNS). Within this safer environment, community and cultural groups are already anticipating how they can bring their groups together in new and innovative ways. Companies and consumers that do not use the Latin alphabet will be brought online in their own scripts and languages. Industries and companies will have the opportunity to explore new ways to reach customers. The years of community work in planning have produced a robust implementation plan, and it is time to see that plan through to fruition.

II. FOLLOWING ICANN’S MISSION AND COMMUNITY DEVELOPED PROCESSES

A. Introduction of new TLDs is a core part of ICANN’s Mission

When ICANN was formed in 1998 as a not for profit, multi-stakeholder organization dedicated to coordinating the Internet’s addressing system, a purpose was to promote competition in the DNS marketplace, including by developing a process for the introduction of new generic top-level domains while ensuring internet security and stability. The introduction of new top-level domains into the DNS has thus been a fundamental part of ICANN’s mission from its inception, and was specified in ICANN’s Memorandum of Understanding and Joint Project Agreement with the U.S. Department of Commerce.¹

ICANN initially created significant competition at the registrar level, which has resulted in enormous benefits for consumers. ICANN’s community and Board has now turned its attention to fostering competition in the registry market. ICANN began this process with the “proof of concept” round for the addition of a limited number of new generic Top Level Domains (“gTLDs”) in 2000, and then permitted a limited number of additional “sponsored” TLDs in 2004-2005. These additions to the root demonstrated that TLDs could be added without adversely affecting the security and stability of the domain name system. Follow on economic studies indicated that, while benefits accruing from innovation are difficult to predict, that the introduction of new gTLDs will bring benefits in the form of increased competition, choice and new services to Internet users. The

¹ ICANN’s Bylaws articulate that the promotion of competition in the registration of domain names is one of ICANN’s core missions. See ICANN Bylaws, Article 1, Section 2.6.

studies also stated that taking steps to mitigate the possibility of rights infringement and other forms of malicious conduct would result in maximum net social benefits.

B. The Community Created a Policy Relating to the Introduction of new gTLDs

After an intensive policy development process, in August 2007, the Generic Names Supporting Organization issued a lengthy report in which it recommended that ICANN expand the number of gTLDs. See <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>. Contributing to this policy work were ICANN's Governmental Advisory Committee ("GAC"), At-Large Advisory Committee ("ALAC"), County Code Names Supporting Organization ("ccNSO") and Security and Stability Advisory Committee ("SSAC"). The policy development process culminated with Board approval in June 2008. See http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171.

III. COMMUNITY INVOLEMENT WAS KEY IN IMPLEMENTATION PLANNING

Since the June 2008 decision, the community has been hard at work creating, commenting on, and refining the implementation of this policy.

Seven versions of the Applicant Guidebook have been published. Fifty-eight explanatory memoranda have been produced. There have been nearly 50 new gTLD-related public comment sessions, over these documents as well as a variety of excerpts and working group reports. Over 2,400 comments were received through those public comment fora, which have been summarized and analyzed, and considered in revisions to the new gTLD program. Over 1,350 pages of summary and analysis have been produced. The community has also participated in numerous workshops and sessions and open microphone public forums at ICANN meetings, providing additional suggestions for the improvement of the new gTLD program. ICANN has listened to all of these community comments in refining the program that is being approved today.

Nearly every ICANN Supporting Organization and Advisory Committee was represented in targeted community-based working groups or expert teams formed to address implementation issues. The GNSO and its component stakeholder groups and constituencies participated in all aspects of the implementation work arising out of its policy recommendations. The ccNSO was particularly active on issues relating to internationalized domain names (IDNs) and the treatment of geographical names in the new gTLD program.

ICANN's technical Advisory Committees provided direct input into the implementation work. For example, RSSAC and SSAC provided expert analysis that there is no expected significant impact of new gTLDs on the stability and scalability of the root server system.

ALAC members served on nearly every working group and team, and actively participated in all public comment fora, giving the world's Internet users a voice in implementation discussions.

IV. CONSULTATION WITH THE GAC LEAD TO IMPROVEMENTS

Under the ICANN Bylaws, the GAC has an assurance that the Board will take GAC advice into account. The Board, through an extensive and productive consultation process with the GAC, has considered the GAC's advice on the new gTLD program and resolved nearly all of the areas where there were likely differences between the GAC advice and the Board's positions.

The ICANN Board and the GAC held a landmark face-to-face consultation on 28 February – 1 March 2011 and subsequently exchanged written comments on various aspects of the new gTLD Program. On 15 April 2011, ICANN published a revised Applicant Guidebook, taking into account many compromises with the GAC as well as additional community comment. On 20 May 2011, the GAC and the ICANN Board convened another meeting by telephone, and continued working through the remaining differences between the Board and GAC positions. See <http://www.icann.org/en/announcements/announcement-22may11-en.htm>. On 26 May 2011, the GAC provided its comments on the 15 April 2011 Applicant Guidebook, and the GAC comments were taken into consideration in the production of the 30 May 2011 Applicant Guidebook.

On 19 June 2011, the ICANN Board and GAC engaged in a further consultation over the remaining areas where the Board's approval of the launch of the new gTLD program may not be consistent with GAC advice. At the beginning of the GAC consultation process, there were 12 issues under review by the GAC and the Board, with 80 separate sub-issues. The GAC and the Board have identified mutually acceptable solutions for nearly all of these sub-issues. Despite this great progress and the good faith participation of the GAC and the Board in the consultation process, a few areas remain where the GAC and the Board were not able to reach full agreement. The reasons why these items of GAC advice were not followed are set forth in responses to the GAC such as Board responses to item of GAC Advice.

V. MAJOR IMPLEMENTATION ISSUES HAVE BEEN THOROUGHLY CONSIDERED

The launch of the new gTLDs has involved the careful consideration of many complex issues. Four overarching issues, along with several other major substantive topics have been addressed through the new gTLD implementation work. Detailed rationale papers discussing the approval of the launch of the program as it relates to nine of those topics are included here. These nine topics are:

- Evaluation Process
- Fees
- Geographic Names
- Mitigating Malicious Conduct
- Objection Process
- Root Zone Scaling
- String Similarity and String Contention
- Trademark Protection.

Detailed rationales have already been produced and approved by the Board in support of its decisions relating to two other topics, Cross Ownership, at <http://www.icann.org/en/minutes/rationale-cross-ownership-21mar11-en.pdf> and Economic Studies, at <http://www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf>, each approved on 25 January 2011.

VI. CONCLUSION

The launch of the new gTLD program is in fulfillment of a core part of ICANN's Bylaws: the introduction of competition and consumer choice in the DNS. After the ICANN community created a policy recommendation on the expansion of the number of gTLDs, the community and ICANN have worked tirelessly to form an implementation plan. The program approved for launch today is robust and will provide new protections and opportunities within the DNS.

The launch of the new gTLD program does not signal the end of ICANN's or the community's work. Rather, the launch represents the beginning of new opportunities to better shape the further introduction of new gTLDs, based upon experience. After the launch of the first round of new gTLDs, a second application window will only be opened after ICANN completes a series of assessments and refinements – again with the input of the community. The Board looks forward to the continual community input on the further evolution of this program.

The Board relied on all members of the ICANN community for the years of competent and thorough work leading up to the launch of the new gTLD program. Within the implementation phase alone, the community has devoted tens of thousands of hours to this process, and has created a program that reflects the best thought of the community. This decision represents ICANN's continued adherence to its mandate to introduce competition in the DNS, and also represents the culmination of an ICANN community policy recommendation of how this can be achieved.

2. ICANN Board Rationale on the Evaluation Process Associated with the gTLD Program

2. ICANN Board Rationale on the Evaluation Process Associated with the gTLD Program

I. Introduction

Through the development of the new gTLD program, one of the areas that required significant focus is a process that allows for the evaluation of applications for new gTLDs. The Board determined that the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.

Following the policy advice of the GNSO, the key goal for the evaluation process was to establish criteria that are as objective and measurable as possible. ICANN worked through the challenge of creating criteria that are measurable, meaningful (i.e., indicative of the applicant's capability and not easily manipulated), and also flexible enough to facilitate a diverse applicant pool. In the end, ICANN has implemented a global, robust, consistent and efficient process that will allow any public or private sector organization to apply to create and operate a new gTLD.

II. Brief History of ICANN's Analysis of the Evaluation Process Associated with the gTLD Program

This section sets forth a brief history of the significant actions on the subject of the evaluation process associated with the gTLD program.

- In December 2005, the GNSO commenced a policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to stimulate competition further and for numerous other reasons.

- In August of 2007, the GNSO issued its final report regarding the introduction of new gTLDs.
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>
- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO's policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues.
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880
- Starting with the November 2007 Board meeting, the Board began to consider issues related to the selection procedure for new gTLDs, including the need for the process to respect the principles of fairness, transparency and non-discrimination.
- On 20 November 2007, the Board discussed the need for a detailed and robust evaluation process, to allow applicants to understand what is expected of them in the process and to provide a roadmap. The process should include discussion of technical criteria, business and financial criteria, and other specifications. ICANN proceeded to work on the first draft of the anticipated request for proposals.
<http://www.icann.org/en/minutes/minutes-18dec07.htm>
- On 23 October 2008, ICANN posted the Draft Applicant Guidebook, including an outline of the evaluation procedures (incorporating both reviews of the applied-for gTLD string and of the applicant), as well as the intended application questions and scoring criteria. These were continually revised, updated, and posted for comment through successive drafts of the Guidebook.
<http://www.icann.org/en/topics/new-gtlds/comments-en.htm>

- Between June and September 2009, KPMG conducted a benchmarking study on ICANN’s behalf, with the objective of identifying benchmarks based on registry financial and operational data. The KPMG report on Benchmarking of Registry Operations (“KPMG Benchmarking Report”) was designed to be used as a reference point during the review of new gTLD applications.
- In February 2010, ICANN published an overview of the KPMG Benchmarking Report. This overview stated that ICANN commissioned the study to gather industry data on registry operations as part of the ongoing implementation of the evaluation criteria and procedures for the new gTLD program.
<http://icann.org/en/topics/new-gtlds/benchmarking-report-15feb10-en.pdf> [Rationale-all -final-20110609.doc](#)
- On 30 May 2011, ICANN posted the Applicant Guidebook for consideration by the Board. This lays out in full the proposed approach to the evaluation of gTLD applications.

III. Analysis and Consideration of the Evaluation Process

A. Policy Development Guidance

The GNSO’s advice included the following:

- The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.
- All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.
- Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.

- Applicants must be able to demonstrate their financial and organisational operational capability.
- There must be a clear and pre-published application process using objective and measurable criteria.

B. Implementation of Policy Principles

Publication of the Applicant Guidebook has included a process flowchart which maps out the different phases an application must go through, or may encounter, during the evaluation process. There are six major components to the process: (1) Application Submission/Background Screening; (2) Initial Evaluation; (3) Extended Evaluation; (4) Dispute Resolution; (5) String Contention and (6) Transition to Delegation. All applications must pass the Initial Evaluation to be eligible for approval.

The criteria and evaluation processes used in Initial Evaluation are designed to be as objective as possible. With that goal in mind, an important objective of the new TLD process is to diversify the namespace, with different registry business models and target audiences. In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. The Board determined that the process must provide for an objective evaluation framework, but also allow for adaptation according to the differing models applicants will present.

The Board set out to create an evaluation process that strikes a correct balance between establishing the business and technical competence of the applicant to operate a registry, while not asking for the detailed sort of information that a venture capitalist may request. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.

Furthermore, new registries must be added in a way that maintains DNS stability and security. Therefore, ICANN has created an evaluation process that

asks several questions so that the applicant can demonstrate an understanding of the technical requirements to operate a registry.

After a gTLD application passes the financial and technical evaluations, the applicant will then be required to successfully complete a series of pre-delegation tests. These pre-delegation tests must be completed successfully within a specified period as a prerequisite for delegation into the root zone.

C. Public Comment

Comments from the community on successive drafts of the evaluation procedures, application questions, and scoring criteria were also considered by the Board. In particular, changes were made to provide greater clarity on the information being sought, and to more clearly distinguish between the minimum requirements and additional scoring levels.

There was feedback from some that the evaluation questions were more complicated or cumbersome than necessary, while others proposed that ICANN should set a higher bar and perform more stringent evaluation, particularly in certain areas such as security. ICANN has sought to consider and incorporate these comments in establishing a balanced approach that results in a rigorous evaluation process in line with ICANN's mission for what is to be the initial gTLD evaluation round. See <http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>.

IV. The Board's Analysis of the Evaluation Process Associated with the gTLD Program

A. Who the Board Consulted Regarding the Evaluation Process

- Legal Counsel
- The GNSO stakeholder groups

- ICANN’s Governmental Advisory Committee
- The At-Large Advisory Committee
- Various consultants were engaged throughout the process to assist in developing a methodology that would meet the above goals. These included InterIsle, Deloitte, KPMG, Gilbert and Tobin, and others.
- All other Stakeholders and Community members through public comment forums and other methods of participation.

B. What Significant Non-Privileged Materials the Board Reviewed

- Public Comments;
<http://icann.org/en/topics/new-gtlds/comments-analysis-en.htm>
- Benchmarking of Registry Operations;
<http://icann.org/en/topics/new-gtlds/benchmarking-report-15feb10-en.pdf>

C. What Factors the Board Found to Be Significant

The Board considered a number of factors in its analysis of the evaluation process for the new gTLD program. The Board found the following factors to be significant:

- the principle that the Board should base its decision on solid factual investigation and expert consultation and study;
- the addition of new gTLDs to the root in order to stimulate competition at the registry level;
- the responsibility of ensuring that new gTLDs do not jeopardize the security or stability of the DNS;

- an established set of criteria that are as objective and measurable as possible;
- the selection of independent evaluation panels with sufficient expertise, resources and geographic diversity to review applications for the new gTLD program; and
- an evaluation and selection procedure for new gTLD registries that respects the principles of fairness, transparency and non-discrimination.

V. The Board's Reasons for Concluding the Evaluation Process was Appropriate for the gTLD Program

- The evaluation process allows for any public or private sector organization to apply to create and operate a new gTLD. However, the process is not like simply registering or buying a second-level domain. ICANN has developed an application process designed to evaluate and select candidates capable of running a registry. Any successful applicant will need to meet the published operational and technical criteria in order to ensure a preservation of internet stability and interoperability.
- ICANN's main goal for the evaluation process was to establish criteria that are as objective and measurable as possible while providing flexibility to address a wide range of business models. Following the policy advice, evaluating the public comments, and addressing concerns raised in discussions with the community, the Board decided on the proposed structure and procedures of the evaluation process to meet the goals established for the program.

3. ICANN Board Rationale on Fees Associated With the gTLD Program

3. ICANN Board Rationale on Fees Associated With the gTLD Program

I. Introduction

The launch of the new gTLD program is anticipated to result in improvements to consumer choice and competition in the DNS. However, there are important cost implications, both to ICANN as a corporate entity and to gTLD applicants who participate in the program. It is ICANN's policy, developed through its bottom-up, multi-stakeholder process, that the application fees associated with new gTLD applications should be designed to ensure that adequate resources exist to cover the total cost of administering the new gTLD process. <http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf>.

On 2 October 2009, the Board defined the directive approving the community's policy recommendations for the implementation of the new gTLD policy. That policy included that the implementation program should be fully self-funding. The Board has taken great care to estimate the costs with an eye toward ICANN's previous experience in TLD rounds, the best professional advice, and a detailed and thorough review of expected program costs. The new gTLD program requires a robust evaluation process to achieve its goals. This process has identifiable costs. The new gTLD implementation should be revenue neutral and existing ICANN activities regarding technical coordination of names, numbers and other identifiers should not cross-subsidize the new program. See <http://icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf>

II. Brief History of ICANN's Analysis of Fees Associated with the gTLD Program

This section sets forth a brief history of the significant Board consideration on the subject of fees associated with the gTLD program.

- In December 2005 – September 2007, the GNSO conducted a rigorous policy development process to determine whether (and the

circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to stimulate competition further and for numerous other reasons and that evaluation fees should remain cost neutral to ICANN. The GNSO's Implementation Guideline B stated: "Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process."

- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO's policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues.
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880
- On 2 November 2007, the Board reviewed the ICANN Board or Committee Submission No. 2007-54 entitled Policy Development Process for the Delegation of New gTLDs. The submission discussed application fees and stated, "[a]pplication fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants."
<http://www.icann.org/en/minutes/minutes-18dec07.htm>.
- On 23 October 2008, ICANN published the initial draft version of the gTLD Applicant Guidebook, including an evaluation fee of USD 185,000 and an annual registry fee of USD 75,000.
<http://www.icann.org/en/topics/new-gtlds/comments-en.htm>
- At the 12 February 2009 Board Meeting, the ICANN Board discussed the new version of the Applicant Guidebook ("AGB"). The Board determined that the application fee should remain at the proposed fee of USD 185,000 but the annual minimum registry fee should be

reduced to USD 25,000, with a transaction fee at 25 cents per transaction. Analysis was conducted and budgets were provided to support the USD 185,000 fee. The decrease in of the registry fee to USD 25,000 was based on a level of effort to support registries.

<http://www.icann.org/en/minutes/minutes-12feb09.htm>

- On 6 March 2009, the Board reviewed ICANN Board Submission No. 2009-03-06-05 entitled Update on new gTLDs. The submission analyzed recent public comments and detailed how ICANN incorporated those comments and changes into the fee structure. It also pointed out that the annual registry fee was reduced to a baseline of USD 25,000 plus a per transaction fee of 25 cents once the registry has registered 50,000 names. Also, the submission highlighted a refund structure for the USD 185,000 evaluation fee, with a minimum 20% refund to all unsuccessful applicants, and higher percentages to applicants who withdraw earlier in the process.
- On 25 June, ICANN Published the New gTLD Program Explanatory Memorandum – New gTLD Budget which broke down the cost components of the USD 185,000 application fee.
<http://www.icann.org/en/topics/new-gtlds/new-gtld-budget-28may10-en.pdf>
- On 30 May 2011, ICANN posted a new version of the Applicant Guidebook, taking into account public comment and additional comments from the GAC.
<http://icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. Major Principles Considered by the Board

A. Important Financial Considerations

The ICANN Board identified several financial considerations it deemed to be important in evaluating and deciding on a fee structure for the new gTLD program. On 23 October 2008, ICANN published an explanatory memorandum

describing its cost considerations and identified three themes which shaped the fee structure: (1) care and conservatism; (2) up-front payment/incremental consideration; and (3) fee levels and accessibility. See <http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf>.

1. Care and Conservatism

ICANN coordinates unique identifiers for the Internet, and particularly important for this context, directly contracts with generic top level domain registries, and cooperates with country code registries around the world in the interest of security, resiliency and stability of the DNS. There are more than 170,000,000 second-level domain registrations that provide for a richness of communication, education and commerce, and this web is reaching ever more people around the world. ICANN's system of contracts, enforcement and fees that supports this system, particularly for the 105,000,000 registrations in gTLDs, must not be put at risk. Therefore, the new gTLD must be fully self funding.

The principle of care and conservatism means that each element of the application process must stand up to scrutiny indicating that it will yield a result consistent with the community-developed policy. A robust evaluation process, including detailed reviews of the applied-for TLD string, the applying entity, the technical and financial plans, and the proposed registry services, is in place so that the security and stability of the DNS are not jeopardized. While the Board thoughtfully considered process and cost throughout the process design, cost-minimization is not the overriding objective. Rather, process fidelity is given priority.

2. Up-Front Payment/Incremental Consideration

ICANN will collect the entire application fee at the time an application is submitted. This avoids a situation where the applicant gets part way through the application process, then may not have the resources to continue. It also assures that all costs are covered. However, if the applicant elects to withdraw its application during the process, ICANN will refund a prorated amount of the fees to the applicant.

A uniform evaluation fee for all applicants provides cost certainty with respect to ICANN fees for all applicants. Further, it ensures there is no direct cost penalty to the applicant for going through a more complex application (except, when necessary, fees paid directly to a provider). A single fee, with graduated refunds, and with provider payments (e.g. dispute resolution providers) made directly to the provider where these costs are incurred seems to offer the right balance of certainty and fairness to all applicants.

3. Fee Levels and Accessibility

Members of the GNSO community recognized that new gTLD registry applicants would likely come forward with a variety of business plans and models appropriate to their own specific communities, and there was a commitment that the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency, and non-discrimination.

Some community members expressed concern that financial requirements and fees might discourage applications from developing nations, or indigenous and minority peoples, who may have different sets of financial opportunities or capabilities relative to more highly developed regions of the world. The Board addressed these concerns with their “Application Support” program (which is discussed more in depth below).

B. Important Assumptions

In the explanatory memorandum on cost considerations published on 23 October 2008, ICANN identified the three assumptions on which it would rely in determining the fee structure for the program: (1) estimating methodology; (2) expected quantity of applications; and (3) the new gTLD program will be ongoing.

1. Estimating Methodology

Estimators for the various costs associated with the application evaluation strove to use a maximum-likelihood basis to estimate the costs. A detailed

approach was taken to get the best possible estimates. The evaluation process was divided into 6 phases, 24 major steps and 75 separate tasks. Twenty-seven separate possible outcomes were identified in the application process, probabilities were identified for reaching each of these states, and cost estimates were applied for each state. Estimates at this detailed level are likely to yield more accurate estimates than overview summary estimates.

Further, whenever possible, sensitivity analysis was applied to cost estimates. This means asking questions such as “How much would the total processing cost be if all applications went through the most complex path? Or “How much would the total processing cost be if all applications went through the simplest path?” Sensitivity analysis also helps to explore and understand the range of outcomes, and key decision points in the cost estimation mode.

2. Expected Quantity of Applications

While ICANN has asked constituents and experts, there is no sure way to estimate with certainty the number of new TLD applications that will be received. ICANN has based its estimates on an assumption of 500 applications in the first round. This volume assumption is based on several sources, including a report from a consulting economist, public estimates on the web, oral comments at public meetings and off-the-record comments by industry participants. While the volume assumption of 500 applications is consistent with many data points, there is no feasible way to make a certain prediction.

If there are substantially fewer than 500 applications, the financial risk is that ICANN would not recoup historical program development costs or fixed costs in the first round, and that higher fixed costs would drive the per unit application costs to be higher than forecast. Still, the total risk of a much smaller-than-anticipated round would be relatively low, since the number of applications would be low.

If there are substantially more than 500 applications, the risk is that application processing costs would again be higher than anticipated, as ICANN would need to bring in more outside resources to process applications in a timely

fashion, driving the variable processing costs higher. In this case, ICANN would be able to pay for these higher expected costs with greater-than-expected recovery of fixed cost components (historical program development and other fixed costs), thus at least ameliorating this element of risk.

3. The New gTLD Program Will Be Ongoing

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

It is reasonable to expect that various fees may be lower in subsequent application rounds, as ICANN processes are honed, and uncertainty is reduced.

C. Cost Elements Determined by the Board

1. Application Fee

The Board determined the application fee to be in the amount of USD 185,000. The application fee has been segregated into three main components: (a) Development Costs, (b) Risk Costs, and (c) Application Processing (see www.icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf). The breakdown of each component is as follows (rounded):

Development Costs:	USD 27,000
Risk Costs:	USD 60,000
<u>Application Processing:</u>	<u>USD 98,000</u>
Application Fee:	USD 185,000

The application fee was also extrapolated and further analyzed under several assumptions including receiving 500 applications (see

www.icann.org/en/topics/new-gtlds/explanatory-memo-new-gtld-program-budget-22oct10-en.pdf).

a. Development Costs

These costs have two components:

i) Development costs which are the activities necessary to progress the implementation of the gTLD policy recommendations. This includes resolving open concerns, developing and completing the AGB, managing communication with the Internet community, designing and developing the processes and systems necessary to process applications in accordance with the final Guidebook, and undertaking the activities that have been deemed high risk or would require additional time to complete.

The costs associated with the Development Phase have been funded through normal ICANN budgetary process and the associated costs have been highlighted in ICANN's annual Operating Plan and Budget Documents

ii) Deployment costs which are the incremental steps necessary to complete the implementation of the application evaluation processes and system. Such costs require timing certainty and include the global communication campaign, on-boarding of evaluation panels, hiring of additional staff, payment of certain software licenses, and so on.

b. Risk Costs

These represent harder to predict costs and cover a number of risks that could occur during the program. Examples of such costs include variations between estimates and actual costs incurred or receiving a significantly low or high number of applications. ICANN engaged outside experts to assist with developing a risk framework and determining a quantifiable figure for the program.

c. Application Processing

Application Processing represents those costs necessary to accept and process new gTLD applications, conduct contract execution activities, and conduct pre-delegation checks of approved applicants prior to delegation into the root zone. Application processing costs consist of a variable and fixed costs.

Variable costs are those that vary depending on the number of applications that require a given task to be completed. Whereas fixed costs are necessary to manage the program and are not associated with an individual application.

The application fee is payable in the form of a USD 5,000 deposit submitted at the time the user requests application slots within the TLD Application System (“TAS”), and a payment of USD 180,000 submitted with the full application. See <http://icann.org/en/topics/new-gtlds/intro-clean-12nov10-en.pdf>.

2. Annual Registry Fee

ICANN’s Board has determined to place the Annual Registry Fee at a baseline of USD 25,000 plus a variable fee based on transaction volume where the TLD exceeds a defined transaction volume.

3. Refunds

In certain cases, refunds of a portion of the evaluation fee may be available for applications that are withdrawn before the evaluation process is complete. An applicant may request a refund at any time until it has executed a registry agreement with ICANN. The amount of the refund will depend on the point in the process at which the withdrawal is requested. Any applicant that has not been successful is eligible for, at a minimum, a 20% refund of the evaluation fee if it withdraws its application.

According to the AGB, the breakdown of possible refund scenarios is as follows:

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 calendar days of a GAC Early Warning	80%	USD 148,000
After posting of applications until posting of Initial Evaluations results	70%	USD 130,000
After posting Initial Evaluation Results	35%	USD 65,000
After the applicant has completed Dispute Resolution, Extended Evaluation, or String Contention Resolution(s)	20%	USD 37,000
After the applicant has registered into a registry agreement with ICANN		None

4. Application Support (JAS WG Charter)

As mentioned above, some community members expressed concerned that the financial requirements and fees might discourage applications from developing nations, or indigenous or minority peoples, who may have different financial opportunities. The Board addressed these concerns with their “Application Support” program, and recognized the importance of an inclusion in the new gTLD program by resolving that stakeholders work to “develop a sustainable approach to providing support to applicants requiring assistance in applying for and operating new gTLDs.” See <http://www.icann.org/en/minutes/resolutions-12mar10-en.htm#20>.

In direct response to this Board resolution, the GNSO Council proposed a Joint SO/AC Working Group (“JAS WG”), composed by members of ICANN’s Supporting Organizations (“SOs”) and Advisory Committees (“ACs”), to look into applicant support for new gTLDs. See <https://st.icann.org/so-ac-new-gtld-wg/index.cgi>.

IV. The Board’s Analysis of Fees

A. Why the Board Addressed Fees

- ICANN’s mission statement and one of its founding principles is to promote user choice and competition. ICANN has created significant competition at the registrar level that has resulted in enormous benefits for consumers. To date, ICANN has not created meaningful competition at the registry level. Based upon the report and recommendation from the GNSO to introduce new gTLDs, the Board decided to proceed with the new gTLD program.
- While the primary implications of the new gTLD program relate to possible improvements in choice and competition as a result of new domain names, there are also important cost implications, both to the ICANN corporate entity and to gTLD applicants. The Board initially determined that the application fees associated with new gTLD applications should be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process.
- Both the Board and members of the community have commented on the application fee structure for the new gTLD program. From those comments the Board has determined that the new gTLD implementation should be fully self-funding and revenue neutral, and that existing ICANN activities regarding technical coordination of names, numbers, and other identifiers should not cross-subsidize the new program.

B. Who the Board Consulted Regarding Fees

- Legal Counsel
- The GNSO
- ICANN’s Supporting Organizations

- The ALAC
- The GAC
- Other ICANN Advisory Committees
- All other Stakeholders and Community members through public comment forums and other methods of participation.

C. Public Comments Considered by the Board

Over 1200 pages of feedback, from more than 300 entities, have been received since the first Draft AGB was published. The Board has analyzed and considered these comments in the context of the GNSO policy recommendations.. The Board received many comments on the fee structure, both the annual registry fee and application evaluation fee. Regarding the annual registry fee, the Board received comments stating that the annual minimum and percentage fee for registries was perceived by some to be too high.

Furthermore, the Board incorporated many suggestions from public comments pursuant to its JAS WG Application Support Program.
<http://forum.icann.org/lists/soac-newgtldapsup-wg>.

D. What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of fees. The Board found the following factors to be significant:

- The principle that the Board should base its decision on solid factual investigation and expert consultation and study;
- The addition of new gTLDs to the root in order to stimulate competition at the registry level;

- That the new gTLD implementation should be fully self funding and revenue neutral; and
- That existing ICANN activities regarding technical coordination of names, numbers, and other identifiers should not cross-subsidize the new program.
- That any revenue received in excess of costs be used in a manner consistent with community input.
- Evaluation fees will be re-evaluated after the first round and adjusted.

V. The Board's Reasons for Deciding the Proposed Fee Structure is Appropriate

While the primary implications of this new policy relate to possible improvements in choice and competition as a result of new domain names, there are also important cost implications, both to ICANN as a corporate entity and to gTLD applicants with regard to the implementation of the policy through the acceptance and processing of applications as set out in the policy adopted by the community and accepted by the Board.

After evaluating public comments, addressing initial concerns and carefully evaluating the twenty-seven separate possible outcomes that were identified in the application process, the Board decided on the proposed fee structure to ensure that the new gTLD implementation would be fully self-funding and revenue neutral.

4. ICANN Board Rationale on Geographic Names Associated with the gTLD Program

4. ICANN Board Rationale on Geographic Names Associated with the gTLD Program

I. Introduction

Through the development of the new gTLD program, one of the areas of interest to governments and other parties was the treatment of country/territory names and other geographic names. This area has been the subject of stakeholder input and discussion throughout the implementation process.

This memorandum focuses on the Board's consideration of the provisions for geographic names in the new gTLD program. The memorandum summarizes the Board's consideration of the issue, and the Board's rationale for implementing the new gTLD program containing the adopted measures on geographic names.

II. Brief History of ICANN's Consideration of Geographic Names Associated with The New gTLD Program

This section sets forth a brief history of significant actions on the subject of geographic names associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for other reasons.
- On 28 March 2007, the GAC adopted principles to govern the introduction of new gTLDs (the "GAC Principles"). Sections 2.2 and 2.7 of the GAC Principles address geographic names issues at the top and second level.
 - 2.2 ICANN should avoid country, territory, or place names, and country, territory, or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.
 - 2.7 Applicant registries for new gTLDs should pledge to: a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of

governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD, and b) ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.

http://gac.icann.org/system/files/gTLD_principles_0.pdf

- On 23 May 2007, the GNSO Reserved Names Working Group issued its final report. Recommendation 20 of the report stated that: (1) there should be no geographical reserved names; and (2) governments should protect their interests in certain names by raising objections on community grounds.
<http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>
- On 8 August 2007, the GNSO issued its final report regarding the introduction of new gTLDs. Recommendation 20 of the report intended to provide protections for geographical names, stating that an application for a new gTLD should be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be targeted.
<http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>
- On 26 June 2008, the Board approved the GNSO's Recommendations for the introduction of new gTLDs and directed staff to develop an implementation plan.
<http://www.icann.org/en/minutes/resolutions-26jun08.htm>
- On 24 October 2008, ICANN published Version 1 of the new gTLD Applicant Guidebook ("Version 1"), which incorporated various concepts set forth in the GAC Principles. Version 1 required applications involving geographic names to be accompanied by documents of support or non-objection from the relevant government authority. Geographic names included country and territory names, sub-national names on the ISO 3166-2 list, city names (if the applicant was intending to leverage the city name), and names of continents and regions included on a UN-maintained

list. <http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf>

- The 24 October 2008 posting also included an explanatory memorandum on the topic of geographical names, describing the various considerations used in arriving at the proposed approach. <http://www.icann.org/en/topics/new-gtlds/geographic-names-22oct08-en.pdf>
- On 28 December 2008, the ccNSO commented on Version 1. The ccNSO stated that (1) the restriction of protections for country/territory names to the 6 official United Nations languages needed to be amended to translation in any language; and (2) All country names and territory names should be ccTLDs – not gTLDs and should not be allowed until the IDN ccPDP process concluded. <http://forum.icann.org/lists/gtld-evaluation/msg00015.html>
- On 12 February 2009, the Board met to discuss: (1) proposed changes to Version 1; and (2) the implementation of policy recommendations given by the GAC and GNSO. <http://www.icann.org/en/minutes/minutes-12feb09.htm>
- On 18 February 2009, ICANN published an analysis of public comments received <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>
- Also on 18 February 2009, ICANN published Version 2 of the new gTLD Applicant Guidebook (“Version 2”), which clarified the definition of geographic names set forth in Version 1. In addition, Version 2 expanded protection for country and territory names involving meaningful representations in any language, and augmented requirements for documentation of support or non-objection from relevant governments and public authorities. <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm>
- On 6 March 2009, the Board resolved that it was generally in agreement with Version 2 as it related to geographic names, but directed staff to revise the relevant portions of Version 2 to provide greater specificity on the scope of protection at the top level for the

names of countries and territories listed in the ISO 3166-1 standard. The Board also directed ICANN staff to send a letter to the GAC by 17 March 2009 identifying implementation issues that have been identified in association with the GAC's advice, in order to continue communications with the GAC to find a mutually acceptable solution.

<http://www.icann.org/en/minutes/resolutions-06mar09.htm>

- On 17 March 2009, Paul Twomey delivered a letter to Janis Karklins that: (1) outlined the Board's 6 March 2009 resolution; (2) stated that ICANN's treatment of geographic names provided a workable compromise between the GAC Principles and GNSO policy recommendations; and (3) sought advice to resolve implementation issues regarding the protection of geographic names at the second level. <http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf>
- On 9 April 2009, the ccNSO commented on Version 2. The ccNSO reiterated that all country and territory names are ccTLDs – not gTLDs. <http://forum.icann.org/lists/2gtld-guide/pdfc3uGsuV7CG.pdf>
- On 24 April 2009, Janis Karklins delivered a letter to Paul Twomey stating that: (1) countries should not have to use objection process and should instead wait for the IDN ccTLD PDP to delegate country names; (2) the names contained on three lists be reserved at the second level at no cost for the government; and (3) ICANN should notify registries and request the suspension of any name if the government notifies ICANN that there was a misuse of a second level domain name. <http://www.icann.org/correspondence/karklins-to-twomey-24apr09.pdf>
- On 29 May 2009, Janis Karklins delivered a letter to Paul Twomey. The letter that stated that: (1) the proposed changes to Version 2 in relation to geographic names at the second level were acceptable to the GNSO; and (2) the GNSO and the GAC were not in agreement with regard to other issues relating to Geographic names at the top level. <http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf>

- On 31 May, 2009, ICANN published an analysis of the public comments received concerning draft version 2 of the Applicant Guidebook.
<http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf>
- On 26 June 2009, the Board discussed proposed changes to the geographic names section of the Applicant Guidebook. These proposed changes were intended to provide greater specificity on the scope of protection at the top level for the names of countries and territories and greater specificity in the support requirements for continent or region names. The changes also provided additional guidance to applicants for determining the relevant government or public authority for the purpose of obtaining the required documentation.
<http://www.icann.org/en/minutes/resolutions-26jun09.htm>
- On 18 August 2009, Janis Karklins delivered a letter to Peter Dengate Thrush that stated that (1) strings that were a meaningful representation or abbreviation of a country name or territory name should not be allowed in the gTLD space; and (2) government or public authority should be able to initiate the redelegation process in limited circumstances.
<http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>
- On 22 September 2009, Peter Dengate-Thrush delivered a letter to Janis Karklins, responding to GAC comments on draft version 2 of the Applicant Guidebook and describing the rationale for the proposed treatment of country names, as well as the Board's general intention to provide clear rules for applicants where possible with reference to lists.
<http://www.icann.org/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf>
- On 04 October 2009, ICANN published Version 3 of the new gTLD Applicant Guidebook ("Version 3").
<http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-04oct09-en.pdf>
- On 21 November 2009, ccNSO delivered a letter to the Board, raising concerns about the treatment of country and territory

names. ccNSO also submitted these comments via public comments. <http://www.icann.org/correspondence/dispain-to-dengate-thrush-21nov09-en.pdf>

- On 15 February 2010, ICANN published an analysis of the public comments received. <http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf>
- On 12 March 2010, the Board resolved that ICANN should consider whether the Registry Restrictions Dispute Resolution Procedure or a similar post-delegation dispute resolution procedure could be implemented for use by government supported TLD operators where the government withdraws its support of the TLD. <http://www.icann.org/en/minutes/resolutions-12mar10-en.htm>
- On 31 May 2010, ICANN published Version 4 of the new gTLD Applicant Guidebook (“Version 4”). Version 4 excluded country and territory names from the first gTLD application round, continuing with the existing definition of country and territory names in Version 3. <http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm>
- On 23 September 2010, Heather Dryden delivered a letter to Peter Dengate Thrush that stated that that Version 4 still did not take fully into consideration GAC’s concerns regarding the definition of country/territory names. <http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>
- On 25 September 2010, the Board met in Trondheim, Norway and decided: (1) not to include translations of the ISO 3166-1 sub-national place names in the Applicant Guidebook, and (2) to augment the definition of Continent or UN Regions in the Applicant Guidebook to include UNESCO’s regional classification list. At the same meeting, the Board resolved that ICANN staff should determine if the directions indicated by the Board regarding geographical names and other issues are consistent with GAC comments, and recommend any appropriate further action in light of GAC’s comments. <http://icann.org/en/minutes/resolutions-25sep10-en.htm>

- On 28 October, 2010, the Board discussed the scope, timing and logistics of a consultation needed with GAC regarding remaining geographic names issues in the new gTLD program. The Board agreed that staff should provide a paper on geographic names to GAC. <http://www.icann.org/en/minutes/prelim-report-28oct10-en.htm>
- On 12 November 2010, ICANN posted the proposed final version of the Applicant Guidebook (the “Proposed Final Guidebook”). <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>
- On 23 February 2011, the GAC released its Indicative Scorecard on New gTLD Outstanding Issues. This scorecard included advice from the GAC on the topics of Post-Delegation Disputes and Use of Geographic Names. http://gac.icann.org/system/files/20110223_Scorecard_GAC_outstanding_issues_20110223.pdf
- On 28 February – 1 March 2011, the Board met with GAC representatives at a meeting in Brussels to discuss the issues raised by the GAC.
- On 4 March 2011, the Board published its notes on the GAC Indicative Scorecard. The Board provided an indication of whether each component of the GAC’s advice was consistent (fully or partially) or inconsistent with the Board’s position on each of the issues. <http://gac.icann.org/system/files/2011-03-04-ICANN-Board-Notes-Actionable-GAC-Scorecard.pdf>
- On 12 April 2011, the GAC published comments on the Board’s response to the GAC Scorecard. http://gac.icann.org/system/files/20110412_GAC_comments_on_the_Board_response_to_the_GAC_scorecard_0.pdf
- On 15 April 2011, ICANN posted a discussion draft of the Applicant Guidebook (the “Discussion Draft Guidebook”). This version expanded the definition of country names to include “a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization” as well as providing clarification to applicants that in the event of a dispute between a

government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, ICANN will comply with a legally binding order from a court in the jurisdiction of the government or public authority that has given support to an application.

<http://www.icann.org/en/topics/new-gtlds/draft-rfp-redline-15apr11-en.pdf>

- On 26 May 2011, the GAC provided comments on the 15 April 2011 Discussion Draft.
<http://gac.icann.org/system/files/GAC%20Comments%20on%20the%20new%20gTLDs%20-%2026%20May%202011.pdf>
- On 30 May 2011, ICANN posted another version of the Applicant Guidebook, taking into account public comment and the additional comment from the GAC. This version includes some clarifications but no significant changes from the 15 April 2011 Discussion Draft.
<http://icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. The Board’s Analysis of Geographic Names Associated with the gTLD Program

A. Brief Introduction to Geographic Names

This section sets forth an overview of the treatment of geographic names in the Applicant Guidebook.

- Section 2.2.1.4 provides the following guidance for applications involving geographic names.
 - Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names.
 - Certain types of applied-for strings are considered geographical names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities. These include:

- An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard;
 - An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name;
 - An application for any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard; and
 - An application for a string which represents a continent or UN region appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.
- Applications for strings that are country or territory names will not be approved, as they are not available under the new gTLD program in this application round.
 - The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds, under which applications may be rejected based on objections showing substantial opposition from the targeted community.
- Section 2.3.1 of the Draft Discussion Guidebook provides additional guidance:
 - If an application has been identified as a geographic name requiring government support, but the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the initial evaluation period, the applicant will have additional time to obtain and submit this information in the extended evaluation period.

B. Why the Board Addressed Geographic Names

- The treatment of geographic names in the new gTLD space was an area of significant concern to many stakeholders.
- The Board received extensive advice from the GAC regarding the protection of geographic names.
- The GNSO, in its policy development work, balanced a number of stakeholder considerations in the formation of advice on the treatment of geographic names.
- The Board recognized that government stakeholders have important interests in protecting certain geographic names.
- The Board wished to create an appropriate balance between the interests of governments in protecting certain geographic names, and the multiple uses possible for various types of names in the namespace.

C. Who the Board Consulted

- Legal Counsel
- The GNSO
- The GAC
- The ALAC
- The ccNSO
- The SSAC
- All other Stakeholders and Community members through public comment forum and other methods of participation.

D. What Significant Non-Privileged Materials the Board Reviewed

- **Communications from GAC**

- On 28 March 2007, GAC adopted the GAC Principles
http://gac.icann.org/system/files/gTLD_principles_0.pdf
- On 31 October 2007, GAC issued a communiqué
<http://gac.icann.org/communiqués/gac-2007-communique-30>
- On 26 June 2008, GAC expressed concern to Board and GNSO that the GNSO proposals do not include provisions reflecting GAC Principles regarding new gTLDs
<http://www.icann.org/en/minutes/resolutions-26jun08.htm>
- On 8 September 2008, Paul Twomey participated in a conference call with the GAC to discuss treatment of GAC Principles
- On 2 October 2008, Paul Twomey delivered a letter to Janis Karklins
<http://www.icann.org/en/correspondence/twomey-to-karklins-02oct08.pdf>
- On 8 November 2008: GAC issued a communiqué
<http://gac.icann.org/communiqués/gac-2008-communique-33>
- On 4 March 2009, GAC issued a communiqué
<http://gac.icann.org/communiqués/gac-2009-communique-34>
- On 17 March 2009, Paul Twomey delivered a letter to Janis Karklins
<http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf>
- On 24 April 2009, Janis Karklins delivered a letter to Paul Twomey
<http://www.icann.org/correspondence/karklins-to-twomey-24apr09.pdf>

- On 29 May 2009, Janis Karklins delivered a letter to Paul Twomey
<http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf>
 - On 24 June 2009, GAC issued a communiqué
<http://gac.icann.org/communiques/gac-2010-communique-38>
 - On 18 August 2009, Janis Karklins delivered a letter to Peter Dengate
<http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>
 - On 22 September 2009, Peter Dengate-Thrush delivered a letter to Janis Karklins
<http://www.icann.org/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf>
 - On 10 March 2010, Janis Karklins delivered a letter to Peter Dengate-Thrush
<http://www.icann.org/correspondence/karklins-to-dengate-thrush-10mar10-en.pdf>
 - On 23 September 2010, Heather Dryden delivered a letter to Peter Dengate-Thrush
<http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>
- On 23 February 2011, the GAC delivered its Indicative Scorecard on New gTLD Outstanding Issues
http://gac.icann.org/system/files/20110223_Scorecard_GAC_outstanding_issues_20110223.pdf

- **GNSO Policy Recommendations**

- On 23 May 2007, GNSO Reserved Names Working Group issued its final report

<http://gns0.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>

- On 8 August 2007, GNSO issued its final report regarding the introduction of new gTLDs
<http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

- **ccNSO Comments**

- On 28 December 2008, ccNSO commented on Version 1
<http://forum.icann.org/lists/gtld-evaluation/msg00015.html>
- On 9 April 2009, ccNSO commented on Version 2
<http://forum.icann.org/lists/2gtld-guide/pdfc3uGsuV7CG.pdf>
- On 6 July 2009, ccNSO commented on an excerpt from Version 3
<http://forum.icann.org/lists/e-gtld-evaluation/msg00006.html>
- On 21 November 2009, ccNSO commented on Version 3 again <http://www.icann.org/correspondence/disspain-to-dengate-thrush-21nov09-en.pdf>

- **Public Comments**

- Comments from the community
<http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>

E. What Concerns the Community Raised

- There is a need for clarification of the geographic names process in the Application Guidebook.
- The new gTLDs should respect the sensitivity regarding terms with national, cultural, geographic and religious significance.

- The enumerated grounds for objection might not provide sufficient grounds to safeguard the interest of national, local and municipal governments in the preservation of geographic names that apply to them.
- Delegation and registration of country and territory names is a matter of national sovereignty.
- There is concern over the fees involved in the dispute resolution process, particularly for governments.
- There is concern over perceived inconsistencies with the GNSO policy recommendations.

F. What Factors the Board Found to Be Significant

- The balance of retaining certainty for applicants and demonstrating flexibility in finding solutions;
- The goals of providing greater clarity for applicants and appropriate safeguards for governments and the broad community;
- The goal of providing greater protections for country and territory names, and greater specificity in the support requirements for the other geographic names;
- The goal of respecting the relevant government or public authority's sovereign rights and interests;
- The risk of causing confusion for potential applicants and others in the user community; and
- The risk of possible misuse of a country or territory name or the misappropriation of a community label.

G. The Board's Reasons For the Proposed Approach to Geographic Names

- ICANN's Core Values include introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

- The Board has accepted GAC advice to require government approval in the case of applications for certain geographic names.
- The Board intended to create a predictable, repeatable process for the evaluation of gTLD applications. Thus, to the extent possible, geographic names are defined with respect to pre-existing lists.
- The Board recognized that the community objection process recommended by the GNSO to address misappropriation of a community label would be an additional avenue available to governments to pursue a case where a name was not protected by reference to a list. The Board discussed this topic extensively with the GAC. As a result of the consultation on this and other topics, the Applicant Guidebook was revised to incorporate an Early Warning process which governments could use to flag concerns about a gTLD application at an early stage of the process. These procedures could also help address any concerns from governments about geographic names not already protected in the process.
- The Board also confirmed that the GAC has the ability to provide GAC Advice on New gTLDs concerning any application. Thus, governments would not be required to file objections and participate in the dispute resolution process, but rather, may raise their concerns via the GAC. This process could be used, for example, for governments to object to an application for a string considered by a government to be a geographic name.
- The formal objection and dispute resolution process does remain available to governments as an additional form of protection. Limited funding support from ICANN for objection filing fees and dispute resolution costs is available to governments.
- The Board adopted GAC recommendations for protections of geographic names in second-level registrations.

5. ICANN Board Rationale on the Risk of Increased Malicious Conduct Associated with the New gTLD Program

5. ICANN Board Rationale on the Risk of Increased Malicious Conduct Associated with the New gTLD Program

I. Introduction

Through the development of the new gTLD program and the numerous opportunities for public comment and receipt of community input on the new gTLD program, one of the issues that emerged as a commonly-raised concern was the potential for an increased risk of instances of malicious conduct associated with the introduction of New gTLDs. ICANN committed to (and remains committed to) addressing this issue. The Affirmation of Commitments of the United States Department of Commerce and ICANN includes the following provision:

ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation.

<http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>. These issues were not newly identified in the Affirmation of Commitments. From the outset, ICANN has sought to address these issues as it has prepared to implement the new gTLD program, and has mechanisms and processes designed to address this concern.

This memorandum focuses on the Board's consideration of the risk of a potential increase in malicious conduct associated with the introduction of new gTLDs. The memorandum summarizes: the Board's consideration of the issue, measures approved to mitigate instances of malicious conduct, and the Board's rationale for implementing the new gTLD program while adopting and implementing measures to mitigate that risk.

II. History of the Board's Consideration of Malicious Conduct

This section contains a brief history of significant actions taken by the ICANN Board to mitigate the potential for malicious conduct associated with the new gTLD program.

- On 26 June 2008, the Board adopted the Generic Names Supporting Organization's ("GNSO") policy recommendations for the introduction of new gTLDs, and directed ICANN staff to continue to develop a detailed implementation plan.
See Board Resolution at http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171; see Board Meeting Transcript at https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt
- On 16 May 2009, the Board participated in a workshop on issues related to the new gTLD program, including the security and stability of the Internet generally and the potential risk of malicious conduct in particular. [Rationale-all -final-20110609.doc](#)
- On 20 June 2009, the Board participated in another workshop on issues related to the new gTLD program, including the risk of malicious conduct on the Internet.
- On 26 June 2009, the Board resolved that new gTLDs be prohibited from using Domain Name System ("DNS") redirection and synthesized DNS responses; directed ICANN staff to amend the draft Applicant Guidebook accordingly; and further directed ICANN staff to educate the community about the harms associated with DNS redirection and synthesized DNS responses and how to stop them.
See Board Resolution at <https://icann.org/en/minutes/resolutions-26jun09.htm>; see Board Meeting Transcript at <http://syd.icann.org/files/meetings/sydney2009/transcript-board-meeting-26jun09-en.txt>
- During its study of malicious conduct, ICANN staff solicited and received comments from multiple outside sources, including the Anti Phishing Working Group (APWG), Registry Internet Safety Group (RISG), the Security and Stability Advisory Committee (SSAC), Computer Emergency Response Teams (CERTs) and members of the banking/financial and Internet security communities. These parties described several potential malicious conduct issues and encouraged ICANN to consider ways these might be addressed or mitigated in new gTLD registry agreements.
- On 1 October 2009, ICANN announced the launch of the Expedited Registry Security Request ("ERSR") process. ICANN intends that

gTLD registries will use the ERSR process for security incidents that require immediate action by the registry in order to avoid adverse effects upon DNS stability or security. The ERSR, a web-based submission procedure, reflects the result of a collaborative effort between ICANN and existing gTLD registries to develop a process for quick action in cases where gTLD registries: (1) inform ICANN of a present or imminent security threat to their TLD and/or the DNS; and (2) request a contractual waiver for actions they may take or already have taken to mitigate or eliminate the threat.

<http://www.icann.org/en/announcements/announcement-01oct09-en.htm>

- On 3 October 2009, ICANN published an Explanatory Memorandum on Mitigating Malicious Conduct, part of a series of documents published by ICANN to assist the global Internet community in understanding the development of the new gTLD program and the requirements and processes presented in the Applicant Guidebook. <https://icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-04oct09-en.pdf>
- On 24 November 2009, ICANN announced that it was soliciting members for two new temporary expert advisory groups to study issues related to the risk of malicious conduct: (1) the establishment of a high security TLD designation; and (2) centralized zone access. <https://icann.org/en/announcements/announcement-03dec09-en.htm>
- On 3 December 2009, ICANN announced that it had formed the High Security Zone Advisory Group and the Centralized Zone File Access Advisory Group. <http://www.icann.org/en/announcements/announcement-03dec09-en.htm>
- On 22 February 2010, ICANN published papers by the High Security Zone Advisory Committee and the Central File Access Advisory Committee and solicited public comments. As the result of the latter paper, a uniform method of accessing registry data is now incorporated into the Guidebook. <http://www.icann.org/en/announcements/announcement-22feb10-en.htm>

- On 28 May 2010, ICANN published an Updated Explanatory Memorandum of Mitigating Malicious Conduct. The paper described specific malicious conduct mitigation measures that were recommended by recognized experts in this area that were subsequently incorporated into the Applicant Guidebook.
<http://www.icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-memo-update-28may10-en.pdf>
- On 16 June 2010, ICANN solicited comments on the High Security Zone Advisory Committee's Policy Development Snapshot #2.
<http://www.icann.org/en/topics/new-gtlds/hstld-program-snapshot-2-16jun10-en.pdf>
- On 22 September 2010, ICANN published a Request for Information on the proposed High Security Zone program and requested that all submissions be made by 23 November 2010.
- On 23 September 2010, the GAC outlined to the Board its concerns and recommendations for the new gTLD program and its comments on version 4 of the Draft Applicant Guidebook.
<http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>
- On 24-25 September 2010, the Board participated in another workshop on issues related to the new gTLD program, including discussions on background screening, orphan glue records, and the High-Security Top-Level Domain (HSTLD) concept.
<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.8>
- On 12 November 2010, ICANN published a second Updated Explanatory Memorandum of Mitigating Malicious Conduct.
<https://icann.org/en/topics/new-gtlds/explanatory-memo-mitigating-malicious-conduct-12nov10-en.pdf>. This memo noted ICANN's adoption of the Zone File Access Advisory Group's [Strategy Proposal](#) for a recommendation to create a mechanism to support the centralization of access to zone-file records. This centralized approach is intended to streamline the access and approval process and standardize the format methodology for zone file consumers (e.g. anti-abuse and trademark protection organizations, researchers, academia, etc.). The Centralized Zone Data Access Provider pilot program was deployed for testing in June 2011 and a

production version program is anticipated to be deployed before any new gTLDs are delegated in the root. [Rationale-all -final-20110609.doc](#)

- On 9 December 2010, the GAC provided ICANN with a list of issues it considered to be “outstanding” and requiring further consideration, including consumer protection/the risk of malicious conduct.
http://gac.icann.org/system/files/Cartagena_Communique.pdf
- On 10 December 2010, the Board resolved that ICANN had addressed the issue of the risk of increased malicious conduct in new gTLDs by adopting and implementing various measures, including centralized zone file access. The Board further stated that these solutions reflected the negotiated position of the ICANN community, but that ICANN would continue to take into account public comment and the advice of the GAC.
See Board Resolution at <https://icann.org/en/minutes/resolutions-10dec10-en.htm>; see Board Meeting Minutes at <https://icann.org/en/minutes/minutes-10dec10-en.htm>
- On 21 February 2011, ICANN published a briefing paper on issues the GAC had identified as “outstanding” in September 2010, including certain issues related to the risk of increased malicious conduct.
<http://www.icann.org/en/announcements/announcement-6-21feb11-en.htm>
- On 28 February 2011 and 1 March 2011, the GAC and the Board conferred about remaining outstanding issues related to the new gTLD program, including certain issues related to the risk of increased malicious conduct.
<http://www.icann.org/en/announcements/announcement-23feb11-en.htm>
- On 4 March 2011, the Board published its comments on the GAC Scorecard.
<http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-04mar11-en.pdf>
- On 15 April 2011, ICANN posted a discussion draft of the Applicant Guidebook (the “Discussion Draft Guidebook”).

<http://www.icann.org/en/topics/new-gtlds/draft-rfp-redline-15apr11-en.pdf>

- On 26 May 2011, the GAC provided comments on the 15 April 2011 Discussion Draft.
<http://gac.icann.org/system/files/GAC%20Comments%20on%20the%20new%20gTLDs%20-%2026%20May%202011.pdf>
- The GAC-Board discussions resulted in additional forms of background checks and requirements for new registries to cooperate with law enforcement.
- On 30 May 2011, ICANN posted another version of the Applicant Guidebook, taking into account public comment and the additional comment from the GAC.
<http://icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. The Board's Analysis of the Risk of Increased Malicious Conduct Associated with the New gTLD Program

A. Why the Board is Addressing This Issue Now

- ICANN's mission statement and one of its founding principles is to promote competition. The expansion of TLDs will allow for more innovation and choice in the Internet's addressing system. The ICANN Board seeks to implement the new gTLD program together with measures designed to mitigate the risk of increased malicious conduct on the Internet.
- ICANN committed to the U.S. Department of Commerce that it would address the risk of malicious conduct in new gTLDs prior to implementing the program.
- The ICANN Board is committed to making decisions based on solid factual investigation and expert analysis.

B. Who the Board Consulted

- The GNSO
- The GAC
- The At-Large Community and ALAC

- The ICANN Implementation Recommendation Team (“IRT”)
- The Anti-Phishing Working Group
<http://www.antiphishing.org/>
- The Registry Internet Safety Group
<http://registrysafety.org/website/>
- The ICANN Security and Stability Advisory Committee
<http://www.icann.org/en/committees/security/>
- Computer Emergency Response Teams (“CERTs”)
See, e.g., <http://www.us-cert.gov/>
- The ICANN Zone File Access Advisory Group
<http://www.icann.org/en/topics/new-gtlds/zone-file-access-en.htm>
- The ICANN High Security Zone TLD Advisory Group
<http://www.icann.org/en/topics/new-gtlds/hstld-program-en.htm>
- The Registration Abuse Policies Working Group
<https://st.icann.org/reg-abuse-wg/>
- The Registrar Stakeholder Group
<http://www.icannregistrars.org/>
- The Registries Stakeholder Group
<http://www.gtldregistries.org/>
- Members of the banking and financial community, including the BITS Fraud Reduction Program, the American Bankers Association, the Financial Services Information Sharing and Analysis Center (“FS-ISAC”), and the Financial Services Technology Consortium (“FSTC”)
See, e.g., www.icann.org/en/correspondence/bell-to-beckstrom-11aug09-en.pdf; and
<http://www.icann.org/en/correspondence/evanoff-to-beckstrom-13nov09-en.pdf>
- Members of the Internet security community, including the Worldwide Forum of Incident Response and Security Teams (“FIRST”), which consists of computer and network emergency response teams from 180 corporations, government bodies,

universities and other institutions spread across the Americas, Asia, Europe, and Oceania; as well as various law enforcement agencies

- Other stakeholders and members of the community
- Legal counsel

C. What Significant Non-Privileged Materials the Board Reviewed

- Reports and Comments from Committees and Stakeholders
 - Centralized Zone File Access:
 - 18 February 2010 gTLD Zone File Access in the Presence of Large Numbers of TLDs: Concept Paper <https://icann.org/en/topics/new-gtlds/zfa-concept-paper-18feb10-en.pdf>
 - 12 May 2010 gTLD Zone File Access For the Future: Strategy Proposal <http://www.icann.org/en/topics/new-gtlds/zfa-strategy-paper-12may10-en.pdf>
 - Wild Card Resource Records:
 - 10 November 2006 ICANN Security and Stability Advisory Committee Paper: Why TLDs Should Not Use Wild Card Resource Records <http://www.icann.org/en/committees/security/sac015.htm>
 - Phishing Attacks:
 - 26 May 2008 ICANN Security and Stability Advisory Committee Paper: Registrar Impersonation Phishing Attacks <http://www.atlarge.icann.org/files/atlarge/ssac-registrar-impersonation-24jun08.pdf>
 - 17 June 2009 Anti-Phishing Working Group Paper https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/potential_for_malicious_conduct:

[20090619162304-0-3550/original/DRAFT%20Potential%20malicious%20us-e%20issues%2020090617.pdf](https://www.icann.org/en/topics/new-gtlds/20090619162304-0-3550/original/DRAFT%20Potential%20malicious%20us-e%20issues%2020090617.pdf)

- DNS Response Modification:
 - 20 June 2008 ICANN Security and Stability Advisory Committee Paper: DNS Response Modification
<https://par.icann.org/files/paris/PiscitelloNXDOMAIN.pdf>
- Centralized Malicious Conduct Point of Contact:
 - 25 February 2009 ICANN Security and Stability Advisory Committee Paper: Registrar Abuse Point of Contact
<http://www.icann.org/en/committees/security/sac038.pdf>
- High Security Zone:
 - 18 November 2009 A Model for High Security Zone Verification Program: Draft Concept Paper
<https://icann.org/en/topics/new-gtlds/high-security-zone-verification-04oct09-en.pdf>
 - 17 February 2010 High Security Zone TLD: Draft Program Development Snapshot
<https://icann.org/en/topics/new-gtlds/hstld-program-snapshot-18feb10-en.pdf>
 - 13 April 2010 High Security TLD: Draft Program Development Snapshot
https://st.icann.org/hstld-advisory/index.cgi?hstld_program_development_snapshot_1
 - 16 June 2010 High Security Zone TLD: Draft Program Development Snapshot
<http://www.icann.org/en/topics/new-gtlds/hstld-program-snapshot-2-16jun10-en.pdf>
- Redirection and Synthesized Responses:

- 10 June 2001 ICANN Security and Stability Advisory Committee Paper: Recommendation to Prohibit Use of Redirection and Synthesized Responses (*i.e.*, Wildcarding) by New TLDs
<http://www.icann.org/en/committees/security/sac041.pdf>
- Thick vs. Thin WHOIS:
 - 30 May 2009 ICANN Explanatory Memorandum on Thick vs. Thin WHOIS for New gTLDs
<http://www.icann.org/en/topics/new-gtlds/thick-thin-whois-30may09-en.pdf>
- Trademark Protection:
 - 29 May 2009 Implementation Recommendation Team Final Draft Report to ICANN Board
<http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>
 - See the Board Rationale Memorandum on Trademark Protection for a more detailed summary of non-privileged materials the Board reviewed on this topic.
- Malicious Conduct Generally:
 - 15 April 2009 ICANN Plan for Enhancing Internet Security, Stability and Resiliency
<http://www.icann.org/en/topics/ssr/ssr-draft-plan-16may09-en.pdf>
 - 19 May 2009 Registry Internet Safety Group's Paper: Potential for Malicious Conduct in New TLDs
https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/potential_for_malicious_conduct:20090519220555-0-2071/original/RISG_Statement_on_New_TLDs-20090519.pdf
 - 19 August 2009 ICANN Security and Stability Advisory Committee Paper: Measures to Protect Domain

Registration Services Against Exploitation or Misuse
<http://www.icann.org/en/committees/security/sac040.pdf>

- 3 October 2009 ICANN’s Explanatory Memorandum on Mitigating Malicious Conduct
<https://icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-04oct09-en.pdf>
- 30 November 2009 Online Trust Alliance’s Comments on the New gTLD Program
<http://www.icann.org/en/correspondence/spiegle-to-pritz-30nov09-en.pdf>
- 28 May 2010 ICANN’s Updated Memorandum on Mitigating Malicious Conduct
<http://www.icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-memo-update-28may10-en.pdf>
- 29 May 2010 Registration Abuse Policies Working Group Final Report
<http://www.gnso.icann.org/issues/rap/rap-wg-final-report-29may10-en.pdf>
- 13 September 2010 ICANN’s Updated Plan for Enhancing Internet Security, Stability and Resiliency
<http://icann.org/en/topics/ssr/ssr-draft-plan-fy11-13sep10-en.pdf>
- 12 November 2010 ICANN’s Second Updated Memorandum on Mitigating Malicious Conduct
<https://icann.org/en/topics/new-gtlds/explanatory-memo-mitigating-malicious-conduct-12nov10-en.pdf>
- 21 February 2011 ICANN briefing paper on issues the GAC had identified as “outstanding” in September 2010, including certain issues related to the risk of increased malicious conduct
<http://www.icann.org/en/announcements/announcement-6-21feb11-en.htm>

- Comments from the Community

D. What Concerns the Community Raised

- There was concern expressed that the new gTLD program will lead to an expansion of crime on the Internet, including look-alike domains, drop catching, domain tasting, domain hijacking, malware distribution, identity theft and miscellaneous deceptive practices.
- Wrongdoers may apply to operate registries.
- Wrongdoers may exploit technical weaknesses in the Internet, including automated registration services.
- End user confusion about new gTLDs may lead to increased fraud. For example, end users may be confused about TLDs whose mere names raise expectations of security.
- Certain new gTLDs may not comply with some national laws.
- There is a need for an enhanced control framework for TLDs with intrinsic potential for abuse, including those involving e-service transactions requiring a high confidence infrastructure (such as electronic financial services or electronic voting) and those involving critical assets (such as energy infrastructures or medical services).
- There is a need for better and more efficient identification of domain name resellers.
- There is a need to ensure the integrity and utility of registry information.
- The new gTLD program should safeguard the privacy of personal and confidential information.
- New gTLDs may adversely affect trademark owners.
- ICANN and others should better enforce provisions in agreements with registries and registrars.
- ICANN should impose new requirements on TLD operators.

- There is a need for systemic processes to combat abuse on the Internet.

E. What Steps the Board Resolved to Take to Mitigate Malicious Conduct

The Board believes the following measures will greatly help to mitigate the risk of increasing malicious conduct arising from new gTLDs. ICANN has incorporated the majority of these measures in the current version of the Applicant Guidebook and/or the registry agreement, and its efforts to implement the remaining measures are ongoing.

<http://www.icann.org/en/topics/new-gtlds/dag-en.htm>

- Required vetting of registry operators: The application process includes standardized, thorough background and reference checks for companies and individuals (key officers) to mitigate the risk that known felons, members of criminal organizations or those with histories of bad business operations (including cybersquatting) will become involved in registry operations or gain ownership or proxy control of registries.
- Required demonstrations of plans for Domain Name System Security Extensions (“DNSSEC”) deployment: DNSSEC is designed to protect the Internet from most attacks, including DNS cache poisoning. It is a set of extensions to the DNS which provide: (1) origin authentication of DNS data; (2) data integrity; and (3) authenticated denial of existence.
- Prohibition on wildcarding: The prohibition on wildcarding bans DNS redirection and synthesized DNS responses to reduce the risk of DNS redirection to a malicious site.
- Required removal of orphan glue records: Removal of orphan glue records destroys potential name server “safe havens” that abusers can use to support criminal domain registrations. Registry operators will be required to remove orphan glue records when presented with evidence in written form that such records are present in connection with malicious conduct.
- Mandatory thick WHOIS records: Registry Operators must maintain and provide public access to registration data using a thick WHOIS data model. Thick WHOIS will help mitigate malicious conduct and

trademark abuse by ensuring greater accessibility and improved stability of records.

- Centralization of zone file access: Central coordination of zone file data will allow the anti-abuse community to efficiently obtain updates on new domains as they are created within each zone, and to reduce the time necessary to take corrective action within TLDs experiencing malicious activity. The program is designed to reduce differences in and complexities of contractual agreements, standardize approaches and improve security and access methods.
- Mandatory documentation of registry level abuse contacts and procedures: Registry operators will provide a single abuse point of contact for all domains within the TLD who is responsible for addressing and providing timely responses to abuse complaints received from recognized parties, such as registries, registrars, law enforcement organizations and recognized members of the anti-abuse community. Registries also must provide a description of their policies to combat abuse.
- Required participation in the Expedited Registry Security Request (“ERSR”) process: ICANN developed the ERSR process in consultation with registries, registrars and security experts, based on lessons learned in responding to the Conficker worm, to provide a process for registries to inform ICANN of a present or imminent “security situation” involving a gTLD and to request a contractual waiver for actions the registry might take or has taken to mitigate or eliminate the security concerns. “Security situation” means: (1) malicious activity involving the DNS of a scale and severity that threatens the systematic security, stability and resiliency of the DNS; (2) potential or actual unauthorized disclosure, alteration, insertion or destruction of registry data, or the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards; or (3) potential or actual undesired consequences that may cause or threaten to cause a temporary or long-term failure of one or more of the critical functions of a gTLD registry as defined in ICANN’s gTLD Registry Continuity Plan.
- Framework for High Security Zones Verification: The concept of a voluntary verification program is a mechanism for TLDs that desire

to distinguish themselves as secure and trusted, by meeting additional requirements for establishing the accuracy of controls for the registry, registrar and registrant processing, as well as periodic independent audits. A draft framework was created by the HSTLD working group.. The working group's Final Report may be used to inform further work. ICANN will support independent efforts toward developing voluntary high-security TLD designations, which may be available to gTLD applicants wishing to pursue such designations.

F. What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of the potential for malicious conduct associated with the new gTLD program. The Board found the following factors to be significant:

- the principle that the Board should base Policy on solid factual investigation and expert analysis;
- whether new gTLDs would promote consumer welfare;
- certain measures intended to mitigate the risk of malicious conduct may raise implementation costs for new gTLD registries;
- the creation of new TLDs may provide an opportunity for ICANN to improve the quality of domain name registration and domain resolution services in a manner that limits opportunities for malicious conduct;
- most abuse takes place in larger registries because that is where abusive behavior “pays back,”; a more diverse gTLD landscape makes attacks less lucrative and effective;
- the risk of increasing exposure to litigation; and
- the lack of reported problems concerning increased criminal activity associated with ICANN's previous introductions of new TLDs.

IV. The Board’s Reasons for Proceeding with the New gTLD Program While Implementing Measures to Mitigate the Risk of Malicious Conduct

- Modest additions to the root have demonstrated that additional TLDs can be added without adversely affecting the security and stability of the domain name system.
- ICANN’s “default” position should be for creating more competition as opposed to having rules that restrict the ability of Internet stakeholders to innovate. New gTLDs offer new and innovative opportunities to Internet stakeholders.
- Most abuse takes place in larger registries. A more diverse gTLD landscape makes attacks less lucrative and effective.
- New gTLD users might rely on search functions rather than typing a URL in an environment with many TLDs, lessening the effectiveness of forms of cyber-squatting.
- Brand owners might more easily create consumer awareness around their brands as a top-level name, reducing the effectiveness of phishing and other abuses.
- ICANN has worked with the community to address concerns relating to potential malicious conduct in the new gTLD space. New and ongoing work on these issues in the policy development arena may provide additional safeguards recommended as a result of the bottom-up process, and ICANN will continue to support these efforts.
- Data protection is best accomplished by data protection tools, including audits, contractual penalties such as contract termination, punitive damages, and costs of enforcement, as well as strong enforcement of rules.
- The measures adopted by ICANN, including centralized zone file access, and other mechanisms, address the principal concerns raised by stakeholders about the potential for proliferation of malicious conduct in the new gTLD space. A combination of verified security measures and the implementation of DNSSEC will

allow users to find and use more trusted DNS environments within the TLD market.

- Revised applicant procedures and agreements reflecting the measures to mitigate the risk of malicious conduct will permit ICANN to address certain risks of abuse contractually and also will permit ICANN to refer abuses to appropriate authorities. ICANN can amend contracts and the applicant guidebook to address harms that may arise as a direct or indirect result of the new gTLD program.

6. ICANN Board Rationale on Objection Process Associated with the New gTLD Program

6. ICANN Board Rationale on Objection Process Associated with the New gTLD Program

I. Introduction

Recommendation 12 of the Generic Names Supporting Organization (GNSO) Final Report on the Introduction of New gTLDs (<http://gnsso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>), and approved by the Board in June 2008 (http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171) states that, “[D]ispute resolution and challenge processes must be established prior to the start of the process.” Further, Implementation Guideline H, also set forth by the GNSO, states “External dispute providers will give decisions on objections.”

Based on the GNSO Policy and implementation planning, it was determined that four of the GNSO recommendations should serve as a basis for an objection process managed by external providers. Those include the following:

- (i) Recommendation 2 “Strings must not be confusingly similar to an existing top-level domain or a Reserved Name” (String Confusion Objection);
- (ii) Recommendation 3 “Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law” (Legal Rights Objection);
- (iii) Recommendation 6 “Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law” (Limited Public Interest Objection); and
- (iv) Recommendation 20 “An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted” (Community Objection).

Thus, a process allowing third parties to object to applications for new gTLDs on each the four grounds stated above was developed.²

Subsequent to the development and refinement of the original Objection Procedures based on the GNSO recommendations and set out in Module 3 of the Applicant Guidebook (see <http://www.icann.org/en/topics/new-gtlds/objection-procedures-clean-30may11-en.pdf>) a separate process has been established for the GAC. That process is also set out in Module 3 of the Applicant Guidebook. In short, there is now a formal process for the GAC to provide advice in relation to the approval of an application.

II. History of the Development of the Objection Processes and Procedures Associated with the New gTLD Program

This section sets forth a history of significant actions taken on the subject of the objection process associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for numerous other reasons.
- In August 2007, the GNSO issued its final report regarding the introduction of new gTLDs. Recommendation 12 of the report (“Recommendation 12”) states that “[d]ispute resolution and challenge processes . . . must be established prior to the start of the process” and Implementation Guideline H states that “External dispute providers will give decisions on objections.” <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>
- In December 2007, ICANN posted a call for expressions of Interest from potential Dispute Resolution Service Providers (DSRP) for the new gTLD Program. <http://www.icann.org/en/announcements/announcement-21dec07.htm>

² The International Centre for Dispute Resolution (ICDR) has agreed to administer disputes brought pursuant to String Confusion Objections. The Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO) has agreed to administer disputes brought pursuant to Legal Rights Objections. The International Center of Expertise of the International Chamber of Commerce (ICC) has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

- Throughout 2008, external dispute resolution service providers were evaluated and selected. As noted above in footnote 1, the ICDR will administer disputes brought pursuant to String Confusion Objections, WIPO will administer disputes brought pursuant to Legal Rights Objections and the ICC will administer disputes brought pursuant to Limited Public Interest and Community Objections.
- Also throughout 2008, ICANN conducted public consultations, as well as thorough and global research to help define the standing requirements and standards to be used by dispute resolution panels to resolve the disputes on the various Objection grounds.
- In October 2008, ICANN published draft version 1 of the Applicant Guidebook, including Module 3, which laid out the Dispute Resolution Procedures. At that same time, ICANN posted a paper for community discussion entitled “Morality and Public Order Objection Considerations in New gTLDs,” which summarized the implementation work that had been accomplished in response to Recommendation 6 (now called Limited Public Interest Objection).
<http://www.icann.org/en/topics/new-gtlds/morality-public-order-draft-29oct08-en.pdf>
- In February 2009, the Board discussed who would have standing to object to an applied-for string on the basis of morality and public order. There was a sense that an objection-based dispute resolution process was the appropriate method for addressing possible disputes. There was also a sense that any injured party would have standing to object. Limiting standing to governments or other official bodies might not address the potential harm.
<http://www.icann.org/en/minutes/minutes-12feb09.htm>
- Also in February 2009, with the second draft version of the Applicant Guidebook, ICANN posted the separate “New gTLD Dispute Resolution Procedure”. <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedure-18feb09-en.pdf>
- Also in February 2009, ICANN posted a paper for community discussion entitled “Description of Independent Objector for the New gTLD Dispute Resolution Process,” which explored the potential benefits of

allowing an “Independent Objector” to object within the dispute resolution process.

<http://www.icann.org/en/topics/new-gtlds/independent-objector-18feb09-en.pdf>

- In May 2009, along with revised excerpts of the Applicant Guidebook, ICANN posted a paper for community discussion entitled “Standards for Morality and Public Order Research,” which summarized the research relating to the development of standards for morality and public order (now Limited Public Interest) objections.
<http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf>
- In May 2010, ICANN posted a paper entitled “‘Quick Look’ Procedure for Morality and Public Order Objections,” which summarized a procedure requested by community members by which morality and public order objections could be dismissed if they are determined to be “manifestly unfounded and/or an abuse of the right to object.”
<http://www.icann.org/en/topics/new-gtlds/morality-public-order-quick-look-28may10-en.pdf>
- In August 2010, Heather Dryden, Chair of the GAC, delivered a letter to Peter Dengate Thrush, Chairman of the Board, requesting that the proposed procedure for morality and public order objections be replaced with an alternative mechanism.
<http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf>
- Also in August 2010, the Board considered Submission No. 2010-08-05-15, which discussed the feedback received by the GAC with regard to the proposed procedure for morality and public order objections.
<http://www.icann.org/en/minutes/board-briefing-materials-2-05aug10-en.pdf>
- In September 2010, the cross-stakeholder group known as the New gTLD Recommendation 6 Cross-Community Working Group (“Rec6 CWG”) published a report on the Implementation of the Recommendation (the “Rec6 CWG report”). The report provided guidance to the Board with regard to procedures for addressing culturally objectionable and/or sensitive strings, while protecting internationally recognized freedom of expression rights. This report

was posted for public comment. [See link at http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm](http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm)

- Also in September 2010, the Board met in Trondheim, Norway and stated that they would “accept the [Rec6 CWG] recommendations that are not inconsistent with the existing process, as this can be achieved before the opening of the first gTLD application round, and [would] work to resolve any inconsistencies.” At the same meeting, the Board agreed that it had “ultimate responsibility for the new gTLD program ... however, [that it wished] to rely on the determination of experts on these issues.”
<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm>
- In October 2010, the Board again discussed the Rec6 CWG report, indicating that several of the working group recommendations could be included in the Guidebook for public discussion and that the working group recommendations should be discussed publicly at ICANN’s upcoming meeting in Cartagena.
<http://www.icann.org/en/minutes/resolutions-28oct10-en.htm>
- In November 2010, ICANN posted the proposed final version of the Applicant Guidebook (the “Proposed Final Guidebook”), which adopted several of the recommendations set forth in the Rec6 CWG report.
<http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>
- Also in November 2010, ICANN posted an explanatory memorandum entitled “Limited Public Interest Objection,” which described the recommendations set forth in the Rec6 CWG report, ICANN’s responses to those recommendations and ICANN’s rationale for its responses.
<http://www.icann.org/en/topics/new-gtlds/explanatory-memorality-public-order-12nov10-en.pdf>
- In December 2010 in Cartagena, Columbia, the Board had two separate sessions with the Rec6 CWG to help achieve further understanding of the working group’s positions.
- On 23 February the GAC issued the “GAC indicative scorecard on new gTLD issues listed in the GAC Cartagena Communique” (“Scorecard”)

identifying the Objection Process as one of twelve areas for discussion.
<http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>

- On 28 February and 1 March 2011, the Board and the GAC had a two-day consultation in Brussels, Belgium to discuss the issues raised in the Scorecard, including the suggestion that the GAC should not be subject to the Objection Procedures for Limited Public Interest Objections. Instead, a process was discussed by which the GAC could provide public policy advice on individual gTLD applications directly to the Board
- On 12 April 2011, the GAC issued “GAC comments on the ICANN’s Board’s response to the GAC Scorecard” that also addressed the Objection Procedures. <http://www.icann.org/en/topics/new-gtlds/gac-comments-board-response-gac-scorecard-12apr11-en.pdf>
- On April 15 2011, ICANN posted the April 2011 Discussion Draft of the Applicant Guidebook, containing a new “GAC Advice” section detailing the procedure by which the GAC could provide advice to the Board concerning gTLD applications. <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-redline-15apr11-en.pdf>
- Also on 15 April 2011, ICANN posted an Explanatory Memorandum entitled ‘GAC and Government Objections; Handling of Sensitive Strings; Early Warning’ to describe details of the new procedures. <http://www.icann.org/en/topics/new-gtlds/gac-objections-sensitive-strings-15apr11-en.pdf>
- [Also on 15 April 2011, ICANN posted](http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf) “Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response” discussing its response to the GAC’s concerns on the Objection Process. <http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf>
- [On 20 May the Board and GAC had further consultations that included discussion on the Objection Process.](http://www.icann.org/en/topics/new-gtlds/transcript-board-gac-20may11-en.pdf) <http://www.icann.org/en/topics/new-gtlds/transcript-board-gac-20may11-en.pdf>

- [On 30 May, ICANN posted the current version of the Applicant Guidebook with additional refinements to the Objection Process as it relates to the GAC. http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm](http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm)
- [On 19 June 2011, the Board and the GAC had additional consultations.](#)

III. The Board’s Analysis of the Objection Process Associated with the New gTLD Program

A. Brief Introduction to the Objection Process

1. Brief Overview of the Objection Process for all except the GAC.

- The new gTLD process is an objection-based process, in which parties with standing may file with an identified independent dispute resolution provider a formal objection to an application on certain enumerated grounds (see footnote 1 for list of providers). The grounds for filing a formal objection to an application are:
 - the gTLD string is confusingly similar to an existing TLD or another applied-for gTLD string in the same round of applications (“String Confusion Objection”)
 - the gTLD string infringes the existing legal rights of the objector (“Legal Rights Objection”)
 - the gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law (“Limited Public Interest Objection”)
 - there is substantial opposition to the application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted (“Community Objection”).

<http://www.icann.org/en/topics/new-gtlds/draft-rfp-redline-15apr11-en.pdf>

- If the objectors have standing, their objections will be considered by a panel of qualified experts, that will issue a Determination.

- Specific standards under which each of the four types of objections will be evaluated are set forth in detail in Module 3 of the current Applicant Guidebook.
- There will be objection fees (fixed for String Confusion and Community Objections and hourly for Limited Public Interest and Community Objections) that will be refundable to the prevailing party.

2. Brief Overview of the GAC Advice Process.

- The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.
- For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period
- Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.
- ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.
- The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

B. Why the Board Addressed the Objection Process as it has

- The GNSO Policy Recommendations called for the creation of a dispute resolution or objection process in the new gTLD program.

- The GNSO also provided implementation guidelines suggesting that external dispute resolution providers should be utilized.
- A fully established objection process, with uniform standing requirements and standards available to the dispute resolution service providers, ensures that a reasonably objective process is in place. It further ensures that experts in dispute resolution make any determinations on the disputes after considering all of the evidence.
- A fully established dispute resolution process provides parties with a cost-effective alternative to initiating action in court, if there is a valid objection.
- The GAC advised the Board that it was not amendable to utilizing the standard Objection Process established for the new gTLD program. Accordingly, the Board worked closely with the GAC to develop a mutually acceptable “objection” mechanism, in the form of GAC Advice.

C. Who the Board Consulted

- Legal Counsel
- International arbitration experts
- Judges from various international tribunals such as the International Court of Justice
- Attorneys who practice in front of international tribunals such as the International Court of Justice
- The GNSO
- The GAC
- The ALAC
- The ccNSO
- The SSAC
- All other Stakeholders and Community Members

D. Significant Non-Privileged Materials the Board Reviewed

- GAC Principles Regarding New gTLDs.
http://gac.icann.org/system/files/gTLD_principles_0.pdf
- GNSO “Final Report – Introduction of new generic top-level domains.” <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>
- Report on Implementation of GNSO New GTLD Recommendation #6. See link to Report from <http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm>
- All materials related to the Board/GAC consultation. See <http://www.icann.org/en/topics/new-gtlds/related-en.htm>
- All relevant GAC letters and Communiqués. See <http://www.icann.org/en/correspondence/> and <http://gac.icann.org/communiques>.
- Applicant Guidebook, related explanatory memoranda, other related documents and related comment summaries and analyses:
 - Each version of the Applicant Guidebook, including all ICANN created explanatory memoranda and the specific proposals for trademark protections, along with numerous pages of public comment summaries and analysis related to the Objection Procedures. See (i) <http://www.icann.org/en/topics/new-gtlds/comments-en.htm>; (ii) <http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm#expmem>; (iii) <http://www.icann.org/en/topics/new-gtlds/comments-en.htm>; (iv) <http://www.icann.org/en/topics/new-gtlds/comments-3-en.htm>; (v) <http://www.icann.org/en/topics/new-gtlds/gnso-consultations-reports-en.htm>; (vi) <http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm>; (vii) <http://www.icann.org/en/topics/new-gtlds/summaries-4-en.htm>; (viii) <http://www.icann.org/en/topics/new-gtlds/comments-5-en.htm>; (ix)

<http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>; (x) <http://www.icann.org/en/topics/new-gtlds/dag-en.htm>; (xi) <http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm>; and (xii) <http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>

E. Significant Concerns the Community Raised

- What will be done if there is an application for a highly objectionable name, but there are no objectors within the process?
- There is a need for clarification on what type of string would be considered to be “contrary to generally accepted legal norms relating to morality and public order . . . recognized under international principles of law.”
- Are the standards set out for each objection appropriate?
- How will fees be determined?
- Will ICANN fund certain stakeholders’ objections?
- Should it be a dispute process rather than a mere objection process?
- Are the independent dispute resolution providers the rights ones to handle the specific objections?
- Neither Governments nor the GAC should be required to utilize the Objection Procedures.

F. Factors the Board Found to Be Significant

- The Dispute Resolution Process is designed to protect certain interests and rights, those interests identified by the GNSO in their policy recommendations that were approved by the ICANN Board.
- The Dispute Resolution Process will be more cost effective and efficient than judicial proceedings. Fees will be paid directly to the dispute resolution providers.

- The Dispute Resolution Process should be independent as possible so that the applicants, the community and ICANN have the benefit of neutral expert opinion.
- It is critical to address risk to the established processes and to ICANN by providing a path for considering controversial applications that might otherwise result in litigation or attacks to the process or to the ICANN model.
- Governments have a particular interest in having an unencumbered process to provide advice to the Board without having to utilize the formal independent objection process.

G. The Board’s Reasons for Supporting the Two-pronged Objection Process Established for the New gTLD Program

- The Dispute Resolution Process complies with the policy guidance provided by the GNSO.
- The Dispute Resolution Process provides a clear, predictable path for objections and objectors.
- The Dispute Resolution Process provides clear standards that will lead to predictable, consistent results.
- The Dispute Resolution Process provides for an independent analysis of a dispute.
- The Dispute Resolution Process provides a bright line between public comment and a formal objection process so parties understand the manner in which a challenge to a particular application should be brought (a lesson learned from previous rounds).
- The Dispute Resolution Process appropriately limits the role for the Board.
- The Dispute Resolution Process limits involvement to those who truly have a valid objection.
- The Dispute Resolution Process provides for a more efficient and cost effective approach to dispute resolution than judicial proceedings.

- The Dispute Resolution Process, which provide for an “Independent Objector” to object is an important step to achieving the goal of independence and ensuring the objectionable strings are challenged.
- The GAC Advice process provides an avenue for the GAC to provide public policy advice to the Board on individual applications in a relatively timely fashion and consistent manner.
- The GAC Advice process was developed after close consultations with the GAC and provides a prescribed manner and time frame in which the Board will be able to consider GAC advice with respect to a particular string or applicant.

7. ICANN Board Rationale on Root Zone Scaling in the New gTLD Program

7. ICANN Board Rationale on Root Zone Scaling in the New gTLD Program

I. Introduction

When ICANN was formed in 1998 as a not for profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, its primary purpose was to promote competition in the domain name system ("DNS") marketplace while ensuring internet security and stability. ICANN's Bylaws and other foundational documents articulate that the promotion of competition in the registration of domain names is one of ICANN's core missions. See ICANN Bylaws, Article 1, Section 2.6.

One part of this mission is fostering competition by allowing additional Top Level Domains ("TLDs") to be created. ICANN began this process with the "proof of concept" round for a limited number of new gTLDs in 2000, and then permitted a limited number of additional "sponsored" TLDs in 2004-2005. These additions to the root demonstrated that TLDs could be added without adversely affecting the security and stability of the domain name system.

After an extensive policy development process, in August 2007, the GNSO issued a lengthy report in which it recommended that ICANN permit a significant expansion in the number of new gTLDs. The report recognized that the introduction of new gTLDs would require the expansion of the top-level DNS zone in the DNS hierarchy known as the DNS root zone ("root zone"). This expansion of the root zone, along with ICANN's recent and concurrent implementation of other changes to the root of the DNS, caused some members of the community to ask ICANN to review how the expansion of the root zone could impact root zone stability. <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

Between 2004 and 2010, the root of the DNS underwent significant changes, both in content as well as support infrastructure. These changes included the addition of Internationalized Domain Names ("IDNs") to the root, the deployment of IPv6 and implementation of Domain Name System Security

Extensions (“DNSSEC”). The broad scope of these changes was unprecedented. Now with new gTLDs on the horizon, further substantive changes in the root of the DNS are expected.

In response to comments from members of the community, ICANN commissioned a number of studies to address the capacity and scaling of the root server system with the goal of ensuring the stable and secure addition of new gTLDs. The studies improved ICANN’s understanding of the scalability of the root zone as it pertains to new gTLDs, and they reinforced confidence in the technical capability and stability of the root zone at the projected expansion rates. The studies also helped to inform and improve ICANN’s approach to monitoring the scalability and stability of the root zone.

II. Brief History of ICANN’s Consideration of Root Zone Scaling Associated with the New gTLD Program

This section sets forth a brief history of significant Board actions on the subject of root zone scaling associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for numerous other reasons.
- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO’s policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues.
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880

- On 6 February 2008, ICANN published a paper entitled DNS Stability: The Effect of New Generic Top Level Domains on the Internet Domain Name System which addressed TLD Strings, technical stability and the capacity of the root zone.

<http://www.icann.org/en/topics/dns-stability-draft-paper-06feb08.pdf>
- On 6 February 2008, in response to ICANN's publication of the paper entitled DNS Stability: The Effect of New Generic Top Level Domains in the Internet Domain System, the Board requested public comments and community feedback regarding technical issues relevant to the addition of new gTLDs. The Board also requested guidance on how best to facilitate transparency in implementing the recommendations of the paper.

<http://www.icann.org/en/announcements/announcement-06feb08.htm>
- In February 2009, the Board resolved that the Security and Stability Advisory Committee ("SSAC") and the DNS Root Server System Advisory Committee ("RSSAC") should jointly conduct a study analyzing the aggregate impact of the proposed implementation of various changes to the root zone and any potential effects on the security and stability within the DNS root server system. These changes include the still-recent addition of IPv6 access to the root servers, the planned addition of IDNs at the root level, signing the root zone with DNSSEC, and the provisioning of new country code IDN TLDs and new gTLDs.
- On 7 September 2009, the Root Zone Scaling Team ("RSST") released its study entitled Scaling the Root.

<http://www.icann.org/en/committees/dns-root/root-scaling-study-report-31aug09-en.pdf>
- On 17 September 2009, the DNS Operations Analysis and Research Center ("DNS-OARC") released the "L" Root Study entitled Root Zone Augmentation and Impact Analysis.

<http://www.icann.org/en/topics/ssr/root-zone-augmentation-analysis-17sep09-en.pdf>

- On 29 September 2009, the Netherlands Organization for Applied Scientific Research (“TNO”) released a report directed by the RSST to develop a quantitative model of the DNS Root Server System to analyze the impact of the addition of new gTLDs, IDN TLDs, IPv6 and DNSSEC. That study is entitled Root Scaling Study: Description of the DNS Root Scaling Model. <http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf>
- On 14 October 2009, the Chair of the Internet Architecture Board (“IAB”), Olaf Kolkman, sent a letter to ICANN’s Board in response to the publication of the RSST Study. He stated that the report’s recommendations were accurate and that security, stability and resiliency are the most important properties of the system and they need to continue to be monitored and safeguarded by ICANN. <http://www.icann.org/en/correspondence/kolkman-to-ceo-board-14oct09-en.pdf>
- On 3 March 2010, ICANN released its Draft Delegation Rate Scenarios for New gTLDs, laying out the plan for limiting delegation rates and outlining expected demand for new gTLDs based on: (1) current participation in the new gTLD process; (2) brand and famous mark holders; and (3) regional, national and other geographic regions that are not currently participating. <http://www.icann.org/en/announcements/announcement-03mar10-en.htm>
- On 25 September 2010, the Board adopted a resolution approving a model and a rationale for the maximum rate of applications. It set the number at 1,000 applications per year. The Board noted that the initial survey of the root server operator’s ability to support growth was successful and directed ICANN staff to revisit that estimate on a regular basis. The Board directed ICANN to consult with root zone operators

to define, monitor and publish data on root zone stability.

<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.3>

- On 6 October 2010, ICANN released its Delegation Rate Scenarios for New gTLDs, laying out in final form the plan for limiting delegation rates for new gTLDs.
- On 5 November 2010, the ICANN Board received a letter from the Chair of ICANN's Board Risk Committee, Bruce Tonkin, stating that the Risk Committee is seeking advice from RSSAC on the capability of the root server system to support the planned introduction of new gTLDs in 2011/2012.
<http://www.icann.org/en/correspondence/tonkin-to-murai-05nov10-en.pdf>
- On 25 November 2010, the ICANN Board received a letter from the Chair of RSSAC, Jun Murai, stating that the recent successful implementation of DNSSEC in the root zone was a good example of how to proceed with new capabilities. He further stated that in the case of the proposed gradual expansion of no more than 1,000 new gTLD entries per year for the next several years, the RSSAC expected the system to remain stable and robust.
<http://www.icann.org/en/correspondence/murai-to-board-25nov10-en.pdf>
- On 10 December 2010, the Board indicated that the overarching issue of root zone scaling had been addressed through expert consultation and study. The studies indicate that rate-limited addition of TLDs can be implemented without any expected impact on the stability of the root zone system. The Board also agreed to implement communications and monitoring systems to oversee the new gTLD program.
<http://www.icann.org/en/minutes/minutes-10dec10-en.htm>

III. Major Root Zone Scaling Studies Commissioned by the Board

On 3 February 2009, the ICANN Board unanimously directed the RSSAC and SSAC to jointly study “the impact to security and stability within the DNS root server system of [the IPv6, IDN TLDs, DNSSEC and new gTLDs] proposed implementations.” The Board resolution stated that the joint studies should: (1) address the implications of the initial implementation of these changes occurring during a compressed time period; (2) address the capacity and scaling of the root server system to address a wide range of technical challenges and operational demands that might emerge as part of the implementation of proposed changes; and (3) ensure that the process for establishing the study terms, design and implementation will address technical and operational concerns regarding expanding the DNS root zone. <http://www.icann.org/en/minutes/minutes-03feb09.htm>.

In response to the Board’s 3 February 2009 Resolution, ICANN commissioned two studies. The “L” Root Study focused on the impact of the scaling of the root on one server. The RSST Study modeled the processes in the root management system and analyzed the results of scaling the system.

The studies made important observations about possible limits to the root system, including limits to the pace of scaling and limitations other than purely technical, e.g. in processing TLD applications through ICANN, NTIA and VeriSign. Neither study found meaningful technical limitations in system scaling. The RSST Study recommended ongoing system modeling and monitoring, and encouraged improved communication with ICANN staff on gTLD forecasts and plans. To follow up on the RSST Study, the TNO put together a modeling contribution in conjunction with the RSST Study to transform the information and findings in the RSST Study into a quantitative model and simulation software.

A. The “L” Root Study

The DNS-OARC released the “L” Root Study on 17 September 2009. The DNS-OARC conducted the study pursuant to a contract with ICANN. The study focused specifically on the impact of adding IPv6, DNSSEC and new TLDs to a laboratory simulation of the “L” Root Server. See

<http://www.icann.org/en/topics/ssr/root-zone-augmentation-analysis-17sep09-en.pdf>.

The DNS-OARC performed a number of simulations and measurements with BIND and NSD server software and varying zone sizes to better understand how the new gTLD program changes may affect the performance of, and resource requirements for, the root DNS server infrastructure. The analysis looked at five key areas that would have an impact on operations: (1) zone size; (2) name server reload and restart times; (3) DNS response latency; (4) inter-nameserver bandwidth utilization; and (5) potential increases in Transmission Control Protocol usage.

The “L” Root Study concluded that at least that one root server could easily handle both the deployment of the new technologies as well as the new gTLD program.

B. The RSST Study

The RSST released their study on 7 September 2009. It undertook to determine if, how, and to what extent “scaling the root” will affect the management and operation of the root system. The RSST Study considered the “L” Root Study as part of its input and outsourced the development of a simulation of root management processes and conducted interviews with root server operators, IANA staff, VeriSign, NTIA and others. The RSST Study reviewed the impact on the root servers, and on the provisioning systems that lead up to the root zone being propagated to the root servers. See <http://www.icann.org/en/topics/ssr/root-zone-augmentation-analysis-17sep09-en.pdf>.

The study provided qualitative and quantitative models of the root system that show how the root zone’s different parts are related and how the root zone responds to changes in the parameters that define its environment. The RSST Study’s conclusions assume that the estimate of less than 1,000 new gTLDs being added to the root zone per year is accurate. The study also assumes that other parameters relating to the management of the DNS root will not be substantively

altered. With these assumptions in mind, the RSST Study concluded that normal operational upgrade cycles and resource allocations will be sufficient to ensure that scaling the root, both in terms of new technologies as well as new content, will have no significant impact on the stability of the root system.

The principal results of the study are qualitative and quantitative models. These models enable the static simulation of popular “what-if” scenarios—*e.g.*, “what would happen if the size of the root zone increased by three orders of magnitude (assuming that everything in the system remained as it is today)?”—but also a far more useful dynamic analysis of the way in which the system responds and adapts to changes in the DNS environment over time. The analysis allows the community to anticipate the consequences of scaling the root, identify and recognize “early warning signs” of system stress, and plan ahead for any mitigating steps that may be necessary to keep the system running smoothly if and when signs of stress appear. The RSST Study also recommended that the Board call on ICANN’s staff to take on a monitoring role in collaboration with other system partners as an element of the new gTLD program rollout.

C. The TNO Report

To follow up on the RSST Study, the TNO put together a modeling contribution in conjunction with the RSST Study to transform the information and findings in the RSST Study into a quantitative model and simulation software. The TNO Report was able to simulate several cases for the purpose of model validation and to illustrate typical use of the simulation model. More specifically, this study was directed by the RSST to apply quantitative modeling expertise to develop a quantitative model of the DNS Root Server System to analyze ways it responds to the addition of new gTLDs, IDN TLDs, IPv6 and DNSSEC. The TNO suggested that the model be fine-tuned as the new gTLD program is implemented, and that the model be used as a tool by ICANN in order to give ICANN more accurate boundaries for the scalability of the root. See <http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf>.

IV. The Board’s Analysis of Root Zone Scaling

A. Why the Board Commissioned Studies on Root Zone Scaling

- ICANN’s mission statement and one of its founding principles is to promote user choice and competition. ICANN has created significant competition at the registrar level that has resulted in enormous benefits for consumers. To date, ICANN has not created meaningful competition at the registry level. Based upon the report and recommendation from the GNSO to introduce new gTLDs, the Board decided to proceed with the new gTLD program.
- Both the Board and members of the community have commented that the introduction of new gTLDs would require the expansion of the root zone and could impact root zone stability. To address these comments, on 3 February 2009, the Board adopted a resolution approving the SSAC/RSSAC Stability Studies which led to the commissioning of the “L” Root Study and RSST Study.

B. Who the Board Consult Regarding Root Zone Scaling

- Legal Counsel
- The GNSO
- The GAC
- DNS-OARC
- The SSAC
- The RSSAC
- The TNO

- All other Stakeholders and Community members through public comment forum and other methods of participation.

C. What Significant Non-Privileged Materials the Board Reviewed

In evaluating the issue of root zone scaling, the ICANN Board reviewed various materials to determine the stability of the root zone: (1) Deployment Experience; (2) Studies and Models; and (3) Public Comments.

1. Deployment Experience

In order to determine the stability of the root zone with the implementation of the new gTLD program, the Board closely evaluated the impact of the significant changes that had already been implemented or were in the process of being implemented into the root zone. Since February 2008, there have been significant additions to the root zone with the adoption and implementation of IDNs, IPv6 and DNSSEC. In fact, during the period between July 2004 when the first IPv6 addresses were added to the root zone for TLD name servers, until July 2010 when the root was DNSSEC-signed and Delegation Signer Records were inserted, the root DNS service continued with no reported or publicly visible degradation of service. The Board evaluated the impact of each individual addition to the root zone to date, and determined that the addition of IPv6 to the root system, IDN TLDs and the deployment of DNSSEC had no significant harmful effects that were observed by or reported to ICANN’s Board. Below is a timeline of the various additions to the root zone since July 2004:

Date	Technology	Event
July 2004	IPv6	First IPv6 addresses added to the root zone for top-level domains (KR and JP).
November 2005	DNSSEC	First top-level domain (.SE) signed.
June 2007	DNSSEC	IANA DNSSEC-signed root test bed made available.

August 2007	IDNs	Test IDN top-level domains added to the root.
February 2008	IPv6, gTLDs	First IPv6 addresses added for root servers (A, F, J, K, L and M). A limit of a maximum of less than 1,000 new gTLDs per year is derived from estimates of gTLD processing times.
January 2010	DNSSEC	Deliberately Unvalidatable Root Zone (DURZ) published on first root server ("L").
May 2010	IDNs, DNSSEC	First production IDNs added to the root (for Egypt, Saudi Arabia and United Arab Emirates). DURZ deployed on all 13 root servers.
June 2010	DNSSEC	First DS records are published in the root zone (for .UK and .BR).
July 2010	DNSSEC	Root is DNSSEC-signed and the root trust anchor is published.

<http://icann.org/en/topics/new-gtlds/summary-of-impact-root-zone-scaling-06oct10-en.pdf>

The deployment of new technologies continues without any significant impact to root zone stability. Deployment of IPv6 in the root, which began in 2004, caused no significant harmful effects. Insertion of IDNs into the root in 2007 similarly was a non-event from the perspective of stability of the DNS, and deployment of DNSSEC in the root starting in January 2010 resulted in no observable or reported negative consequences. The empirical data drawn from the deployment of these new technologies can be used to validate the observations. Furthermore, the Board looked at this data, and the continued stability of the root zone throughout the implementation of these programs, as a demonstration that the introduction of the new gTLD program at the proposed max rate of 1,000 applications per year would similarly not impact the stability of the root zone.

2. Studies and Models

As previously mentioned, the ICANN Board commissioned two studies in order to analyze any impact the new gTLD program might have on the root zone. Both of these studies took a different approach to evaluate the possible impact the new gTLD program might have on root zone stability. Along with the TNO Report, the studies concluded that if the proposed new gTLD program is implemented pursuant to the adopted model of a maximum of 1,000 applications per year, the program will have no significant impact on the stability of the root system.

3. Public Comments and the Board's Response

Throughout the Board's analysis of the new gTLD program, in particular with respect to its possible impact to root zone stability, the Board considered public comments made by individuals both in public comment forums and in direct response to the release of the two root zone stability studies. The universe of comments pertaining to root zone scaling is still available. See <http://forum.icann.org/lists/scaling/index.html>.

The ICANN Board's responses to those comments made in response to the RSST Study were published for the public. See <http://icann.org/en/committees/dns-root/summary-analysis-root-scaling-study-tor-04oct09-en.pdf>.

D. What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of root zone scaling. The Board found the following factors to be significant:

- the principle that the Board should base its decision on solid factual investigation and expert consultation and study;
- the addition of new gTLDs to the root in order to stimulate competition at the registry level;
- the stable and secure addition of addition of new gTLDs to the DNS;

- the continued security, stability and resiliency of the root zone; and
- the continued monitoring of the root zone system.

V. The Board’s Reasons for Concluding the Introduction of New gTLDs Will Not Harm the Root Zone

The overarching issue of root zone scaling has been addressed through conversations with the public, expert consultation and expert analysis of the impact of the new gTLD program. These studies, consultations and interactions with the community facilitated the Board’s study of the possible impacts the introduction of new gTLDs may have on root zone stability. The Board concluded that the additional gTLDs may be delegated without any significant impact on the stability of the root zone system.

The Board will continue to closely monitor the stability of the root zone and will call on its staff to take on a monitoring regime along with other system partners as an element of the new gTLD program roll-out. Furthermore, the Board will ensure that ICANN staff and system partners establish effective communication channels with root zone operators and RSSAC to ensure a timely response to any changes in the root zone environment.

8. ICANN Board Rationale on String Similarity and String Contention Associated with the gTLD Program

8. ICANN Board Rationale on String Similarity and String Contention Associated with the gTLD Program

I. Introduction

Through the development of the new gTLD program, the Board has given consideration to issues of potential user confusion resulting from the delegation of many similar TLD strings, as well as to creating procedures for resolving contention cases (i.e., where there is more than one qualified applicant for a TLD).

The foundational policy guidance for the program contains the principle that strings likely to cause user confusion should be avoided. Additionally, policy guidance recommended that there should be a preference for community applications in contention situations.

This memorandum focuses on the Board's review of these issues in implementing these principles in the new gTLD program. The memorandum summarizes the Board's consideration of these issues, and the Board's rationale for implementing the new gTLD program with the provisions on string contention and string similarity.

II. Brief History of ICANN's Analysis of String Similarity and String Contention Associated With the gTLD Program

This section sets forth a brief history of significant actions on the subject of string contention associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for other reasons.
- In February 2007, Bruce Tonkin sent an email to the GNSO Council, describing the type of contention resolution methods under discussion for the gTLD process, including self-resolution, among the parties, third-party mediation, a bidding process, auctions, and testing for community affiliations.

<http://forum.icann.org/lists/gtld-council/msg00358.html>;
<http://forum.icann.org/lists/gtld-council/msg00359.html>

- In March 2007, the Governmental Advisory Committee issued its GAC Principles regarding New gTLDs. This included: 2.4: In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains, no two letter gTLDs should be introduced.
http://gac.icann.org/system/files/gTLD_principles_0.pdf
- In August 2007, the GNSO issued its final report regarding the introduction of new gTLDs, including Recommendation 2, which stated that “strings must not be confusingly similar to an existing top-level domain or a Reserved Name.”
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>
- The GNSO’s Final Report also included Implementation Guideline F, which stated: If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe; ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and; iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.
- In March 2008, ICANN reported on preliminary work with SWORD to develop a potential algorithm that could help to automate the process for assessing similarity among proposed and existing TLD strings. <http://www.icann.org/en/minutes/prelim-report-27mar08.htm>
- On 26 June 2008, the Board adopted the Generic Names Supporting Organization’s (“GNSO”) policy recommendations for the introduction of new gTLDs, and directed ICANN staff to continue to develop a detailed implementation plan.
See Board Resolution at
<http://www.icann.org/en/minutes/resolutions->

[26jun08.htm# Toc76113171](#); see Board Meeting Transcript at https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt

- In August 2008, ICANN considered the use of auctions as a tie-breaking mechanism within the new gTLD process. <https://www.icann.org/en/topics/new-gtlds/program-updates-2008.htm>
- Also in August 2008, ICANN posted a paper for community discussion, entitled “The Economic Case for Auctions,” which explores the potential benefits of auctions as a tie-breaking mechanism. <https://www.icann.org/en/topics/economic-case-auctions-08aug08-en.pdf>
- Also in August 2008, ICANN considered the use of a string similarity algorithm to help automate the process for assessing similarity among the proposed and existing TLD strings. SWORD completed a beta algorithm and reviewed several test cases with ICANN staff to refine the parameters and discuss how the algorithm could be successfully integrated as a tool to help implement the GNSO's recommendation that new gTLD strings should not result in user confusion. <https://www.icann.org/en/topics/new-gtlds/program-updates-2008.htm>; <http://www.icann.org/en/announcements/announcement-08aug08-en.htm>
- In October 2008, the Board passed a resolution, authorizing the CEO, COO and/or General Counsel of ICANN to enter into an agreement for algorithm related services with SWORD. <https://www.icann.org/en/minutes/prelim-report-01oct08.htm>
- On 24 October 2008, ICANN published Version 1 of the new gTLD Applicant Guidebook (“Version 1”), as well as an explanatory memorandum, “Resolving String Contention,” <http://www.icann.org/en/topics/new-gtlds/string-contention-22oct08-en.pdf>, describing the reasons for the contention procedures found in the draft Guidebook. The Guidebook included a preliminary establishment of contention sets based on similarity between strings, opportunities for applicants to self-resolve such contention, a comparative evaluation process, and an objective

mechanism as a last resort.

<http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf>

- These procedures have been continually revised, updated, and posted for comment through successive drafts of the Guidebook. In February 2009, auctions were identified as an objective mechanism of last resort for resolving string contention, included in an updated memorandum, <http://www.icann.org/en/topics/new-gtlds/string-contention-18feb09-en.pdf>, and beginning in draft version 2 of the Guidebook. <http://www.icann.org/en/topics/new-gtlds/draft-string-contention-clean-18feb09-en.pdf>
- Comments on successive drafts of the Guidebook expressed a desire for greater clarity around the standards to be used for comparative evaluation, including requests for examples of applications that would and would not meet the threshold. In response to these comments, ICANN developed detailed explanatory notes for each of the scoring criteria to give additional guidance to applicants. These were included beginning in draft version 3 of the Guidebook. <http://www.icann.org/en/topics/new-gtlds/draft-string-contention-clean-04oct09-en.pdf>
- In May 2010, ICANN issued draft version 4 of the Guidebook. The comparative evaluation was renamed the Community Priority Evaluation, to more accurately convey the purpose and nature of the evaluation (i.e., not comparing applicants to one another but comparing each against a common set of criteria). Version 4 also included definitions for terms used in the explanatory notes as well as clarifications and expanded guidance in several areas. <http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm>
- In June 2010, the GNSO Council and the Registries Stakeholder Group requested that exceptions be granted from findings of confusing similarity. The reason for granting an exception would be that a string pair that was found to be confusingly similar constituted a case of "non-detrimental confusion." <http://gns0.icann.org/mailling-lists/archives/council/msg09379.html>; <http://forum.icann.org/lists/string-similarity->

[amendment/msg00002.html](#);
<http://www.icann.org/en/minutes/board-briefing-materials-1-25sep10-en.pdf>

- In September 2010, the Board discussed the subject of string similarity and resolved to encourage policy development as needed to consider any exceptions from findings of confusing similarity.
<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.4>
- On 30 May 2011, ICANN posted the Applicant Guidebook for consideration by the Board.
<http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. The Board's Analysis of String Similarity and String Contention

A. Brief Introduction to String Similarity and String Contention

1. String Similarity

This section sets forth an overview of the string similarity determination:

- What is the Concern over String Similarity?
 - The Board determined that delegating highly similar TLDs in the new gTLD program created the threat of detrimental user confusion.
- How Is It Determined that String Similarity Exists?
 - The preliminary similarity review will be conducted by a panel of String Similarity Examiners, who will use the following standard to test for whether string confusion exists:

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

- The examination will be informed by human judgment assisted by criteria and an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs. <http://icann.sword-group.com/algorithm/>
- What Happens Once the Determination is Made that String Similarity Exists?
 - In the simple case in which an applied-for TLD string is identical to an existing TLD, the application system will not allow the application to be submitted.
 - An application that fails the string confusion review and is found too similar to an existing TLD string will not pass the Initial Evaluation stage of the evaluation process, and no further reviews will be available.
 - An application that passes the string similarity review in the Initial Evaluation is still subject to challenge regarding string similarity in the current application round. That process requires that a specific string similarity objection be filed by an objector having the standing to make such an objection. Such category of objection is not limited to visual similarity. Rather, confusion based on any type of similarity may be claimed by an objector, visual, phonetic, and semantic similarity.
 - An application that passes the string similarity review and is not subject to a string confusion objection would proceed to the next relevant stage of the process.

2. String Contention

This section sets forth an overview of the string contention process:

- What is String Contention?
 - String contention is said to occur when the strings of two or more applications are identical or found to be so similar that delegation of both will create a threat of user confusion.
- What Components Are Involved in the String Contention Process?

- Identifying gTLD strings that are likely to deceive or cause user confusion in relation to either existing TLDs or reserved names or applied-for gTLDs; and
- Resolving the string contention.
- How is a Contention Set Identified?
 - In the initial evaluation of an applied for gTLD, a string similarity panel, using the procedures described above, will determine whether two or more applications for gTLDs are in direct string contention. The applications that are determined to be in direct string contention will be marked for later resolution of the contention and proceed to the subsequent process steps. Applications that are not part of a contention set can proceed to the next stage of the evaluation process without further action.
 - Applications are in direct string contention if their proposed strings are identical or so similar that string confusion would occur if both were to be delegated as TLDs. The determination is based on human judgment assisted by an algorithmic test performed on applications.
 - Two applications are in indirect string contention if they are both in direct string contention with a third application, but not with each other.
 - During the objection process, an applicant may file a string confusion objection to assert string confusion. If the objection is upheld by the panel adjudicating the objection, the applications will be deemed to be in a direct string contention and the relevant contention sets will be modified accordingly.
 - The final contention sets are established once the extended evaluation and objection process have been concluded, because some applications may be excluded in those steps.
- How is a Contention Set Resolved?

- Voluntary settlements or agreements can occur between applications that result in the withdrawal of one or more applications. These can occur at any stage of the process, once ICANN has posted the applications received. However, material changes to an application may require a re-evaluation.
- Community priority evaluation can be used only if at least one of the applications involved is community-based and has expressed a preference for community priority evaluation. A panel will receive and score the community-based applications against the established criteria for: (1) community establishment; (2) nexus between the proposed string and community; (3) dedicated registration policies; and (4) community endorsement. If one application is a “clear winner” (i.e., meets the community priority criteria), the application proceeds to the next step and its direct contenders are eliminated. If there is no “clear winner,” the contention set will be resolved through negotiation between the parties or auction. It may occur that more than one application meets the community priority criteria, in which case time will be allowed for resolving the remaining contention by either applicant withdrawing, otherwise an auction between those applicants will resolve the contention.
- A community application that prevails in a community priority evaluation eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria. Arriving at the best outcome in a contention situation requires careful balancing of several variables, and this is the reason that a number of factors are included in the analysis.
- Auction is available as a last resort mechanism for resolving string contention when (1) contending applicants successfully complete all evaluations; (2) contending applicants elect not to use community priority evaluation, were not eligible for community priority evaluation, or

community priority evaluation did not provide a “clear winner”; and (3) contending applications have not resolved the contention among themselves.

B. Why The Board Addressed String Similarity and String Contention

- The new gTLD program will increase the number of domain names available, implying a risk that “confusingly” similar strings will appear.
- It is in the interests of consumer confidence and security to protect against the threat of user confusion and to avoid increasing opportunities for bad faith entities who wish to defraud users.
- Measures should be in place to protect internet users from the potential harm in delegating confusingly similar strings in the new gTLD program.
- The Board wants to create greater certainty in the domain name marketplace by crafting a fair and practical approach on how to identify and how best to resolve contention sets.
- The Board adopted the GNSO policy recommendations, including the implementation guideline implying that a community-based TLD application could be given a priority in cases of contention.

C. Who the Board Consulted

- Legal Counsel
- The GNSO
- The GAC
- The ALAC
- The ccNSO
- The SSAC
- All other Stakeholders and Community members through public comment forum and other methods of participation.

D. What Significant Non-Privileged Materials the Board Reviewed

- **GNSO Policy Recommendations**
 - Recommendation 2: Strings must not be confusingly similar to an existing top-level domain or a Reserved Name
<http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>
 - Implementation Guideline F: If there is contention for strings, applicants may:
 - i) resolve contention between them within a pre-established timeframe
 - ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and
 - iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.
- **GAC Principles**
 - Recommendation 2.4: In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains, no two letter gTLDs should be introduced
http://gac.icann.org/system/files/gTLD_principles_0.pdf
- **Comments from the Community**
 - <http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>

E. What Concerns the Community Raised

- There is a need for clarification on the definition of “confusing similarity.”
- There are questions about the definitions for “standard” vs. “community-based” TLD types.
- There is a need for objective procedures and criteria for the community priority evaluation.

- A special form of resolution should be considered for a contention set involving two community-based applicants of equal strength, so that such a contention set is not required to go to auction.
- There is concern over using the auction process (and the receipt of auction proceeds) as a means to resolve contention for TLDs.
- There is concern that the string similarity algorithm only accounts for visual similarity, and does not accurately gauge the human reaction of confusion.
- Proceeds from auctions may be used for the benefit of the DNS and be spent through creation of a foundation that includes oversight by the community.

F. What Factors the Board Found to Be Significant

- There should be a consistent and predictable model for the resolution of contention among applicants for gTLD strings;
- The process should be kept as straightforward as possible to avoid unnecessary risks;
- There is potential harm in confusingly similar TLD strings that extends not only to the interests of existing TLD operators, but also to Internet users; and
- The protections set forth in the current string similarity process will safeguard both user and operator interests;

IV. The Board’s Reasons for Supporting the String Contention Process Contemplated in the new gTLD Program

- The Algorithm is a tool to aid the string similarity analysis.
 - The algorithm will be a consistent and predicable tool to inform the string confusion element of the new gTLD program. The algorithm will provide guidance to applicants and evaluators;
 - The role of the algorithm is primarily indicative; it is intended to provide informational data to the panel of examiners and expedite their review.

- The algorithm, user guidelines, and additional background information are available to applicants for testing and informational purposes
- Human judgment will be the determining factor in the final decisions regarding confusing similarity for all proposed strings.
- Contending applicants should be given the opportunity to settle contention among themselves – this will result in innovative and economic solutions.
- The community priority evaluation stage of the string contention process features sufficient criteria to: (a) validate the designation given to community-based applications; and (b) assess a preference for community-based applications in a contention set. Both the GNSO Final Report and GAC Principles encourage the special consideration of applications that are supported by communities. <http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>; http://gac.icann.org/system/files/gTLD_principles_0.pdf
- The GAC Principle that two-letter TLDs should not be delegated to avoid confusion with ccTLDs was adopted.
- There are advantages to an auction as a resolution mechanism of last resort.
 - It is an objective test; other means are subjective and might give unfair results, are unpredictable, and might be subject to abuses.
 - It assures the round will finish in a timely way.
 - It is thought that few auctions will actually occur. A negotiated settlement will be a lower-cost solution for the parties than an auction. The availability of auctions will encourage parties to settle. Even if there are proceeds from auctions, these will be expended in a process that includes independent oversight.
 - Ascending clock auctions typically employ an “activity rule,” where a bidder needs to have been “in” at early prices in the auction in order to continue to stay “in” at later prices. This is useful because in an ascending clock auction, bidders are

informed of the number of contending applications that have remained “in” after each round, but not their identities. With the specified activity rule, this demand information has real significance, as a competitor who has exited the auction cannot later re-enter.

- The auctioneer in ascending clock auctions has the ability to pace the speed at which prices increase. This facet has greatest importance if related items are auctioned simultaneously, as their prices can then be paced to increase together in relation to the level of demand. This has the advantage of providing bidders with information about the level of demand for other new gTLDs—and hence the value of a new gTLD—while the auction is still in progress.

9. ICANN Board Rationale On Trademark Protection in the New gTLD Program

9. ICANN Board Rationale On Trademark Protection in the New gTLD Program

I. Introduction

One of ICANN's core values is "[i]ntroducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest." <http://www.icann.org/en/general/bylaws.htm>. In furtherance of this core value, ICANN is committed to ensuring that the concerns of all community members, including trademark holders, are considered and addressed to the extent practicable before launching the new generic top level domain ("gTLD") program.

ICANN has long recognized the importance of ensuring that the introduction of new gTLDs is conducted consistently with the protection of the rights of trademark holders, communities and other rights holders from abusive registration and infringement. In each previous expansion to the domain name system ("DNS"), the protection of legal rights of third parties was a feature of the application and evaluation process. For the new gTLD Program, ICANN has sought input from numerous stakeholders, including trademark holders, trademark lawyers, businesses, other constituencies and governments, to devise a multi-layered approach to protecting the rights of third parties. The approach includes a pre-delegation dispute resolution process for protecting existing legal rights at the top level. Also included in this approach are numerous rights protection mechanisms at the second level such as: (i) the establishment of a trademark clearinghouse to support both sunrise and trademark claims processes, a trademark post-delegation dispute resolution procedure (PDDRP), the Uniform Rapid Suspension System (URS) and the requirement for registries to maintain a thick Whois database. Of course, also available to all is the existing, long-standing and tested Uniform Domain Name Dispute Resolution Policy (UDRP).

II. History of the Board's Consideration of Trademark Protection

This section contains a brief history of significant actions taken to address trademark protection in the new gTLD program.

- On 1 February 2007, the Generic Names Supporting Organization ("GNSO") Council approved a request to form a Working Group on

Protecting the Rights of Others.

<http://gns0.icann.org/meetings/minutes-gns0-01feb07.html>

- On 15 March 2007, the GNSO Council ratified a Statement of Work for the newly-formed GNSO Working Group on Protecting the Rights of Others. <http://gns0.icann.org/meetings/minutes-gns0-15mar07.html>
- On 26 June 2007, the GNSO Working Group on Protecting the Rights of Others published its Final Report. gns0.icann.org/drafts/pro-wg-final-report-26jun07.pdf
- On 8 August 2008, the GNSO issues its “Final Report – Introduction of New Generic Top-Level Domains,” including a recommendation that “Strings must not infringe the existing legal rights of others”. <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>
- On 21 December 2007, ICANN requested “expressions of interest from potential dispute resolution service providers for the new gTLD program.” <http://www.icann.org/en/topics/drsp-call-for-expressions-of-interest.pdf>
- On 26 June 2008, the Board adopted the GNSO’s Policy recommendations for the introduction of new gTLDs. See Board Resolution at http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171; see Board Meeting Transcript at https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt
- On 22 October 2008, ICANN published an Explanatory Memorandum on Protection of Rights of Others in New gTLDs and solicited comments. <http://www.icann.org/en/topics/new-gtlds/protection-rights-22oct08-en.pdf>
- After receiving significant community input, on 6 March 2009, the Board recognized trademark protection in the new gTLD program as an issue requiring additional input and analysis, the resolution of which would benefit the new gTLD program. The Board requested that the GNSO’s Intellectual Property Constituency convene an Implementation Recommendation Team (“IRT”) to solicit input,

analyze the issue, and prepare draft and final reports.

<http://www.icann.org/en/minutes/resolutions-06mar09.htm#07>

- On 24 April 2009, the IRT published its Preliminary Report for public comment.
<http://www.icann.org/en/topics/new-gtlds/irt-draft-report-trademark-protection-24apr09-en.pdf>; see public comments at <http://forum.icann.org/lists/irt-draft-report/>
- On 16 May 2009, the Board participated in a workshop on issues related to the new gTLD program, including trademark protections in particular.
- On 29 May 2009, the IRT published its Final Report and an “Open Letter from the IRT Introducing our Work.” ICANN and the IRT recognized that a significant intersection exists in between strategies to facilitate trademark protection and strategies to mitigate the risk of increased malicious conduct on the Internet.
<http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>
- On 20 June 2009, the Board participated in another workshop on issues related to the new gTLD program, including trademark protection.
- On 21 June 2009, the IRT presented its Final Report to the ICANN Board at the ICANN Sydney Open Meeting and provided briefings to the GNSO, interested constituencies and others.
<http://syd.icann.org/full-sched>
- On 26 June 2009, the Board acknowledged and thanked the IRT for its “intensive engagement” and its “detailed and articulate proposals.”
<http://www.icann.org/en/minutes/resolutions-26jun09.htm>
- Also on 26 June 2009, the Board acknowledged that ICANN staff had posted material on the new Draft Applicant Guidebook for public comment; thanked the community; and requested that all further comments be submitted by the close of the comment period on 20 July 2009. The Board also requested that the ICANN staff prepare a comprehensive set of implementation documents before the Board’s meeting on 30 October 2009. See Board

Resolution at <https://icann.org/en/minutes/resolutions-26jun09.htm>; see Board Meeting Transcript at <http://syd.icann.org/files/meetings/sydney2009/transcript-board-meeting-26jun09-en.txt>

- On 12 September 2009, the Board continued its discussion about trademark protection in new gTLDs at a Board Retreat.
- On 12 October 2009, the Board sent a letter to the GNSO, requesting that it review trademark protection policy for the new gTLD program as described in the Draft Applicant Guidebook and accompanying memoranda, including the proposals for a Trademark Clearinghouse and a Uniform Rapid Suspension System. <http://www.gnso.icann.org/correspondence/beckstrom-to-gnso-council-12oct09-en.pdf>
- On 28 October 2009, the GNSO adopted a resolution creating the Special Trademarks Issues review team (“STI”), which included representatives from each stakeholder group, the At-Large community, nominating committee appointees, and the Governmental Advisory Committee (“GAC”). <http://gnso.icann.org/resolutions/#200910>
- On 30 October 2009, the Board issued a resolution encouraging additional comments on the Draft Applicant Guidebook and new gTLD program. See Board Resolution at <https://icann.org/en/minutes/resolutions-30oct09-en.htm>; see Board Meeting Transcript at <https://icann.org/en/minutes/index-2009.htm>
- On 11 December 2009, the STI published its Report. See link to Report in <http://gnso.icann.org/resolutions/#200912>
- On 18 December 2009, the GNSO unanimously approved the recommendations contained in the STI’s report. <http://gnso.icann.org/resolutions/#200912>
- On 15 February 2010, ICANN published for public comment proposals for trademark protection in the new gTLD program, including the Trademark Clearinghouse, a Uniform Rapid Suspension System, and a post-delegation dispute resolution procedure.

<http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm>

- On 10 March 2010, the GAC outlined to the Board some concerns and recommendations for the new gTLD program and its comments on version 3 of the Draft Applicant Guidebook.
<http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-10mar10-en.pdf>
- On 12 March 2010, the Board acknowledged the community recommendations for trademark protections in the new gTLD program, including the development of a Trademark Clearinghouse and a Uniform Rapid Suspension System; resolved that the proposals for both be incorporated into version 4 of the Draft Applicant Guidebook; and directed ICANN staff to review any additional comments and develop final versions of the proposals for inclusion in the Draft Applicant Guidebook.
<http://www.icann.org/en/minutes/resolutions-12mar10-en.htm>
- Also on 12 March 2010, the Board approved the concept of a post-delegation dispute resolution procedure; and directed ICANN staff to review any additional comments and synthesize them, as appropriate, into a final draft procedure, and include the procedure in version 4 of the Draft Applicant Guidebook.
<http://www.icann.org/en/minutes/resolutions-12mar10-en.htm>
- On 28 May 2010, in response to further comments from the community, ICANN published for public comment revised proposals for the Trademark Clearinghouse, Uniform Rapid Suspension System, and a post-delegation dispute resolution procedure.
<http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm>
- On 5 August 2010, the Board responded to the GAC's comments on version 3 of the Draft Applicant Guidebook and described the steps it took to protect trademarks in version 4 of the Draft Applicant Guidebook.
<http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-05aug10-en.pdf>
- On 23 September 2010, the GAC outlined to the Board its concerns and recommendations for the new gTLD program and its comments on version 4 of the Draft Applicant Guidebook.

<http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>

- On 24-25 September 2010, the Board participated in another workshop on issues related to the new gTLD program, including trademark protections and passed some resolutions specifically addressing trademark protections.
<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.6>
- On 12 November 2010, ICANN posted for public comment version 5 of the Draft Applicant Guidebook, incorporating a number of protections for the rights of others, and a series of papers explaining certain aspects of the current proposals for the Trademark Clearinghouse, the Uniform Rapid Suspension System and related comments and analysis.
<http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>
- On 10 December 2010, the Board resolved that ICANN had addressed the issue of trademark protection in new gTLDs by adopting and implementing various measures, including the establishment of a Trademark Clearinghouse, the Uniform Rapid Suspension System and the Post-Delegation Dispute Resolution Procedure. The Board further stated that these solutions reflected the negotiated position of the ICANN community, but that ICANN would continue to take into account public comment and the advice of the GAC.
See Board Resolution at <https://icann.org/en/minutes/resolutions-10dec10-en.htm>; see Board Meeting Minutes at <https://icann.org/en/minutes/minutes-10dec10-en.htm>
- On 21 February 2011, ICANN published numerous briefing papers on the trademark issues the GAC had identified as “outstanding” in September 2010.
<http://www.icann.org/en/announcements/announcement-6-21feb11-en.htm>
- On 23 February 2011, the GAC issued its “Indicative Scorecard” which included 30 specific recommendations relating to trademark protections on which it intended to consult with the.

<http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>

- On 28 February 2011 and 1 March 2011, the GAC and the Board participated in a special two-day consultation to address the remaining outstanding issues related to the new gTLD program, including certain issues related to trademark protection.
<http://www.icann.org/en/announcements/announcement-23feb11-en.htm>
- On 4 March 2011, the Board published its comments on the GAC Scorecard.
<http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-04mar11-en.pdf>
- On 15 April 2011, ICANN published an Explanatory Memorandum on Trademark Protection in the new gTLD program.
<http://www.icann.org/en/topics/new-gtlds/trademark-protection-claims-use-15apr11-en.pdf>
- Also on 15 April 2011, ICANN posted for comment version 6 of the Draft Applicant Guidebook, incorporating additional protections for the rights of others.
<http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm>
- Also on 15 April 2011, ICANN issued “Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response”
<http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf>
- On 19 April 2011, the GAC issued “Remaining points of difference between the ICANN Board and the Governmental Advisory Committee on New gTLD Rights Protection Mechanisms”
http://gac.icann.org/system/files/20110419-GAC_comments_on_NewgTLD_Rights_Protection.pdf
- On 26 May 2011, the GAC issued “GAC comments on the Applicant Guidebook (April 15th, 2011 version)”
<http://www.icann.org/en/topics/new-gtlds/gac-comments-new-gtlds-26may11-en.pdf>

- On 30 May 2011, ICANN posted the current version of the Applicant Guidebook.
<http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. The Board’s Analysis of Trademark Protection in the New gTLD Program

A. Why the Board is Addressing This Issue Now

- ICANN’s mission statement and one of its founding principles is to promote competition. The expansion of gTLDs will allow for more innovation and choice in the Internet’s addressing system. The ICANN Board seeks to implement the new gTLD program together with measures designed to protect the rights of others on the Internet.
<http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>
- The Board endorsed GNSO policy recommendation states that gTLD strings should not infringe the rights of others. The Board took that recommendation as an emphasis on the need to protect intellectual property rights.
- ICANN committed to the Internet community and governments, including the U.S. Department of Commerce that it would address trademark protection in new gTLDs prior to implementing the program.
- The ICANN Board is committed to making decisions based on solid factual investigation and expert analysis.

B. Who the Board Consulted

- The GNSO
<http://gns0.icann.org/>
- The GAC
<http://gac.icann.org/>
- The ICANN Implementation Recommendation Team (“IRT”)
https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090407232008-0-9336/original/IRT-Directory.pdf

- The GNSO’s Special Trademark Issues Working Team (“STI”)
- The At-Large Advisory Committee (“ALAC”)
<http://www.icann.org/en/committees/alac/>
- All other stakeholders and members of the community
- Legal counsel

C. What Significant Non-Privileged Materials the Board Reviewed

- In addition to all public comments received on all versions of the Applicant Guidebook, as well as all relevant GAC Communiqués (see <http://gac.icann.org/communiques>), the ICANN Board reviewed the following reports from Stakeholders:
 - 1 June 2007 GNSO Working Group on Protecting the Rights of Others’ Final Report
<http://www.gnso.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf>
 - 8 August 2007 GNSO Final Report – Introduction of New Generic Top Level Domains.
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>
 - 24 April 2009 IRT Draft Report and Public Comment Summary
<http://forum.icann.org/lists/irt-draft-report/pdfuyqR57X82f.pdf>
 - 24 April 2009 IRT Preliminary Report, and public comment thereon
<http://www.icann.org/en/topics/new-gtlds/irt-draft-report-trademark-protection-24apr09-en.pdf>; see public comments at <http://forum.icann.org/lists/irt-draft-report/>
 - 29 May 2009 IRT Final Report
<http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>
 - 29 May 2009 Implementation Recommendation Team Final Draft Report to ICANN Board

<http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>

- 4 October 2009 ICANN Comment and Analysis on IRT Report: Post-Delegation Dispute Mechanism and Other Topics
<http://www.icann.org/en/topics/new-gtlds/summary-analysis-irt-final-report-04oct09-en.pdf>
- 11 December 2009, STI Report
See link to Report in
<http://gnso.icann.org/resolutions/#200912>
- 12 December 2009 letter from the members of the former IRT to ICANN unanimously supporting the work of the STI process and recommendations concerning a trademark clearinghouse and a mandatory Uniform Rapid Suspension system
<http://www.icann.org/en/correspondence/irt-group-to-dengate-thrush-15dec09-en.pdf>
- 23 February 2011 GAC “Indicative Scorecard”
<http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>
- 19 April 2011 GAC issued “Remaining points of difference between the ICANN Board and the Governmental Advisory Committee on New gTLD Rights Protection Mechanisms”
http://gac.icann.org/system/files/20110419-GAC_comments_on_NewgTLD_Rights_Protection.pdf
- 26 May 2011, the GAC issued “GAC comments on the Applicant Guidebook (April 15th, 2011 version)”
<http://www.icann.org/en/topics/new-gtlds/gac-comments-new-gtlds-26may11-en.pdf>
- ICANN prepared materials
 - Each version of the Applicant Guidebook, including all ICANN created explanatory memoranda and the specific proposals for trademark protections, along with hundreds of pages of public comment summaries and analysis related to trademark protections.
(i) <http://www.icann.org/en/topics/new-gtlds/comments->

[en.htm](http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm#expmem); (ii) <http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm#expmem>; (iii) <http://www.icann.org/en/topics/new-gtlds/comments-e-en.htm>; (iv) <http://www.icann.org/en/topics/new-gtlds/comments-3-en.htm>; (v) <http://www.icann.org/en/topics/new-gtlds/gnso-consultations-reports-en.htm>; (vi) <http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm>; (vii) <http://www.icann.org/en/topics/new-gtlds/summaries-4-en.htm>; (viii) <http://www.icann.org/en/topics/new-gtlds/comments-5-en.htm>; (ix) <http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>; (x) <http://www.icann.org/en/topics/new-gtlds/dag-en.htm>; (xi) <http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm>; and (xii) <http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>

D. What Concerns the Community Raised

- There is a need for adequate protection of intellectual property rights in new and existing gTLDs.
- If the introduction of new gTLDs leads to increased malicious conduct on the Internet, then trademark owners may pay a disproportionate percentage of costs associated with enforcing standards of behavior.
- Defensive domain name registrations in new gTLDs generate substantial costs for trademark owners.
- Registry behavior may cause or materially contribute to trademark abuse, whether through a TLD or through domain name registrations in the TLD.
- Legal rights that a party seeks to protect through Rights Protection Mechanisms should be capable of being authenticated, at least if the authenticity of such rights is challenged.

- Administrative dispute resolution procedures provide trademark owners with relatively swift and inexpensive alternatives to arbitration and litigation.
- Recurring sanctions may not be a sufficient remedy for wrongful conduct; suspension and termination may be necessary remedies.
- Policies developed to prevent and remedy trademark abuses in the DNS are expected to build upon the framework of existing intellectual property laws to minimize burdens on trademark owners and contribute to the orderly functioning of the DNS.
- The introduction of new gTLDs may lead to consumer confusion if one trademark owner registers its mark in one gTLD while another registers an identical or similar mark in another gTLD. To the extent that Internet users are unable (or become unaccustomed) to associate one mark with a specific business origin, the distinctive character of the mark will be diluted.

E. What Steps ICANN Has Taken or Is Taking to Protect the Rights of Others in New gTLDs

The Board believes the following measures will significantly help to protect the rights of others on the Internet. ICANN has incorporated the majority of these measures into the current version of the Applicant Guidebook and the registry agreement, and its efforts to implement the remaining measures are ongoing:

- Pre-delegation objection procedures.
- Mandatory publication by new gTLDs of policy statements on rights protection mechanisms, including measures that discourage registration of domain names that infringe intellectual property rights, reservation of specific names to prevent inappropriate name registrations, minimization of abusive registrations, compliance with applicable trademark and anti-cyber squatting legislation, protections for famous name and trademark owners and other measures.
- Mandatory maintenance of thick Whois records to ensure greater accessibility and improved stability of records.

- The establishment of a Trademark Clearinghouse as a central repository for rights information, creating efficiencies for trademark holders, registries, and registrars
- The requirement for all new registries to offer both a Trademarks Claims service and a Sunrise period.
- Post-delegation dispute resolution procedures that allow rights holders to address infringing activity by a registry operator that may be taking place after delegation.
- Implementation of the Uniform Rapid Suspension System that provides a streamline, lower-cost mechanism to suspend infringing names
- The continued application of the Uniform Domain Name Dispute Resolution Policy on all new gTLDs.

F. What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of trademark protection in the new gTLD program. The Board found the following factors to be significant:

- The GNSO's Working Group on Protecting the Rights of Others was not able to reach consensus on "best practices" for Rights Protection Mechanisms;
- While economic studies revealed that there will be both benefits and cost to trademark holders associated with new gTLDs, no determination could be made that the costs outweigh the benefits.
- New gTLDs would promote consumer welfare.
- The availability and efficacy of dispute resolution mechanisms and appropriately-designed modifications of ICANN procedures for protecting intellectual property.
- The need for dispute resolution mechanisms to be comprehensive enough to expand with the addition of new gTLDs.

- The need to balance the protection of trademark rights with the practical interests of compliant registry operators to minimize operational burdens and the legitimate expectations of good faith domain name registrants.
- The risk of increasing exposure of participants to litigation.
- The lack of reported problems with ICANN’s previous introductions of new TLDs.

IV. The Board’s Reasons for Proceeding to Launch the New gTLD Program While Implementing Measures to Protect Trademarks and Other Rights

- ICANN’s “default” position should be for creating more competition as opposed to having rules that restrict the ability of Internet stakeholders to innovate.
- New gTLDs offer new and innovative opportunities to Internet stakeholders.
- Brand owners might more easily create consumer awareness around their brands as a top-level name, reducing the effectiveness of phishing and other abuses.
- Revised applicant procedures and agreements reflecting the measures to mitigate the risk of malicious conduct will permit ICANN to address certain risks of abuse contractually and also will permit ICANN to refer abuses to appropriate authorities. ICANN can amend contracts and the applicant guidebook to address harms that may arise as a direct or indirect result of the new gTLD program.
- ICANN has addressed the principal concerns raised by stakeholders about the potential for proliferation of malicious conduct in the new gTLD space by implementing measures to mitigate that risk, including centralized zone file access, a high security TLD designation and other mechanisms. A combination of verified security measures and the implementation of DNSSEC will allow users to find and use more trusted DNS environments within the TLD market.
- ICANN has addressed the principal concerns raised by stakeholders about the protection of trademarks in the new gTLD space by

implementing other measures to enhance protections for trademarks and other rights, including pre-delegation dispute resolution procedures, a trademark clearinghouse, and post-delegation dispute resolution procedures.

- To the extent that there are costs to trademark owners or others, ICANN has worked with the community to address those concerns, and ICANN pledges to continue that effort.

Reference Material 12.



— Applicant Guidebook

The Applicant Guidebook provides a step-by-step procedure for new gTLD applicants.

It specifies what documents and information are required to apply, the financial and legal commitments of operating a new gTLD, and what to expect during the application and evaluation periods.

APPLICANT GUIDEBOOK

Presented in Full and by Module

Note: Due to the technical complexity and length of the Applicant Guidebook, translated versions are not always published on the same date as the English version. The most recently translated versions are posted here.

English	Arabic	Chinese	French	Russian	Spanish
New gTLD Applicant Guidebook 4 June 2012 (/en/applicants/agb/guidebook-full-04jun12-en.pdf) [PDF, 5.88 MB]	دليل المتقدم بطلب gTLD في 19 سبتمبر 2011 http://www.icann.org /ar/topics/new-gtlds/rfp-clean-19sep11-5.pdf [ar.pdf] [ميغابايت]	gTLD 申请人指导手册 2012 年 1 月 11 日版 (/zh/applicants/agb/guidebook-full-11jan12-zh.pdf) [PDF, 3.49 MB]	Guide du candidat pour les nouveaux gTLD 19 sept 2011 http://www.icann.org /fr/topics/new-gtlds/rfp-clean-19sep11-fr.pdf [PDF, 4.51 MB]	Руководство кандидата программы ввода новых рДВУ от 19 сентября 2011 г. http://www.icann.org /ru/topics/new-gtlds/rfp-clean-19sep11-ru.pdf [PDF, 10.12 MB]	Guía para el Solicitante de Nuevos gTLDs 19 de septiembre de 2011 http://www.icann.org /es/topics/new-gtlds/rfp-clean-19sep11-es.pdf [PDF, 3.1 MB]
Module 1 Introduction to the gTLD Application Process (/en/applicants/agb/intro-04jun12-en.pdf) [PDF, 501 KB]	الوحدة 1 gTLD مقدمة للتعريف بعملية تقديم طلبات الحصول على ar/applicants/agb/intro-11jan12-459.pdf [ar.pdf] [KB]	模块 1 通用顶级域名 (gTLD) 申请流程简介 (/zh/applicants/agb/intro-11jan12-zh.pdf) [PDF, 842 KB]	Module 1 Введение в процесс подачи заявок на рДВУ (/ru/applicants/agb/intro-11jan12-ru.pdf) [PDF, 641 KB]		
Module 2 Evaluation Procedures (/en/applicants/agb/evaluation-procedures-04jun12-en.pdf) [PDF, 917 KB] Key Content Evaluation Questions and Criteria (/en/applicants		模块 2 评估程序 (/zh/applicants/agb/evaluation-procedures-11jan12-zh.pdf) [PDF, 1.01 MB] 主要内容 评估问题和标准 (/zh/applicants/agb/evaluation-questions-criteria-			

<p>/agb/evaluation-questions-criteria-04jun12-en.pdf [PDF, 746 KB]</p>		<p>11jan12-zh.pdf [PDF, 634 KB]</p>			
<p>Module 3 Objection Procedures (/en/applicants/agb/objection-procedures-04jun12-en.pdf) [PDF, 261 KB]</p> <p><i>Key Content</i> New gTLD Dispute Resolution Procedure (/en/applicants/agb/dispute-resolution-procedure-04jun12-en.pdf) [PDF, 120 KB]</p>		<p>模块 3 异议程序 (/zh/applicants/agb/objection-procedures-11jan12-zh.pdf) [PDF, 458 KB]</p> <p><i>主要内容</i> 新 gTLD 争议解决程序 (/zh/applicants/agb/dispute-resolution-procedure-11jan12-zh.pdf) [PDF, 318 KB]</p>			
<p>Module 4 String Contention Procedures (/en/applicants/agb/string-contention-procedures-04jun12-en.pdf) [PDF, 429 KB]</p>	<p>الوحدة 4 إجراءات التنافس على السلسلة ar/applicants/agb/string-contention-procedures-11jan12-605.PDF [ar.pdf] [KB]</p>	<p>模块 4 字符串争用处理程序 (/zh/applicants/agb/string-contention-procedures-11jan12-zh.pdf) [PDF, 644 KB]</p>	<p>Module 4 Procédures de conflits de chaînes (/fr/applicants/agb/string-contention-procedures-11jan12-fr.pdf) [PDF, 475 KB]</p>	<p>Модуль 4 Процедуры разрешения разногласий в отношении строк (/ru/applicants/agb/string-contention-procedures-11jan12-ru.pdf) [PDF, 586 KB]</p>	
<p>Module 5 Transition to Delegation (/en/applicants/agb/transition-delegation-04jun12-en.pdf) [PDF, 320 KB]</p> <p><i>Key Content</i> Base Agreement & Specifications (/en/applicants/agb/base-agreement-specs-04jun12-en.pdf) [PDF, 917 KB]</p> <p>Uniform Rapid Suspension (/en/applicants/agb/urs-04jun12-en.pdf) [PDF, 280 KB]</p>		<p>模块 5 授权移交 (/zh/applicants/agb/transition-delegation-11jan12-zh.pdf) [PDF, 450 KB]</p> <p><i>主要内容</i> 新 gTLD 协议 (/zh/applicants/agb/base-agreement-specs-11jan12-zh.pdf) [PDF, 635 KB]</p> <p>统一快速暂停系统 (URS) (/zh/applicants/agb/urs-11jan12-zh.pdf) [PDF, 258 KB]</p>			

<p>Trademark Clearinghouse (/en/applicants/agb/trademark-clearinghouse-04jun12-en.pdf) [PDF, 163 KB]</p> <p>Post Delegation Dispute Resolution (PDDRP) (/en/applicants/agb/pddrp-04jun12-en.pdf) [PDF, 181 KB]</p> <p>Registry Restriction Dispute Resolution (RRDRP) (/en/applicants/agb/rrdrp-04jun12-en.pdf) [PDF, 257 KB]</p>		<p>商标信息交换机构 (/zh/applicants/agb/trademark-clearinghouse-11jan12-zh.pdf) [PDF, 284 KB]</p> <p>商标授权后争议解决程序(商标 PDDRP) (/zh/applicants/agb/pddrp-11jan12-zh.pdf) [PDF, 248 KB]</p> <p>注册管理机构注册限制争议解决程序 (RRDRP) (/zh/applicants/agb/rrdrp-11jan12-zh.pdf) [PDF, 228 KB]</p>			
<p>Module 6 Application Terms & Conditions (/en/applicants/agb/terms-04jun12-en.pdf) [PDF, 130 KB]</p>	<p>الوحدة 6 طلبات نطاقات المستوى الأعلى - الشروط (/ar/applicants/agb/terms-11jan12-132.PDF) [ar.pdf] [KB]</p>	<p>模块 6 顶级域申请 - 条款和条件 (/zh/applicants/agb/terms-11jan12-zh.pdf) [PDF, 285 KB]</p>	<p>Module 6 Candidature à un domaine de premier niveau – Conditions générales (/fr/applicants/agb/terms-11jan12-fr.pdf) [PDF, 478 KB]</p>	<p>Модуль 6 Заявка на домен верхнего уровня - условия и положения (/ru/applicants/agb/terms-11jan12-ru.pdf) [PDF, 195 KB]</p>	
<p>Supporting Material</p>	<p>دعم المواد</p>	<p>辅助材料</p>		<p>вспомогательные материалы</p>	
<p>Summary of Changes to the Applicant Guidebook (/en/applicants/agb/summary-changes-applicant-guidebook-04jun12-en.pdf) [PDF, 121 KB]</p> <p>Change Review Process: gTLD Applicant Guidebook (http://www.icann.org/en/topics/new-gtlds/change-review-applicant-guidebook-19sep11-en.pdf) [PDF, 271 KB]</p> <p>(19 Sept 11)</p>	<p>ملخص التغييرات التي طرأت على دليل مقدم الطلب (/ar/applicants/agb/summary-changes-applicant-guidebook-11jan12-379.PDF) [ar.pdf] [KB]</p> <p>عملية مراجعة التغييرات: كتيب المتقدم بطلب لبرنامح الجديد gTLD (http://www.icann.org/ar/topics/new-gtlds/change-review-applicant-guidebook-19sep11-ar.pdf) [PDF, 109 KB]</p>	<p>申请人指导手册变更摘要 (/zh/applicants/agb/summary-changes-applicant-guidebook-11jan12-zh.pdf) [PDF, 981 KB]</p> <p>变更审核流程: 新 gTLD 申请人指南 (http://www.icann.org/zh/topics/new-gtlds/change-review-applicant-guidebook-19sep11-zh.pdf) [PDF, 335 KB]</p>	<p>Changer Processus d'examen: Guide de candidature pour les nouveaux gTLD (http://www.icann.org/fr/topics/new-gtlds/change-review-applicant-guidebook-19sep11-fr.pdf) [PDF, 347 KB]</p>	<p>Сводка изменений Руководства кандидата (/ru/applicants/agb/summary-changes-applicant-guidebook-11jan12-ru.pdf) [PDF, 549 KB]</p> <p>Процесс пересмотра и внесения изменений: Руководство кандидата программы ввода новых рДВУ (http://www.icann.org/ru/topics/new-gtlds/change-review-applicant-guidebook-19sep11-ru.pdf) [PDF, 494 KB]</p>	<p>Proceso de revisión de cambios: Guía para el Solicitante de Nuevos gTLDs (http://www.icann.org/es/topics/new-gtlds/change-review-applicant-guidebook-19sep11-es.pdf) [PDF, 339 KB]</p>

[Financial Projection Templates \(/en/applicants/agb/fin-proj-template-28dec11-en.pdf\) \[Excel \(/en/applicants/agb/fin-proj-template-28dec11-en.xls\)\]](#)

[Instructions: TLD Applicant – Financial Projections \(/en/applicants/agb/fin-proj-instrux-12dec11-en.pdf\)](#)

[Evaluation Questions \(/en/applicants/agb/evaluation-questions-criteria-04jun12-en.pdf\)](#)

© 2014 Internet Corporation For Assigned Names and Numbers

[Site Map](#)

Reference Material 13.



New Generic Top-Level Domains

NEW GTLD UPDATE (30 MAY 2012)

New gTLD Update by Akram Atallah, COO

The TLD Application System, or TAS, has now closed.

As of 23.00 GMT/UTC today, with one hour remaining before the system closed, just over 1900 applications had been submitted in TAS.

We will reconcile all payments and submitted applications, and will release the final numbers when the applied-for domain names are published. As we said yesterday, our target date for publishing the list of applied-for domain names is 13 June 2012.

We thank all applicants and the ICANN community for their support throughout the application process.

© 2014 Internet Corporation For Assigned Names and Numbers

[Site Map](#)

Reference Material 14.

NEW gTLD DRAFT APPLICANT GUIDEBOOK-VERSION 2: ANALYSIS OF PUBLIC COMMENT

Table of Contents

INTRODUCTION AND EXECUTIVE SUMMARY	2
GENERAL CONCERNS	8
TRADEMARK PROTECTION	34
TLD DEMAND & ECONOMIC ANALYSIS	55
POTENTIAL FOR MALICIOUS CONDUCT	60
ROOT ZONE SCALING	65
EVALUATION	69
FINANCIAL CONSIDERATIONS	91
GEOGRAPHICAL NAMES	107
OBJECTION PROCESS	119
REGISTRY AGREEMENT	150
STRING CONTENTION	186
IDN	207
RESPONDENTS	210

Sources:

Mexico City Meeting Transcripts
GNSO 28 Feb. 2009
Public Forum 5 March 2009

Public Comments Postings
18 February to 13 April 2009

INTRODUCTION AND EXECUTIVE SUMMARY

Background

Since it was founded in 1998, one of ICANN's key mandates has been to create competition in the domain name market. In addition, the Joint Project Agreement that ICANN has with the U.S. Department of Commerce says: "ICANN shall maintain and build on processes to ensure that competition, consumer interests, and Internet DNS stability and security issues are identified and considered in TLD management decisions, including the consideration and implementation of new TLDs."

The policy making process in the ICANN model is driven by people from around the world. Those discussions have involved representatives of governments, individuals, civil society, the technology community, business, and trademark lawyers. The consensus they came to, through discussions at the Generic Names Supporting Organization (GNSO), one of the many groups that coordinate global policy in ICANN, was that new gTLDs were needed and could be introduced.

The current new gTLDs project has been in the study and planning stages for more than 3 years. See <http://gns0.icann.org/issues/new-gtlds/>. Its origin goes back even further – to the first two rounds of top-level domain applications held in 2000 and 2003. Those rounds were used to shape the current process.

In June 2008, the ICANN Board adopted the GNSO policy to introduce new gTLDs and directed staff to continue to further develop and complete a detailed implementation plan, continue communication with the community on the work, and provide the Board with a final version of the implementation proposals for the Board and community to approve before the new gTLD introduction process is launched.

In October 2008, a Draft Applicant Guidebook, with six explanatory memoranda was released and a consultation period of 76 days was held on the first draft. In addition to the comment period, there have been face-to-face consultations held at ICANN meetings and special consultations.

An analysis of over 300 comments to the Guidebook resulted in substantial changes, reflected in the second version of the Guidebook published in February 2009. Again, there has been substantial commentary reiterating previous positions and staking out new ones for consideration.

Overview of the Analysis

ICANN conducts numerous public comment periods. They can be found here:

<http://www.icann.org/en/public-comment/>. In 2008, more than 50 comment periods were held. This process shapes policy direction and effects change to important technical, contract, and policy implementation documents. While ICANN relies heavily on this process, many have suggested that it is often difficult to understand how comments have shaped outcomes and if not, why not.

For the comment period to the second version of the Guidebook, ICANN followed the approach taken on comments to the first version and is providing here a detailed analysis of comments received. The comments were again divided into major categories and then subcategories.

An analysis was written to address issues raised in the categories and subcategories. The analysis identifies commenters and provides a summary of issues with which commenters are associated, and then provides an explanation of the proposed position regarding the issues raised. Therefore, each category is divided into the following sections:

- A summary of the key points made in that category
- A summary where a synopsis of comments and sources is listed
- Analysis including a summary of the issues raised by that set of comments, and an analysis balancing the issues raised by the comments
- A proposed position that is reflected in excerpts Applicant Guidebook for additional discussion.

Guidebook Analysis and Changes

ICANN continues to move forward in the implementation of the new gTLD Program while balancing and addressing community concerns on specific aspects of the program. The public comment period on the second version of the applicant guidebook recently closed and work continues to proceed regarding the discussion of overarching issues.

In order to continue progress and the community discussion, ICANN:

- Will now publish an analysis of comments similar to that published after the first version of the Guidebook
- Will conduct consultations and fora at the Sydney meeting and afterward to develop solutions to the overarching issues
- Publish the third version of the Guidebook after the Sydney meeting when solutions to the overarching issues can be included.

With that in mind, it is anticipated that applications for new top-level domains will be accepted starting in the first quarter of 2010.

Guidebook Analysis

As with the first version of the Guidebook, ICANN has organised and is reporting a synopsis of all the comment made in the ICANN comment forum as well as at the ICANN meeting in Mexico

City. The report analyzes comments by category and balances the different proposals made. The goals of the report are to:

- Analyze the comments in order to develop amendments to the Guidebook that are consonant with the meaningful input of the community, and
- Demonstrate that the comments are taken seriously and carefully considered.

ICANN will not be producing a third version of the Draft Applicant Guidebook for new generic top-level domains before its upcoming June meeting in Sydney, Australia. This is because the discussion of overarching issues will continue through the meeting and beyond (as was expected). Publication of a new Guidebook version without addressing these issues might signal that they are not considered important.

In order to provide specifics and point up discussion, the Comment Analysis will be accompanied by several excerpted redlined sections of the Guidebook so that potential changes can be discussed. These excerpted sections are being developed in response to the recently closed public comment forum and will be published in time for discussion in the Sydney meeting.

Overarching Issues

ICANN previously identified four overarching issues with respect to the new gTLD program. Significant progress has been made on each and the Sydney meeting will be used to focus on that work in the hope of finding solutions.

For example, a session dedicated to trademark issues will take place on Wednesday, 24 June at the Sydney meeting. There will also be an update session on the opening day of the meeting, as well as the usual updates and public forums.

Starting with the first session in Sydney, regional events will be held in Europe, the Americas and Asia, to develop Guidebook solutions to Trademark issues. Those sessions will discuss solutions offered by the Implementation Recommendation Team (<http://www.icann.org/en/announcements/announcement-24apr09-en.htm>) and other sources.

Progress on other overarching issues will be reported in Sydney.

Timing

The comment analysis and redlined Guidebook sections are published now, in time for discussion at the Sydney meeting. The third version of the Guidebook is scheduled to be published in early September; the comment period for that version will close after the ICANN meeting in Seoul (25-30 October, 2009).

Major Changes in Selected Draft Applicant Guidebook Sections

Even though publication of a new version of the Draft Applicant Guidebook is pending resolution of certain overarching issues, the public comment has resulted in many proposed changes to the Applicant Guidebook. Those proposed changes are posted under separate cover for discussion and comment. The subject areas of these changes include:

Updates to Module 2: Geographical Names

Section 2.1.1.4 on Geographical Names describes the categories of strings that are considered geographical names, the documentation requirements, and the review procedure employed.

The potential changes highlighted in this section provide greater specificity on the scope of protection at the top level for the names of countries and territories listed in the ISO 3166-1 standard, and greater specificity in the support requirements for continent or region names. These updates are in accordance with the ICANN Board's resolution of 6 March, 2009 (<http://icann.org/en/minutes/resolutions-06mar09.htm#08>), directing staff to revise the relevant portions of the Draft Applicant Guidebook to provide greater clarity in these areas.

The updated text also provides additional guidance to applicants for determining the relevant government or public authority for the purpose of obtaining the required documentation. (There are also protections for certain geographical names at the second level, see update to module 5.)

Evaluation Criteria

Module 2 of the Draft Applicant Guidebook describes the evaluations that take place during Initial Evaluation of new gTLD applications.

ICANN has made changes to this document based on public comments (see analysis of public comments on Draft Applicant Guidebook v2) and continuing development work by staff. The updates include changes to the following questions / scoring / criteria:

- Proof of Legal Establishment & Good Standing
- Contact information
- Background Check
- Cybersquatting/Domain Name Abuses
- Community-Based Designation
- Technical Criteria
- DNSSEC
- Security
- Protection of Geographical Names at Second Level
- Continuity

String Criteria

Section 2.1.1.3.2 describes criteria established so that strings themselves do not pose DNS Stability or Security issues. The criteria has been clarified to provide clear direction to applicants.

Update to Module 3: Dispute Resolution Procedures

Module 3 of the Draft Applicant Guidebook describes dispute resolution procedures applicable in the gTLD application process; see the full module at <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedure-clean-18feb09-en.pdf>.

Potential changes in these sections are based on public comments (see analysis of public comments on Draft Applicant Guidebook v2) and continuing development work by staff. Areas with updated text are:

- Changes to standing requirements for Morality and Public Order Objections.
- Updates to standing requirements for Community Objections.
- Additional detail on the role of the Independent Objector.
- Changes to the dispute resolution principles (standards) for Community Objections.

Update to Module 4: Comparative Evaluation (Community Priority)

The module describes procedures for resolving string contention: formation of contention sets, comparative evaluation (community priority), and auction.

The potential new language highlighted in this section is based on public comments (see analysis of public comments on Draft Applicant Guidebook v2) and continuing development work by staff. The updates are:

- Deaggregation of criteria.
- Clarifying the criteria.
- Clarification of process name.
- Criteria sequence.
- Modified scoring threshold. Although comments on the previous scoring threshold – 14 out of 16 – diverged, in consideration of these comments and the tests performed, it is suggested to lower the threshold to 13 out of 16.

Update to Module 5: Registry Agreement Specifications

These changes are illustrative – for discussion purposes.

Module 5 of the draft Applicant Guidebook describes procedures applicable at the concluding stages of the gTLD application process, including the execution of a Registry Agreement between the applicant and ICANN.

Potential changes to two of the specifications in the agreement have been drafted based on community discussion and comment (see also the analysis of public comments on draft Applicant Guidebook v2). The updates are:

- Registration Data Publication Services (Specification 4). The specification is modified to reflect **a requirement for a thick Whois service** to be provided by all new gTLD registry operators.
- Schedule of Reserved Names (Specification 5). The specification has been updated with **a requirement for reservation of country and territory names at the second level**, in accordance with the recent GAC report in response to the ICANN Board resolution requesting clarification of protections for geographical names at the second level (<http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf>). **The relevant excerpts are included below.** Redlined versions showing the changes from v2 of the draft specifications are included for ease of reference.

ICANN encourages comment on the interim language provided.

GENERAL CONCERNS

Timing

I. Key Points

- ICANN continues to pursue the launch of the new gTLD process with alacrity, moving toward accepting applications as soon as possible while ensuring that sufficient time is taken and appropriate effort is spent to resolve remaining issues.
- Phased implementation, as a way to accelerate process launch, is problematic for several reasons and is not part of the current implementation plan.
- Significant and meaningful work is taking place across the ICANN community in order to facilitate a launch with appropriate safeguards and protections for registrants.

II. Summary of Comments

Overall Timing Concern; proposed timeline approach. Self filtering and self prioritizing. We have had much delays and we are now focused on the next round. We are making a big mistake. We are making a big bang after which there will be a pause and people will not take that pause lightly. They will think that the commitment of one year is not going to be met as the track record has shown, so everybody is trying to go into the big bang. You should think about the solution to that. *W. Staub, GNSO Transcript at 98 (28 Feb. 2009)*. The “big bang” can be replaced by a self filtering and self prioritizing timeline if ICANN (1) defines multiple application windows for each round (e.g. each round could have 3 or 4 application windows; this Round 3 could run from October 2009 to October 2011 and have 4 windows, one every 6 months; Round 4 could start in October 2012, etc.); (2) enables affected third parties to object to a given TLD application for “Excessive External Costs” (in addition to community, morality and rights infringement grounds); and (3) stipulates that, as long as there is opposition to an application, additional applications for the same string may be submitted in the subsequent application window. This would work even better if there are graceful withdrawal terms; the costs of withdrawal are still excessive in the current guidebook. *W. Staub (13 April 2009)*. See also *E. Brunner-Williams (Module 3, 14 April 2009)*.

Abandon “artificial” timeline. ICANN should abandon an artificially created “timeline” for launching new gTLDs until concerns have been genuinely resolved. *Worldwide Media, Inc. (13 April 2009)*; *J. Seitz (11 April 2009)*.

Provide timelines. Publication of a revised, detailed schedule of events/milestones prior to application opening would give needed certainty. The **pre-launch timeline** should be regularly updated showing all the steps in the process such as when the next draft guidebook is due, when comment periods open and close, what events the ICANN team has planned, and key events in the Communication Campaign. The published **post-submission timeline** should

indicate when the Objection Period opens and closes and how that relates to Initial Evaluation. While the Objection Period will open at the end of the Application Period, there still isn't a set time frame for filing objections (e.g., will third parties have 90 days after publication of the applicant strings to object?) IPC (13 April 2009). See also SIIA (13 April 2009). To increase certainty and give prospective applicants more visibility, a detailed schedule of milestones with regular updates should be made available by ICANN. *Lovells (14 April 2009)*.

Application windows and next round—exact dates. ICANN should state in the final applicant guidebook exact dates for the application submission window for the next round, and a fixed date for the application window should be announced as soon as possible. *City Top-Level Domain Interest Group (12 April 2009)*. The window for new gTLD applications should be opened by the end of 2009. The last minute discovery of overarching issues might well be considered a lack of respect towards all those in the community who have committed time and resources to the new gTLD proposal over the past three years. The Internet is about change and innovation and the process should be kept on track. *eCOM-LAC (13 April 2009)*. Given the many gTLD delays already and the negative economic impact on investors and sponsors, ICANN should publish a definite date for the application window no later than at the Sydney meeting in June 2009. *eco (12 April 2009)*. ICANN should state a reliable date for the next application round, and stick to the goal to begin with the next application round within one year after the forthcoming round is completed. *DOTZON, GmbH (13 April 2009)*. See also *NCUC (13 April 2009)*; *S. Soboutipour (Module 1, 11 April 2009)*; *DotAfrica (Module 1, 12 April 2009)*; *Y. Keren (Module 1, 12 April 2009)*; *L.Andreff (Module 1, 13 April 2009)*; *S. Maniam (Module 1, 13 April 2009)*; *S. Subbiah (Module 1, 13 April 2009)*.

Clarity on scope and resolution of overarching issues. ICANN should state exactly what each issue covers, how the resolution of each of these issues fits into the overall plan for new gTLDs, and state explicitly that the new gTLD launch will not proceed until all these issues have been satisfactorily resolved. *Time Warner (13 April 2009)*. See also *COA (13 April 2009)*. None of the overarching issues have ripened sufficiently to support ICANN's timeline for rolling out new gTLDs, even as some steps have been taken in the context of one or two of them. *SIIA (13 April 2009)*. ICANN must be open to the possibility that an outcome of threshold issue resolution may be a fundamental change to ICANN's initial gTLD implementation proposals. It is still unclear how solutions to the threshold issues will be taken into account and how the implementation process and draft guidebook will be modified. *AT&T (13 April 2009)*.

Resolve existing gTLD rounds before opening subsequent rounds. Because of the unknowns on quantity of applications and how that will affect ICANN's capacity to handle them, ICANN should address and resolve existing gTLD applications before opening up the next round. *J. Seng (13 April 2009)*.

Need a Reliable Timeline to be published. Despite good staff work by ICANN, it is a scandal that ICANN did not publish any reliable timeline at this time, which is relevant for all parties; we urge ICANN to catch up on this as soon as possible. *dot berlin (27 Mar. 2009)*. See also *dot EUS (13 April 2009)*; *NIC Mexico (14 April 2009)*.

Process and timing certainty. If ICANN must press ahead with the gTLD process, then it must provide more certainty on process including how the rebate system will work and the roadmap to launch. Selecting a reasonable launch date – e.g., September 2010—would assist many organizations in planning and allow ICANN to benefit from more consultation. ICANN should not proceed until or unless it can implement proper safeguards for trademark owners. *MARQUES (13 April 2009).*

Delay Impact on Cultural and Linguistic TLDs' Planning. The timeline is a big concern and it would help to have a realistic date from ICANN. We don't want to see the gTLD process turn into a never-ending story; for example the Galician culture community is anxious for "dot gal" to become real. Cultural and linguistic TLDs are not the cause of the "overarching issues that are delaying the whole process," so ICANN shouldn't penalize us with another delay. *S. Reynolds, Public Forum Transcript at 17-18 (5 Mar. 2009).* Since cultural and linguistic TLDs (e.g., Basque) seek to enhance Internet diversity and do not create any of the overarching issues, it's really not necessary to delay more and more this process. *I. E. Arribillaga, dot EUS, Public Forum Transcript at 22 (5 Mar. 2009).* The timeline delay is a burden in terms of credibility to local sponsors and supporting environments; how can ICANN help with getting credibility with local partners. *M. Credou, dot BZH, Public Forum Transcript at 29 (5 Mar. 2009).*

Don't Rush Process. As dot music we believe this has to be done right and time does not matter that much until this is done correctly because we have a big responsibility to the at-large community. *C. Roussos, Public Forum Transcript at 23 (5 Mar. 2009).*

Set a precise timeline. Many resources have already been devoted to new TLD initiatives all over the world. Failure to start the new TLD program in a timely manner would have a disastrous impact on ICANN's credibility and be a major blow for further innovative programs on the Internet. While taking due care to address the issues raised by the community, ICANN should set a precise timeline as soon as possible and by the Sydney meeting in June 2009. Prospective applicants need to know when they will be able to submit their applications. *INDOM. com (10 April 2009).* See also *Asociacion PuntoGal (13 April 2009).* ICANN should confirm December 2009 as the opening date of the application period for new gTLDs. *dot BZH (13 April 2009).*

Postpone new gTLDs. New gTLDs should be postponed until alternative solutions have been solicited, tested and evaluated from vantage points that include technical, intellectual property, consumer acceptance, and the impact on cost for, and competition among, name consumers—i.e. businesses in general—not just presumptive registries. The field is open for innovation and technical solutions to be considered (e.g., multiplexed domain names which have been tested and found to work). *K. Ryan (13 April 2009).* Further versions of the guidebook and the timeline for introducing new gTLDs should be delayed until fundamental threshold concerns have been addressed, including:

- 1 Completing an impartial economic study with evidence supporting the need for new TLDs;
- 2 Addressing Internet safety and stability concerns;
- 3 Protecting against malware, phishing and fraud;
- 4 Establishing protections to curb trademark abuse at all stages of the new TLD process. Until all these issues are resolved, ICANN should limit any new rollout to perhaps a few select IDNs on a trial basis. *Verizon (13 April 2009)*. See also *BITS (13 April 2009)*; *CADNA (13 April 2009)*; *eBay (13 April 2009)*; *3M Company (15 April 2009)*. ICANN should not move ahead with new gTLDs when significant problems plaguing existing gTLDs remain unresolved. *NBCEP (13 April 2009)*. ICANN cannot reasonably conclude that it must hold fast to a 2009 implementation date for gTLDs. AT&T supports a limited rollout of community based/sponsored gTLDs and the 22 fast track ccTLD IDNs as a pilot to a broader launch. *AT&T (13 April 2009)*.

Indefinite postponement of new gTLDs. ICANN, through Board action if necessary, should indefinitely postpone new gTLDs rollout due to the serious and fundamental issues that remain unresolved and which are unlikely to be addressed in the short timeline currently proposed. The process is “at least TWO (if not three) draft Guidebooks” away from being final, making rollout of new gTLDs virtually a technical and commercial impossibility according to the current ICANN timeline. Instead ICANN should focus on areas of IDNs and ccTLDs which were bundled with the original announcement about new gTLDs. *SIIA (13 April 2009)*.

Take a slower, phased approach; risks to ICANN and Internet from unlimited applications. The proposal will open up ICANN to a wave of lawsuits, frivolous or not, that may undermine the organization. From a risk management perspective, this could put the entire Internet at risk. A slower, phased approach is recommended, rather than opening up to unlimited applications. *A. Allemann, DomainNameWire.com (6 April 2009)*. ICANN must proceed cautiously and should announce in advance a prioritization system to assure orderly and comprehensive review. ICANN has yet to show that it is capable of properly processing hundreds of new gTLD applications simultaneously. *ICA (13 April 2009)*. There should be significant delays in between application rounds to allow assessment of how the gTLD implementation is affecting issues critical to the health of the DNS, such as IP rights protection, costs and benefits of introducing new gTLDs. *COTP (13 April 2009)*.

Concerns not addressed in second version of guidebook; more consultation time needed. The comments submitted by LEGO in its letter of 4 December 2008 remain valid because the second version of the guidebook has not lessened our grave concerns regarding the release of new gTLDs. There are major outstanding issues still unresolved in connection with the implementation of new gTLDs, also in relation to security and stability issues; further consultations are needed with all relevant parties to find solutions to all of these issues before any new gTLD is implemented. *LEGO et al. (6 April 2009)*. ICA’s major issues of concern were not addressed in second version; ICANN should provide longer, sufficient time for review of the

guidebook and should commit to a fourth version prior to finalization and first round application acceptance, assuming that ICA's major issues are adequately addressed in the third version. *ICA (13 April 2009)*.

Overarching issues/timing. Introduction of new TLDs is not a subject to be considered lightly; SIDN supports ICANN's decision to work out in detail some overarching issues. This means that we will have to wait until the 3rd draft of the guidebook to see how ICANN proposes to resolve these issues, so comments at the second stage focus mainly on those topics that are not part of the overarching issues. *SIDN (14 April 2009)*. See also *auDA (14 April 2009)*. If ICANN proceeds with the new gTLDs in the face of such widespread opposition and in spite of the economic downturn, then Microsoft urges ICANN to take the time necessary to consider and address the issues and questions raised by the community about the intended implementation plan; it is essential that ICANN "get it right" and the current, compressed timetable effectively ensures that it will not. *Microsoft (Guidebook, 13 April 2009)*.

Start small and soon, then assess application process and subsequent round timing. It is unclear if the application process set up by staff will work and if the one year date for a subsequent round is realistic or could be made more or less frequent. ICANN should start "small" and soon with gTLD applications, assess how the process is working (e.g., is formalism required and, if so, for all applications equally), using the available time and experience of existing registry operators, and then set a schedule for iterations of the application process. "Formalism" should be expended on the applications which must be improved, junked or approved but subject to significant oversight. *E. Brunner-Williams (Module 1, 14 April 2009)*.

Phased approach—IDN TLDs first; thoroughly explore issues. If comprehensively pursued, the information generated by inquiry into the four overarching issues will support evidence that the new TLD process should focus first on "those IDN TLDs needed to satisfy documented demand from users who employ non-ASCII scripts as their primary means of communication." Whether that turns out to be the case, ICANN must devote necessary time and resources to thoroughly exploring the issues. This investment if properly managed will bear significant returns regarding protection of consumers, e-commerce security and a safe and stable DNS. *Time Warner (13 April 2009)*. ICANN should respond to the change in world economy and scale back plans; e.g., it might initially go ahead with a first round of up to 50 community-based applications. *MARQUES (13 April 2009)*. ICANN should establish criteria first for success in the first round, including IDNs, before moving forward; do a limited number of IDN ccTLDs first as a pilot and limit further rollout until sufficient safeguards are in place to protect Internet users, businesses and brand owners. *COTP (13 April 2009)*.

Do not use first-come, first served in initial round because of pent-up demand and risk of gaming. ICANN should hold one new round of accepting gTLD applications, the one being developed now, with a fixed deadline and which is subjected to the string contention dispute mechanisms in the guidebook. After this, ICANN should eliminate "rounds" and accept subsequent gTLD applications on a rolling "first come first served" process of string allocation subject to the objection mechanisms. *ALAC (19 April 2009)*.

Do not do a preliminary interim round with an arbitrarily limited number of applications as a “trial run”. Such an interim round can be gamed no matter what selection process is used and will be unlikely to serve its intended goals. *ALAC (19 April 2009).*

Fast track gTLD solution needed; delay in IDN gTLD creates disadvantages. ccTLDs should not be given a free pass, based on administrative accident, not on performance or consumer demand, to come out of the gate first and effectively define the IDN landscape—which is what will happen if the new gTLD process is delayed. The solution is to add existing gTLDs to the IDN fast-track, and agree to roll them out at the same time as the ccTLDs. This would enable the IDN world to have the same commercial openness and same options common in the Latin script world. *A. Mack (13 April 2009).* Efforts should continue on synchronizing IDN ccTLD and IDN gTLD as much as possible without unduly delaying either and to consider steps in case a significant time gap between the two is unavoidable. *RyC (Modules 1-4, 13 April 2009).* Especially given the negative economic impact on entities doing business in other countries (e.g. the Arabic world), ICANN needs to ensure that at least the current gTLDs are allowed to offer their IDN domains at the same time as the ccTLDs are going to offer them. By fast tracking existing gTLDs ICANN can solve this problem for the benefit of all. *J. Elmorsy (13 April 2009).*

City TLD Fast Track. City TLDs should have a fast track process if the timing gets delayed by legal issues raised by other gTLDs (e.g., IP problems). *Connecting.nyc (13 April 2009).*

Allow time for international effort for a sponsored financial gTLD. ABA requests that the financial services industry be given time to craft an international effort to secure a sponsored financial gTLD through a process that has been established to address issues on a sector-wide and global basis. *ABA (13 April 2009).*

Limit to a precise, small number the maximum gTLDs per year. Limit to 4 maximum per year to bring order and cohesion to a process that might otherwise spin out of control. Approve the pending applications from 2000 at the paid amounts before approving new applications; this is fair and equitable. *M. Housman (8 April 2009).* Limit new gTLDs to no more than 5 per year to allow proper absorption. *Worldwide Media, Inc. (13 April 2009); J. Seitz (11 April 2009).* Regions supports rollout of 4-6 new gTLDs; a “Dutch auction” (start with high asking priced which is lowered until accepted) should be considered with a minimum reserve application price as a way to select the first 4-6 entities who will then proceed through the application. ICANN has not justified its rejection so far of this approach. This approach would mean lower costs and burdens on businesses. *Regions (13 April 2009).*

Resist efforts to restrict number or type of TLDs. This limitation is not a rights protection mechanism and will result in TLDs which do not bring innovation and competition to the Internet. This round is about generic TLDs and competition, not restricted or hobbled TLDs. We should concentrate on real and effective rights protection mechanisms, not on restricting TLDs. *Demand Media (RPMs, 13 April 2009).*

Delay adding new gTLDs. ICANN needs to cure its current failures and bad policy decisions before even considering adding any new gTLDs. If any new gTLDs are to be added, they should be consistent with the sound graduated framework supplied by the U.S. government in its past comments, and only obeying the will of the public (which currently is vastly opposed to their introduction). Any other path is inconsistent with security and stability. *G. Kirikos (7 April 2009).*

Delay Impact on City TLDs. City TLDs will be less contentious, have less risk and less cost. Our shared concern is the timeline and we have the feeling that the current round lasts forever. What can be done to assure that cities will get their TLDs in a timely manner? *D. Krischenowski, dot Berlin, Public Forum Transcript at 25-26 (5 Mar. 2009).*

IDN gTLD Priority. If there is a priority for the gTLD RFP, it is IDN gTLD. In 2008, the largest growth in domain names other than dot com came from Asia, and it is essential that gTLDs will work in Asia. *J. Seng, Public Forum Transcript at 4 (5 Mar. 2009).*

Support for expedient process. New gTLDs are going to be beneficial to everybody, so we support an expedient process. *J. Frakes, Minds and Machines, Public Forum Transcript at 42 (5 Mar. 2009).*

III. Analysis and Proposed Position

Accurate Timeline. Calls for accurate timelines for introducing new gTLDs reflect frustration borne of program delays. This is understandable, as earlier projected launch dates have passed. Balancing that is the need to address all important issues, even though some have been brought to the table late. Therefore, even though some of the remaining issues have been discussed previously, they have not been settled in terms of actual program implementation. By taking the time to examine these important issues, the launch will include: trademark and rights protection mechanisms developed through constituency and community work; specific efforts to combat types of malicious behavior; a better understanding of how the coincident introduction of new gTLDs, IDNs, IPv6, and DNSSEC will affect the root zone; and additional agreements across the community on issues such as how geographical names will be addressed and community-based applications will be scored.

One way to address these concerns is to establish timely goals for implementation – setting the expectation that remaining problems should be resolved in an expedited but accurate and careful manner. With that in mind, goals set for the IRT and GAC reports of April 25 and May 25 have essentially been met. The RSSAC / SSAC scaling study preliminary report will be delivered in August. Initial reports on potential abusive conduct have already been received.

Significant and meaningful work is being accomplished across the community to ensure a timely, careful, well-considered launch. Anticipating the successful conclusion of the work being done by community members, a final Guidebook release date of December 2009 is still being pursued.

Postponement. Calls for temporary or indefinite postponement of the New gTLD Program launch are considered in light of the substantial community discussion and formal policy development work that have occurred, and the mission and core values of ICANN. ICANN has done development work for the program and released application materials for public comment in response to community-developed policy advice and Board direction. As instructed, ICANN has been working toward a timely implementation of the consensus recommendations, starting with the recommendation that: “ICANN must implement a process that allows the introduction of new top-level domains.” An indefinite postponement would require further discussion and a new consensus among the community.

The launch of the New gTLD Program represents a significant change in the namespace. ICANN has approached this implementation with due diligence, beginning before the policy was completed, and continuing through the implementation phases. As described later in this document, there are certain overarching issues that must be worked through before ICANN can move forward. ICANN has no plans to conduct a launch absent resolution of these issues.

Technical alternatives to opening up the top-level of the namespace may exist, but have not been vetted by the community or expressed as policy positions.

Phased Approaches/Timing and Prioritization. Some parties who have concerns about the impact of opening up the namespace have submitted suggestions for a phased approach. Such options were considered during the policy development process, and the earlier stages of implementation. A phased approach could happen in a number of ways, such as a limited first round or establishing a category of applications eligible for a ‘fast track’ process.

ICANN has previously conducted two limited application rounds: the proof-of-concept round in 2000, limited to a small number of new TLDs that would provide an effective proof of concept, and the sTLD round in 2003-4, limited to sponsored-model applications. The experience from another such round might yield further incremental improvements, but the process would be less inclusive and the benefits less widespread than would be possible with an open launch.

Conducting another limited application process via limiting to a certain number, raises the problem of allocation. Random selection of applicants, even if allowed by law, could encourage gaming and favor those with the most money. Auctioning off application “slots” by various methods, including the Dutch auction suggestion, was also discussed earlier in the process and generated very little support for the same reasons. It is also expected that numerical limitations will cause a rush of application volume that could equal or surpass that of an ‘unlimited’ opening.

Other suggestions for a phased approach focused on a first round limited to certain types of applications, such as IDNs, cities, or applications that appear to be non-contentious.

Experience suggests that any criteria defined for participation in a limited early round will incent applicants with aggressive timelines to adjust their applications according to the set

criteria, even if it is not what best serves the applicant or the user community. Rules for a limited round would need to be carefully drafted and reviewed by the community, which would retard progress for all potential applicants while benefitting only a select group. Opening the process to any one group to start before others raises issues of fairness, and is difficult to align with stated goals of the process such as diversity, openness, and innovation.

A less-defined set of criteria that involves picking out some 'simple' applications would require an objective method for determining in advance which applications are likely to be most and least complex. It is also certainly possible that an application could become contentious in the middle of the process, resulting in disparate treatment among those 'simple' applications. This would be extremely difficult to construct in such a way as to result in a successful, timely introduction round.

ICANN has not ruled out the possibility of phased launches, but currently does not consider that an implementable approach has been developed or that consensus exists to date for any one manner of implementing this. An open launch is preferable as it meets program goals, and to date has continued to emerge as the solution that provides the most benefits. Of course some risk is inherent in this. Some comments have expressed skepticism that ICANN can actually handle a high volume of applications. ICANN is considering scaling and designing a process that can be scaled. In the event that the number of applications far overwhelms the scale that the organization is prepared to handle, an emergency system will be put in place. A root scaling study is looking at issues of volume and the DNS as well.

Time for financial industry to work on ideas. The financial industry occupies a unique position in regard to the consumer trust and the world economy, and ICANN welcomes global coordination by the industry in the area of new gTLDs. There are some safeguards built into the process in the form of an objection mechanism that could address a financially-oriented gTLD application by an unqualified or unsupported applicant.

First come, first served/Rolling. After the first round, ICANN may move to a first-come, first-served process as suggested by the ALAC, or may continue to process applications in rounds. The GNSO's policy advice was that "Applications must initially be assessed in rounds until the scale of demand is clear." It is expected that a community-wide review of the first round will occur to determine the best way to move forward.

Fast track coordination. As has been stated by many in the community, the ideal scenario would be for IDN ccTLD fast track and the gTLD program to launch at the same time. Input received from the GNSO, ccNSO, and others reflect this goal. While it is important to coordinate these two efforts, it is also been determined that one process should not be tolled due to delays in the other. That course has been pursued when it appeared as though the IDN process may lag behind the gTLD process. Now, it appears that the IDN ccTLD process may launch first, a few months ahead of the gTLD implementation.

Balancing the benefits and harms associated with moving ahead with IDNs a few months ahead of gTLDs, the original course appears to be sound – that each process will launch as soon as it is ready. Many countries are ready to move ahead with their community based IDN. Delaying that process would only serve to deprive registrants in those areas of participating in the DNS in their own language and also encourage those waiting for the ICANN process to launch their own version of the root zone.

Program Support/Opposition - ICANN's Role and Mission

I. Key Points

- The new gTLD process implementation effort was borne out of a two-year broad based policy development process that considered carefully the question of whether new gTLDs should be introduced and if so, whether that introduction should be open or limited.
- Present discussions regarding: ICANN priorities, the relative importance of the new gTLD process, and prerequisites to launch are important and serve to ensure that appropriate inquiry, study and changes to the plan are made prior to accepting applications.

II. Summary of Comments

ICANN should focus on other priorities. There is much work left to do on the Mid-Term Review; if ICANN moves ahead with new gTLDs, it is hard to see how continued work identified in the Mid-Term Review can be accomplished adequately, much less at a high standard. ICANN should be working on improving governance, transparency and accountability, implementation of the multi-stakeholder model and security and stability. The new gTLD process has not promoted confidence but rather confusion among stakeholders. ICANN has not institutionalized its consideration of new TLDs in a manner that accounts for the stability/security and governance impacts of quickly adding dozens of new TLDs. *SIIA (13 April 2009)*. Any new TLD rollout should be managed holistically in light of other important issues ICANN is working on (e.g. GNSO reform, improving institutional confidence, and enhanced contract compliance efforts). *AT&T (13 April 2009)*.

Opposition to new gTLD implementation. AIPLA continues to strongly oppose implementation of new gTLDs until at least the following conditions occur: (1) completion of the economic study called for in Oct. 2006 with public comment; and (2) adequate measures to protect IP rights and prevent cybersquatting and other abuses. *AIPLA (13 April 2009)*. Microsoft objects to introduction of an unlimited number of new ASCII gTLDs. *Microsoft (Guidebook, 13 April 2009)*.

Lack of Openness and Innovation; Risk of Competing Root Systems. The plan "is central planning of what should be an open and innovative marketplace." It is "larded with private law to enforce private agendas" of privileged stakeholders, it would restrain trade and may engender competing root systems. The costs are "absolutely unrealistic." ("[n]o one has ever asked me, and I operate my own TLD, how much it really costs to run a small TLD. It's a few hundred dollars a month. Not \$500,000. That's absurd.") There is a need to start over with a new market-based, competitive new gTLD plan. *K Auerbach, Public Forum Transcript at 30 (5 Mar. 2009)*.

New gTLD program problematic; ICANN “empire building” concerns. The new gTLD plan is “anything goes” and was not thought through, and seems to be about ICANN empire building and transforming itself into a regulatory apparatus. A brand new institutional model would be required if transformation into a global policy making apparatus is what ICANN wants to become. ICANN involvement in content regulation through the new gTLD program threatens to have the Internet evolve as levels of walled gardens where there is a chokehold on Web content. ICANN should tend to preserving and managing technical infrastructure only and forget about empire building and the Internet will take care of itself. *D. Harris (29 Mar. 2009).*

Proper ICANN Role. The ICANN Board should “focus on coordinating the management of the DNS and not on issues more appropriately addressed by governments and other entities, including the appropriate advisory committees and support organisations within ICANN.” *J.A. Andersen, Director General, Ministry of Science Technology and Innovation, National IT and Telecom Agency, Denmark (2 Mar. 2009).*

Competition and Consumer Choice. There are outstanding issues that must be addressed and acted upon effectively in the revised policy documents before implementing introduction of new gTLDs. For example, in promoting competition and consumer choice, the focus of ICANN should be to lower costs, promote innovation, and enhance user choice and satisfaction, as stated in the Memorandum of Understanding between the Department of Commerce and ICANN. *J.A. Andersen, Director General, Ministry of Science Technology and Innovation, National IT and Telecom Agency, Denmark (2 Mar. 2009).*

Radical reform of new gTLD program needed. The proposed new gTLD “experiment” needs to be radically reformed and put on the back burner for a post-ICANN world where the technical coordination function currently outsourced to ICANN is taken back in-house by NTIA. Given ICANN’s attempt to force new gTLDs upon the public it is clear that U.S. government employees can represent the public interest in a superior manner. ICANN has been captured by entities that no longer serve the public interest as seen by the manner that the public majority is routinely dismissed in order to favor a select minority through mechanisms such as weighted-voting. The services provided by VeriSign and ICANN can be performed much less expensively either by in-house government employees or by competitive tenders. For any new gTLDs that the community agrees should be added to the root, there should be a tender process to see who would perform that at the lowest cost for a given set of contract specifications. *G. Kirikos (4 Mar. 2009). See also G.Kirikos (7 April 2009); Worldwide Media, Inc. (13 April 2009); J. Seitz (11 April 2009).*

Concern re: Internet Future/Censorship/Corporate Dominance. The new gTLD program should not go ahead; corporations are going to buy up the new gTLDs and censor the Internet in ways that no one imagined in the past (“255 people who voted unanimously for the gTLDs, selling something worth 100 trillion for 20 billion...”). *P. Foody, Public Forum Transcript at 6-7 (5 Mar. 2009).*

U.S. government should intervene to protect stakeholders. ICANN ignored the vast majority of first-round comments which were against the introduction of new gTLDs and also introduced changes to the guidebook that were the exact opposite of the recommendations, including those of the U.S. Dept. of Commerce and the U.S. Dept. of Justice. The U.S. government should intervene to protect Internet stakeholders from the detrimental effects of introducing any new gTLDs. *G. Kirikos (7 April 2009).*

Guidebook process for new gTLDs not endorsed. While INTA provides comments on the guidebook version 2, it “reiterates that it does not in any way endorse the process to introduce new gTLDs as envisioned in the Draft Applicant Guidebook.” *INTA (8 April 2009).*

III. Analysis and Proposed Position

ICANN recognizes that there are strong concerns about the implementation of new gTLDs for reasons described by a variety of entities.

The launch of the New gTLD Program represents a significant change in the namespace. ICANN exists to ensure the stable and secure operation of the Internet’s unique identifier systems. A namespace that allows innovation and promotes competition and choice are principles reflected in ICANN’s core values. Expanding the number and availability of gTLDs has been identified since the formation of ICANN as a way to provide greater choice and in the name space. The ICANN community has approached this implementation with due diligence.

The ICANN community worked on opening the space since its inception where the objective has been identified in each of the MoU’s between the U.S. Government and ICANN. Based on the experience gained from two trial rounds and other relationship activities with TLD registries and registrars, ICANN undertook a policy development process to guide the opening of the domain space. The GNSO completed an extensive policy development after nearly two years of intensive work. The GNSO constituency groups, with input from other policy making bodies, considered carefully the questions of whether there should be new TLDs and, if so, whether the introduction should be limited in some way.

The current implementation plan follows the direction provided by the ICANN bottom-up policy development. The implementation details furnished in the Guidebook are intended to address several issues within the umbrella of the policy direction:

- Ensuring DNS stability and security;
- Addressing risks to the process;
- Protecting important interests identified in the policy;
- Launching and operating a smooth running, predictable, transparent process; and
- Protecting registrants, enhancing competition and choice for consumers.

The implementation plan, begun during the policy development in order to test some of the conclusions there, is presented in the form of the Applicant Guidebook, accompanying explanatory memoranda, and other supporting documentations.

The implementation plan maps to the policy recommendations and seeks to satisfy the five criteria above. As described elsewhere in this paper, there are certain overarching issues that will be resolved before new gTLDs are delegated.

It should be said that the implementation work, while significant in scope, is not impeding work in other important areas: ICANN accountability, DNSSEC implementation, IPv6 readiness and others. These important efforts are separately and fully staffed and the work in those areas has been competent, timely and successful.

Program Communication Aspects

I. Key Points

- While striving for objectivity, some aspects of the New gTLD evaluation process are necessarily subjective in order to meet the policy goals of the program.
- ICANN will continually upgrade the new gTLD web page to make materials clearer and more accessible.
- ICANN will conduct procurement of evaluation services in a transparent manner and fully disclose all aspects of the evaluation process.

II. Summary of Comments

Accountability and Transparency. The process of introducing new gTLDs should in itself be accountable and transparent to the entire community and be executed according to ICANN's multi-stakeholder model. *J.A. Andersen, Director General, Ministry of Science Technology and Innovation, National IT and Telecom Agency, Denmark (2 Mar. 2009).*

Notice to others of gTLD application filings. There is no easy mechanism by which financial institutions would be alerted to the filing of applications they may find objectionable (e.g. financial-related strings, IP infringement, etc.). ICANN should develop a mechanism for institutions to sign up for electronic notices about each new gTLD applicant. *Regions (13 April 2009). See also BITS (13 April 2009).*

Public notice of applications; criteria re: considering public comments (1.1.3). ICANN needs to clarify how it will make the public aware of applications (i.e., will the public have access to the database of applications), and clarify the types of entities permitted to file public comments (i.e., does it include trade associations, corporations and individuals). Better definition is needed regarding the criteria evaluators will use in exercising discretion in considering public comments (perhaps similar to what ICANN proposes for formal objections). *BITS (13 April 2009).*

Making gTLD materials more user friendly. In general the guidebook is clear and well written but it would be helpful to have one single repository with additional information such as a single source for consensus policies and background on them. Especially to help parties not involved with ICANN, perhaps ICANN could review the current gTLD website to make the material more comprehensible to newcomers. *SIDN (14 April 2009).*

Guidebook Terms/Language. The guidebook language and terms were far too loose. Terms such as "as soon as practical", "certain elements", "satisfactory" and many others are commonplace, undefined and too subjective. *M. Mansell, Mesh Digital Ltd. (2 Mar. 2009).*

III. Analysis and Proposed Position

ICANN welcomes suggestions on how the application materials can be most useful to potential applicants and the greater community. An introductory section on consensus policies and their role in gTLDs is planned for the next version of the Guidebook.

The implementation of the New gTLD Program is a work in progress. In the earlier stages, processes had been sketched out in general terms to provide a conceptual understanding and allow flexibility while details continue to be worked out. As development of the program continues, ICANN is able to provide greater specificity in the Guidebook. Particularly as evaluators are engaged and systems and resources are put into place, the plan will define processes and steps more concretely.

Having said that, there are portions of the process that are necessarily subjective. For example, the process for determining whether a community TLD should get a preference in cases of string contention is necessarily subjective: it is a *comparative evaluation*. The technical evaluation must accommodate large registries (requiring significant infrastructure) and small registries (requiring less). In order to have an evaluation that scales, there must be a process that is somewhat subjective. The infrastructure plan must be compared to the projected registry size – also a subjective measure. The implementation work is striving to make these measurements as objective as possible to provide a clear roadmap for applicants but, given the goals of the process, complete objectivity cannot always be attained.

ICANN is also making updates and improvements to the website, to make materials easier to find and to write clear documents that are easily understandable.

Transparency is also a goal. The process for recruiting panelists is being done through a public posting and response process. Questions and answers with prospective service providers will be publicly posted and those submitting expressions of interest will also be disclosed. Panelists will be identified before evaluations commence.

Program Issues - Various

I. Key Points

- Miscellaneous comments indicated concern that the process may be subject to capture or serve to limit (rather than enhance) competition.
- Comments urged the use of additional languages and that TLD applicants should declare the purpose or use of the TLD in the application.
- The implementation plan strives to provide an even playing field for all participants, including those whose primary language is other than one of the U.N. languages.

II. Summary of Comments

Process concerns: New gTLD process capture by registry and registrar interests. The entire new gTLD process has been captured by registry and registrar interests due to double-weighted voting. Companies and consumers representing tens of trillions of dollars of economic activity are being outvoted and bullied by companies representing only hundreds of millions of dollars in economic activity (much of it monopoly-based due to no-bid contracts). The new gTLD proposals: (1) ensure perpetual and presumptive renewal for registries; and (2) ensure cost certainty for registries. This is the opposite of what the priority should be: (1) ensure perpetual and presumptive renewal for registrants; and (2) ensure cost certainty for registrants. Assigned names and numbers are intended to be permanent so that a consumer can rely on them. The only way to ensure registrants are protected is to ensure that registry operators can be replaced if a lower cost supplier makes a competing bid. *G. Kirikos (7 April 2009)*. See also *J. Burden (13 April 2009)*.

Competition concerns. The gTLD seems like a step towards creating a monopolistic situation where the registrars will effectively eliminate any market opportunity for domain registrants. Opening the door to this type of exploitation by a few corporations seems like a step in the wrong direction. *Pat (12 April 2009)*.

Consumer protection. It is important that appropriate mechanisms are in place through all stages of the application process to ensure the protection of consumer interests. *J.A. Andersen, Director General, Ministry of Science Technology and Innovation, National IT and Telecom Agency, Denmark (2 Mar. 2009)*.

Guidebook needs a TLD “use” definition. The guidebook does not reflect the GNSO recommendation that an applicant granted a TLD string must use it within a fixed timeframe. Simply setting up a website can hardly be considered “use.” The following is a proposed “use” definition that would prevent a numerous speculative, vanity and defensive TLD applications: “A TLD is deemed to be in use if and only if second-level or lower-level domains in the TLD are delegated, based on an objective registration process, to a sizable number of third parties that

do not control, nor are controlled by, that TLD's registry operator or sponsoring organization.”
W. Staub (13 April 2009).

Limit number of new gTLDs. ICANN should limit the number of new gTLDs because the fundamental search structure of Internet domain names may be blurred making it difficult for users to navigate if a vast number of TLDs are introduced. *J.A. Andersen, Director General, Ministry of Science Technology and Innovation, National IT and Telecom Agency, Denmark (2 Mar. 2009).*

Support more languages. The process should support at least the five official UN languages (e.g., section 5.2 of the draft contract says that the language of arbitration will only be English; this could be a disadvantage to some applicants). *CNNIC (13 April 2009).*

III. Analysis and Proposed Position

The policy recommendations and their implementation strive to enhance competition and choice for consumers. The policy recommendations were approved by a nearly unanimous vote of the GNSO council reflecting broad based support for the compromises reached during the policy development process. The implementation reflects the goals of the policy that, among other things: registrant and user experience is enhanced; and the DNS remains secure and stable.

In order to maintain an even playing field, it is important to not limit the types of TLDs introduced. Attempts at limiting would produce an incentive to game the system to gain first-movers' advantage. An objective method to limit the number of TLDs would be to charge a high application fee – then there could be successive rounds with lower prices each round. This methodology would be contrary to the GNSO recommendation that the evaluation fee be charged on a cost recovery basis. ICANN has no intention of pursuing this avenue to limit the number of applications.

While English is the application language of the first round and materials are provided in the U.N. languages only, the process strives to be inclusive. The application process will accept backup documents in native or official languages. Also, a *raison d'être* for new gTLDs is the implementation of IDNs – enabling users to use the Internet in their native language. As ICANN becomes facile at processing applications, language restriction may be loosened in future rounds.

gTLD Categories

I. Key Points

- In accordance with policy recommendations, there are currently three TLD categories proposed in the Applicant Guidebook: Community-based TLDs, Geographic Names TLDs, and everything else (Open TLDs).
- A number of additional TLD categories to address individual community requests have been proposed in the public comments (e.g., brand and socio-cultural); each of them is accompanied by requested contractual accommodations such as lower fees, or relief from contractual compliance obligations.
- Such introduction, if accompanied by contractual accommodation, will result in costly and problematic contractual compliance issues.
- A new category program where the applicant self-selects the category and signs a standard form of agreement can be readily implemented in a way that will provide immediate benefit for registrants: a clear DNS TLD roadmap.

II. Summary of Comments

More and different categories of TLDs proposed. The current structure – ccTLD or gTLD (with open and community based subcategorization) – is too limited. Some of the ideas for new TLDs would benefit from an approach that uses multiple categories—this approach was raised in the Mexico City ICANN meeting and needs further consideration by ICANN. SIDN would propose the following categories (and will propose a specific fee structure):

- 1 Single owner TLD (e.g. for companies, brands or closed communities with one owner) for one company/organization that intends to have its own TLD. Registration would be provided only by the TLD owner and no registrar is involved;
- 2 Socio-cultural TLD (not for profit, community based) for socio-cultural purposes (to be defined; “social” would mean “for the public”) with a non-profit purpose that provide registry services for a well-defined community and the socio-cultural TLD would serve the public benefit. Policies are defined by the community, in a similar way as the LC plays for the ccTLDs. Socio-cultural TLDs would not be obliged to use the gTLD ICANN contracts and to follow the ICANN consensus policies. Multiple registrars would competitively provide registration services to registrants, and registrars could be accredited by the registry but not necessarily accredited by ICANN;
- 3 Community TLDs (for-profit, for well-described/closed communities including companies) that are very much the same as the current definition of community gTLDs in the applicant guidebook, but it would not be necessary to use only ICANN accredited registrars;
- 4 Open TLDs (for all other types of TLDs) with the same rules as for the current open TLDs;

5 TLDs for intergovernmental or treaty based organizations that are very much the same as the current gTLDs but the TLD is not obliged to follow the ICANN consensus policies. *SIDN (14 April 2009)*.

Create different categories of TLDs with different contractual framework and policy development process. The current model will not work for all TLDs: current gTLDs serve a global community for which it makes sense to have a central and ICANN-based policy development process; however, future TLDs might all have different purposes and serve different communities. Unless ICANN recognizes this by creating different categories of TLDs with each a different contractual framework and a policy development process then there will be an unworkable policy development process within ICANN. *SIDN (14 April 2009)*.

gTLD Categorization is Incomplete. Categorizing gTLDs as “open” or “community-based” is incomplete and does not account for all of the issues that differentiate the categories; indeed it is likely that more than two categories may be necessary to address the diversity of stakeholders and potential applicants. Further study is required immediately to further develop the exact categorization, which should not be so complex as to cause confusion or significant logistical problems. Categories should encompass dispute resolution procedure and pricing/recognizing ability to pay in developing and least developed countries. ICANN may allow applicants to assert in advance that their proposed gTLD is based on an existing intellectual property. *ALAC (19 April 2009)*.

Create more classes of TLDs. ICANN should also create more classes of TLDs than just the open or community categories (a third geographic category is also implied by the current draft guidebook) and should apply a variable fee structure. *INDOM.com (10 April 2009)*.

Differentiated fee structure. ICANN should differentiate the fee structure based on the type of TLD proposed. The current differentiation between ccTLDs and gTLDs will not be sufficient because gTLDs will probably become very large and differentiated and it will be difficult to design a single fee structure that fits all types of applicants. *SIDN (14 April 2009)*. Fees should either be lowered or applications should be categorized (e.g. fees pose big obstacle to cultural/linguistic TLDs). *M. Neylon, Blacknight Solutions (13 April 2009)*. ICANN should provide a more detailed explanation for its refusal to consider an alternative basis for establishing differential evaluation fees based on differences in the anticipated types of applications that ICANN expects to receive and the GNSO recommendations. *NYC (13 April 2009)*.

Open or Community TLD. ICANN should address further the issue of whether in some cases a TLD would be better served as an open TLD instead of a community TLD. *E. Chung, GNSO Transcript at 87-88 (28 Feb. 2009)*.

Recognize cultural/linguistic TLD category within community-based designation. ICANN needs to take into consideration the specific needs and constraints of new cultural/linguistic-based TLDs. (See comments text for proposed guidebook language.) *dot BZH (13 April 2009)*.

Corporate gTLD category. While such an application—submitted by a corporation whose only intended registrants are employees or agents—shares some characteristics with a “community” application, it could also be considered an “open” application with highly restrictive registration policies. Such applications may deserve separate treatment in the new gTLD process. *COA (13 April 2009)*. See also *IPC (13 April 2009)*. Creation of a third category for brand owners should be given serious consideration. *Lovells (13 April 2009)*.

Cities. Cities should have the option of substituting alternative arrangements for the provision of the registrar function. It is unclear that registrars will be willing to invest in development funds. *Connecting.nyc (13 April 2009)*.

New Category Proposed—Brand gTLD (bTLD). A bTLD would be subject to fewer restrictions than community gTLDs but would receive some of their associated benefits. A bTLD is a corporate, branded gTLD for which the brand owner is the applicant, that the brand owner will operate for its own benefit and in connection with the provision of the goods and/or services identified by the brand, and for which the brand owner will restrict the registrant population. *Microsoft (Guidebook, 13 April 2009)*.

Minimum Registrant Base/Single-End User (e.g., Corporate Protective) Registration. One of ICANN’s core values is to promote competition. Single end user (e.g., corporate protective) registrations do not promote competition on the Internet. They create closed protective registrations arguably making the Internet less operable to the end user. A minimum registrant base for both open and community registrations is one way to evolve this and encourage 2nd/3rd level use with a corporate registration. *M. Mansell, Mesh Digital Ltd. (2 Mar. 2009)*.

Applying for gTLD for limited use. Can applicants apply for a new gTLD and use it for only one domain name? For example, apply for “.companyname” and use only that gTLD to redirect to the applicant’s “.com” home page? *F. Hammersley, SAIC (Module 5, 24 Mar. 2009)*. Clarification: for example, apply for “.companyname” and register only one domain name within that gTLD (e.g., “companyname.companyname”) to redirect to the applicant’s “.com” home page? The main purpose would be to prevent others from registering the “companyname” gTLD, but it would still be in use (albeit for one registered second-level TLD that redirects to the company’s current home page). *F. Hammersley, SAIC (Module 5, 6 April 2009)*.

Comment re: GeoTLDs and Linguistic TLDs; Benefits of Categories. Geo TLDs and community, linguistic TLDs are the biggest community TLDs and they usually are lists that have been agreed at a global level by neutral organizations, similar to the ISO list. Local authorities also provide legal accountability frameworks. Therefore, instead of making things more complex, introducing categories can sometimes make things simpler; the community wants a chance for the concept of categories. *B. de la Chapelle, Public Forum Transcript at 32 (5 Mar. 2009)*.

Reserve “.Web”. ICANN should retain .web for future consideration. Is it deliberately missing? It strikes us there will be endless open and community applications for this TLD, generating substantial auction revenue. *M. Mansell, Mesh Digital Ltd. (2 Mar. 2009).*

“Open” TLD restrictions. Any “open” TLD should be allowed to place restrictions on the use of its domain as it wishes (re: Module 1, 1.2.2). *A. Allemann, DomainNameWire.com (6 April 2009).*

Financial services gTLD. Any domain name associated with financial services should be restricted to financial services companies, with substantial restrictions, guidelines and proof of eligibility. ABA supports the FDIC’s strong recommendations for financial gTLDs (see comments text, referring to FDIC comments filed 15 Dec. 2008). The FDIC has offered to meet with ICANN and any community or industry group to develop a workable solution and ABA is willing to participate in such a meeting. ABA is reaching out to the international financial sector to assist in developing the appropriate community, composed of professional financial industry associations or regulatory agencies associated with the financial services industry, to make decisions regarding the approval of any gTLDs whose names suggest they offer financial services or to endorse any applicants of such gTLDs. *ABA (13 April 2009).* If ICANN moves ahead with the new gTLD program, there should be a separate and distinct process for financial sector gTLDs, as recommended by the FDIC. This should include adequate documentation and independent verifications for industry representatives and regulators before any entity is selected as a representative of the financial community to operate a financial sector gTLD. There are many complex issues and cost factors that prevent reaching consensus on the issue of a new financial sector gTLD. Also, it is unclear that consumers would feel more secure about sites within a .bank gTLD. *Regions (13 April 2009).*

Financial services working group. ICANN should partner with the financial services industry to create a working group focused on resolving issues of special importance to the industry. This group might serve to set criteria ICANN would use to evaluate gTLDs whose purpose or name tie to financial services. *BITS (13 April 2009).*

No need for a financial sector gTLD. Regions is unaware of any unmet demand for one or more new community-based gTLDs to serve the financial sector. Regions is not in favor of sponsoring a new gTLD for itself or the financial sector (e.g. .bank or .fin). Instead, the overwhelming concern which we share with other financial institutions focuses on the considerable risks, burdens and costs that the gTLD rollout will impose on consumers and the financial sector, particularly at this time of global economic crisis. Forefront among our concerns is maintaining consumer confidence in banking systems, including Internet banking. *Regions (13 April 2009).* A majority of BITS members regard as low the demand for either an industry wide or institution specific gTLD given costs it would create regarding switching, governance and the current challenging economic climate. *BITS (13 April 2009).*

III. Analysis and Proposed Position (gTLD Categories)

The policy recommendations of the GNSO and GAC have resulted in the creation of three gTLD categories or types:

- Community-based TLDs
- Geographic Name TLDs
- Everything else (called Open TLDs)

Comment from the Mexico City meeting and the public comment forum indicated there should be consideration of many other TLD categories with some special consideration designated for each category.

Community comment suggests the creation of several TLD categories: e.g., Single-owner, Country, Intergovernmental Organization (I/O), Socio-Cultural, Community, Developing Country, and Open. Depending on the category, various accommodations are suggested; for example, no requirements to:

- Execute an ICANN contract,
- Use accredited registrars, and
- Follow consensus policy.

Some might be restricted to not-for-profit status, be eligible for reduced fees, require registration restrictions, and have names reserved in anticipation of registration by certain parties. The table below indicates some of the categories of TLDs and the accommodations proposed in some of the public comments.

TLD CATEGORIES PROPOSED

TYPE	Contract	Use of Registrars	Consensus Policy	May Be For-Profit	Fees	Restrictions	Name Blocked
Single-owner	Yes	No	Yes	Yes	Volume discounts	Restricted	Sometimes
Geographic	No	No	No	Yes	Voluntary	Open	Yes
I/O	Yes	Certain Cases	No	Yes	Normal	Open	Yes
Cultural	No	No	No	No	None	Restricted	No
Community	Yes	No	Yes	Yes	Normal	Restricted	No
Open	Yes	Yes	Yes	Yes	Normal	Open	No

In determining whether and how new TLD categories should be implemented, several issues should be considered:

- The value and benefits of TLD differentiation to registrants;
- What types of accommodation can and should be made for the different proposed types;

- Managing the post-delegation environment, including contractual compliance and ensuring DNS stability and security;
- How categories would be assigned to each TLD applicant; and
- Managing the discussion going forward.

Benefits of different categories. Public comments describe certain benefits associated with the creation of TLD categories: e.g.,

- Socio-cultural or cultural/linguistic TLDs would be “for the public” with a non-profit purpose that provide registry services for a well-defined community and the socio-cultural TLD would serve the public benefit.
- Brand gTLD. A brand TLD would allow registries to self-register names to a restricted population (such as employees) and be subject to fewer restrictions (e.g., use of registrars) than community gTLDs but would receive some of their associated benefits.
 - However, it has also been asserted that single end user (e.g., corporate protective) registrations do not promote competition on the Internet, and create closed protective registrations arguably making the Internet less operable to the end user.

Whether there should be accommodation. The proposals assert that there are benefits to the registries and the registrants in the new classifications. Many of the benefits are related to accommodations or relaxation of contractual requirements. The proposals recommend that some registries need not sign agreements with ICANN, some pay lower fees, and some need not use ICANN accredited registrars.

The .brand TLD proponents argue that a lower registry fee be applied to them because they will be registering several brands and, essentially, one evaluation effort will cover all those applications. Other TLD applicants may differ, arguing that brand holders are among those who are best able to afford fees, especially when compared to small community applications or applications from those in least developed countries. (Assuming a fixed cost environment, lower fees to some TLDs will result in higher fees to others.)

In certain cases, there are restrictions imposed on a new category. For example, it is suggested the socio-cultural TLDs would be required to be not-for-profit.

One question is whether the accommodations serve to benefit the registries or the registrants. Arguably, accommodations that benefit registries, such as lower fees, will also serve to benefit registrants by promoting varied business models.

The effects of these accommodations should be the subject of public discussion. Primary purposes of ICANN agreements are to ensure the ongoing stability and security of the DNS and to ensure a level playing field among its participants. The GNSO included the requirement to use ICANN accredited registrars to ensure the benefits accruing to registrants of the registrar

environment. A yardstick should be that the accommodation should directly benefit registrants and not only the registry operator.

Post delegation environment. The post-delegation environment with many TLD categories will be characterized by:

- A richer TLD environment where categories are created to address certain registrant desires / needs.
- A complex contractual environment requiring substantial compliance activities.

After the delegation of the initial sets of TLDs, registrants will be better able to survey the new field of opportunities if TLDs are classified in some way. A registrant looking for a particular set of services, access, or similarly situated registrants will be able to make a survey more readily if the registries are organized in some way to make those choices more clear. However, the classifications, if embedded in the registry agreements, will introduce their own set of complexities.

Imagine a single use (or brand) TLD where the TLD operator restricts registrations to employees. ICANN will have to monitor those registrations. Are contractors, agents or temps employees? Each single owner TLD might answer that question differently. Registrars will closely monitor registrations because single owner TLDs aren't required to use ICANN accredited registrars. They will call ICANN to task for each questionable registration.

Imagine a socio-cultural TLD restricted to not-for-profit status. ICANN will be required to monitor its tax status and understand tax rules in many different jurisdictions. If the TLD tax status changes, would they then be required to sign an agreement? How would ICANN put that into effect?

The resulting contractual compliance effort would be difficult. The number of gray areas to adjudicate will multiply – areas that are not related to DNS stability or security. Community watchdogs would be a step ahead because they target specific areas. Increased compliance function costs would probably mean increased fees. Reduced fees for some registries will mean higher fees for others.

Self-selection. There are a few models for implementing TLD categories. In one model, the TLD application evaluation process could determine the TLD category of the applicant based on answers to application questions designed to make a category determination.

The public comments seem to indicate a different model, that applicants would self-select the TLD category. In such a case, the applicant might have to meet certain criteria published as part of the application process.

Even more straight forward would be a process where applicants can self-select and announce a TLD category. ICANN could create categories based upon community input such as the new

gTLD comment fora. The application evaluation would not test the application against TLD type or category criteria; it would evaluate the applicant against the stability / security related criteria in the business and technical evaluations only. The applicant would be able to state that it had self-selected itself as belonging to a certain category.

Potential Solutions. One complexity in the introduction of new gTLD categories are the number of different accommodations that are requested. As stated above, these accommodations will lead to a complex and difficult contractual compliance environment. Additionally, there will be considerable debate and discussion in the community as to whether certain accommodations should be made. Should certain gTLDs not be required to have an agreement with ICANN or not be required to follow consensus policy? Should certain TLDs be required to maintain not-for-profit status? These discussions and debates will take considerable time and resources.

One approach would be to reduce or eliminate the accommodations or contractual differences among the TLD types. There are some differences required by policy recommendations of the GNSO and GAC (creating community and geographical names TLDs). Other accommodations could be eliminated, e.g., require that new gTLDs be required to sign a contract and comply with consensus policy. Also, it does not seem necessary to require that certain TLD types retain not-for-profit status, so long as they are not getting some special accommodation such as not complying with consensus policy or reduced fees.

Fees. The certainty of costs and the question of fees will probably be in flux until sometime after the first round; therefore, parsing fees among TLD categories now is difficult. This is due to the uncertain number of applications and thus the current lack of clarity about the extent to which economies of scale can be realized in supporting new gTLDs operationally. It will be difficult to create different fee structures (application or annual fees) in this uncertain environment. Application fees are designed to recover costs. Reductions in some evaluation fees will result in increases to others. This is also true in the area of annual registry fees. The annual fee reduction made between the first and second version of the Guidebook lowered fees to the extent possible given the unknown number of TLDs that will be delegated into the root zone. *ICANN has always stated that the idea of fee categories and lower fees will be investigated after the first round* and following removal of many of the contingencies and uncertainties. Therefore, the possibility of different fee structures in the future remains – and is probable.

Finally, the structure of TLD categories, if granted different accommodations with differing contractual obligations, would result in significantly higher compliance costs and therefore, annual fees. If a self-declaration program is instituted and contractual accommodations are eliminated or minimized, fees can remain constant.

The ICANN community should continue to discuss TLD categories in order to flesh out the benefits and costs of the program. The new gTLD implementation seeks to provide new prospective registrants with an array of choices that will meet their needs.

TRADEMARK PROTECTION

Consideration of Trademark Protection Issues

I. Key Points

- Multiple comments request that ICANN ensure that trademark protections are put in place before the gTLD program is launched.
- The Board formed the IRT to develop solutions and report by before the end of May. The IRT has issued their report, recommending solutions as well as reported meeting notes and responded to comment in a transparent way. ICANN will conduct consultations on trademark issues, beginning in Sydney in June, and throughout the month of July. These consultations will take place in diverse geographic regions, and will provide a forum for ICANN to hear from the community on the effectiveness of proposals that address the overarching issues submitted by the IRT and others.
- The Board gave the IRT an accelerated timeline to develop solutions. The timeline for the launch of new gTLDs was adjusted to accommodate these regional consultations and the development of solutions that adequately address these concerns.

II. Summary of Comments

More Clarity Needed on How Whole System Will Work for Trademark Owners. Despite some changes ICANN made concerning its inadequately defined application and dispute resolution processes, it is still unclear how the whole process will work and whether trademark owners will have priority over other registrants and what form that priority will take. *European-American Business Council (1 April 2009)*. It is not clear and ICANN should clarify what is meant by reference to “applicability of this gTLD dispute resolution process.” *Microsoft (Guidebook, 13 April 2009)*.

Suggestions on Future Process. The impact of the new gTLD program raises large brand protection and consumer abuse/fraud concerns. ICANN should reach out to the pertinent stakeholders to set up expeditiously the appropriate processes so any new expansion of the Internet is a safer one. Not just for businesses (like Time Warner) that offer goods on the Internet, but for those consumers who rely on our legitimate businesses and services. *F. Vayra, Time Warner, Public Forum Transcript at 10-11 (5 Mar. 2009)*. The IP Constituency is very concerned that ICANN published the second draft guidebook without addressing any of the trademark protection issues or any of the proposed solutions. Going forward, ICANN should convene a solutions team of persons who have knowledge, experience, and expertise in IP and the interplay of trademarks and the domain name system, charged with developing and proposing concrete solutions that can be implemented and rolled out in connection with the

new gTLDs and with providing a report to the board in advance of the Sydney meeting. *K. Rosette, IP Constituency N. America Rep., Public Forum Transcript at 27 (5 Mar. 2009).*

Adequate Time for Brand Owners to Consider Guidebook Revisions. Since brand owner issues were not addressed yet, brand owners may not have sufficient time to fully digest, analyze and comment on pertinent changes. ICANN has not indicated when it intends to begin the application process; the analysis of the previous public comments suggests December 2009. The current timeline is too tight; ICANN should take its time evaluating comments from all interested parties including brand owners before formally beginning the application process. *MarkMonitor et al. (10 April 2009). See also Visa Inc. (11 April 2009).*

Stronger Protection for Brand Owners. Introduction of new gTLDs should be accompanied by stronger protection for brand owners; this could include more stringent controls within the registration process and more pro-active controls around the integrity of registrant data, with particular focus on consumer-facing brands (e.g., an increased burden of proof of ownership of a trademark brand before rights to a related domain are granted). *P. Taylor, Bradford & Bingley (5 April 2009).*

Second Level Fairness Concerns re: Disputes. Is ICANN considering additional procedures applicable to these new gTLDs for second-level disputes which will either be supplementary or alternative to the existing UDRP? It is unfair and unbalanced to change the rules for second-level disputes in the context of a proposal for expanding at the first level. The way to address that is for a separate comprehensive review of the existing UDRP on its own and not as a kind of tail on this new gTLD dog where only one side's complaints are being really taken into account at this stage. If you are going to have a UDRP for second level postlaunch disputes, it ought to be uniform across all TLDs; there shouldn't be some separate or alternative process that applies to new gTLDs. *P. Corwin, Internet Commerce Association, GNSO Transcript at 91-92 (28 Feb. 2009).*

Resources Concern and Solutions Commitment. Trademark community would like reassurance that if at a time of scarce resources they expend time, money, etc. on these fora, then the process will result in a product that will be acted upon. *K. Rosette, GNSO Transcript at 60 (28 Feb. 2009). See also M. Cade, GNSO Transcript at 62 (28 Feb. 2009); J. Scott Evans, GNSO Transcript at 62-63 (28 Feb. 2009).*

European Brand Owners Perspective. Some European brand owners don't want to address whether they should embrace new gTLDs until we get past the issue of how is ICANN dealing with the problems we face. The proposal to engage a panel of experts will go a long way in bringing brands to the table so they feel they have a place at ICANN. *S. King, Public Forum Transcript at 41 (5 Mar. 2009).*

Adopt the WIPO post-delegation dispute resolution procedures. The WIPO post delegation dispute resolution procedures should be adopted given the significant potential for actual infringement post-delegation by registries, and the policy should be mandated under the

Registry Agreement. *MarkMonitor (10 April 2009)*. ICANN should consider adopting the WIPO post delegation procedure for new gTLD registries after it is subjected to comments and review by the community. *Regions (13 April 2009)*. Regarding the WIPO Post Delegation proposal, registry operators should be held accountable if they allow the registry to become a safe haven for infringers; whether this should be addressed through a scheme operated by a third party like WIPO or through enhanced contract compliance enforced by ICANN is not yet certain. *MARQUES (13 April 2009)*. ICANN should consider the viability of a procedure whereby a trademark holder can bring a claim against a registration authority (registrar or registry) where there is a direct contractual relation with the infringing party—modeled in part on the WIPO post delegation dispute resolution proposal. Unlike the WIPO proposal, the panelist would be limited to a finding of harm to the complainant and then the matter would be referred to ICANN for appropriate action. *M. Palage (14 April 2009)*.

WIPO mediation proposal regarding registry abuse. Serious consideration should be given to WIPO's proposal to allow for a mediation process where a trademark holder determines that an ICANN accredited registry is abusing its mandate in the new TLD either through misuse caused by the name itself or through registry misconduct. Without some form of self-help mechanisms, it is unlikely that ICANN can effectively police registry or registrar abuse. *European-American Business Council (1 April 2009)*.

Post Delegation Dispute Resolution. INTA continues to support a robust post-delegation dispute resolution process to address post-launch issues, including post-launch infringement (see comments to be provided on WIPO's working draft of Post-Delegation Procedure for new gTLD Registries, 5 Feb. 2009). *INTA (8 April 2009)*.

Dynamic Process. The IRT process is promising, but ICANN also must ensure that it moves beyond static definitions of existing definitions and is dynamic so that it can fight new threats to consumers and brand owners that may emerge in the future. In the next version of the Guidebook, ICANN should design a process that encourages applicants to offer more than the minimum requirements (i.e. using innovation) and rewards that initiative. *NetChoice (Module 2, 13 April 2009)*.

IRT Transparency. While appreciating ICANN's move to take closer look at trademark protection mechanisms in the new gTLD process, it would have been appreciated if members of the IRT were required to submit an interest disclosure statement about their interests in the new gTLDs as is common practice in ICANN stakeholder groups. *DOTZON GmbH (13 April 2009)*.

IRT Process. The IRT recommendations are a first step in a process of shaping the new gTLD launch to protect consumers against confusion by discouraging abuse of trademarks at the top and second registration levels. *Time Warner (13 April 2009)*. Any DNS expansion must include mechanisms for brand owners to effectively and efficiently police their trademarks. *Yahoo! (13 April 2009)*. The IRT process does not provide valid grounds for ICANN to defer immediate consideration of comments submitted by AT&T and other brand holders on trademark protection concerns and mechanisms. *AT&T (13 April 2009)*. The IRT timeframes seem

extremely unreasonable and this adds to an effect of marginalizing IP interests and limiting their opportunity to comment on the issues of greatest concern pending ICANN's response to the IRT's report. *IACC (13 April 2009)*.

ICANN Lack of Transparency; Flaws in IRT Process. ICANN is not adequately observing its own transparency obligations in the development of "solutions" for rights holders in the new gTLD process. ICANN has delegated the lead role to the IP constituency and is proceeding in a way that unfairly excludes registrants' views; the domainer community has been excluded from the IRT membership, and we know of no outreach effort. The IRT is not acting in a sufficiently transparent manner. It is of concern that any procedures adopted in the new gTLD process will be retroactively imposed on existing gTLDs. *ICA (13 April 2009)*.

Reconsider or Re-Evaluate New gTLD Launch in Light of Trademark/IP Concerns. The launch of new gTLDs as currently proposed by ICANN should be reconsidered or re-evaluated based on these concerns:

- 1 The immense cost and efforts that will be required to register gTLDs defensively and to defend existing IP rights against any new gTLD that infringes or harms those rights;
- 2 The risk of severe damage to the IP rights of trademark and brand owners and the related consumer confusion that will result; and
- 3 The vaguely defined application and dispute resolution processes that place the burden on trademark owners to prevent the registration of new gTLD extensions that infringe on their marks and threaten to cause confusion detrimental to consumers and the public. *European-American Business Council (1 April 2009)*. Expansion of TLDs will greatly increase brand management costs and create new opportunities for others to infringe, phish and engage in other deceptive practices. The multitude of second level domains to be sold will be even more vulnerable to phishers, squatters and other fraudulent operators who currently abuse the existing smaller gTLD system. Given these concerns and the extensive consumer confusion which will result, the potential costs of the new gTLD program far outweigh any perceived benefits to business or the general public. Although we continue to oppose this initiative we ask ICANN to consider measures to reduce the burden on trademark holders and seek consideration of five items we noted in our 15 Dec. 2008 letter. *ANA (12 April 2009)*. See also *NBCEP (13 April 2009)*; *3M Company (15 April 2009)*.

New Guidebook Release Premature Because Trademark and Consumer Issues Not Addressed and Resolved. The European-American Business Council (EABC) has taken note of the 2nd version of the Draft Applicant Guidebook as well as the outcome of the Mexico City meeting, and realizes that some changes have been made –e.g., relating to the costs and application and dispute resolution process. However, many of EABC's concerns about the impact on trademark owners have not been adequately addressed. ICANN's promises of discussion and further study do not fundamentally provide answers or the robust and comprehensive forms of protection for IP rights owners that will be needed to police and enforce trademarks to combat fraud and confusion in the new TLD rollout. ICANN should not be releasing any new version of the

guidebook without first addressing the trademark, consumer confusion and related abuse issues and finding solutions that are acceptable to the business community. *European-American Business Council (1 April 2009)*.

Trademark Protection Issues Remain Unresolved. Trademark protection is the major issue which remains unresolved; the new guidebook fails to address this issue adequately. Adobe welcomes the IRT process to propose solutions for consideration at the Sydney meeting and trusts that the next version of the guidebook will outline these proposed strategies and remedies in significant detail. Much work still needs to be done by ICANN to address trademark owners' concerns about the new gTLD proposal. *Adobe (10 April 2009)*.

Difficulty of Resolving Trademark Issues. Trademark issues can never be resolved to the satisfaction of all the parties unless ICANN, its registrars and registries literally police and examine every new domain application prior to registration. New gTLDs will benefit nobody but cybersquatters and those who resolve cybersquatting disputes. *D. Harris (29 Mar. 2009)*.

III. Analysis and Proposed Position

Numerous comments called for consideration of and the implementation of trademark protection measures prior to the launch of new gTLDs.

ICANN is pursuing a timely resolution of trademark protection concerns. To solicit proposals on trademark and other overarching issues from members of the community concerned about these issues, ICANN has created a WIKI <https://st.icann.org/new-gtld-overarching-issues/index.cgi>.

The IRT was commissioned by the ICANN board and given a tight deadline to produce its final report in May to address the issues of trademark protection in new TLDs. The Final IRT Report will then be subject to a public comment period and discussions in public consultations.

The IRT work has resulted in several specific, detailed recommendations, see https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:200904281. The IRT accepted the tight timelines set by the ICANN Board to produce these proposed solutions in a timely manner. The proposed solutions seek, in combination or separately, to address the concerns raised in the public comments periods. While the Board directed the formation of the IRT from representatives from the IP Constituency, the IRT has conducted its work in an open, transparent manner, publishing: team membership information, meeting notes, and reports. The IRT has solicited public comment to the extent possible and invited representatives of other groups to explain their positions on these issues. Finally, the IRT proposals will be open to full consultation in several public sessions.

ICANN will be hosting sessions at the Sydney meeting to discuss the trademark issues and solutions proposed by the IRT and others and will be conducting a series of regional meetings globally in the weeks following the Sydney meeting. These discussions are designed to discuss

the feasibility of implementing the recommendations contained in the IRT Report, as well as other submissions addressing the overarching issues.

ICANN recognizes that identifying solutions for trademark issues is key to finalizing the Applicant Guidebook and the timeline for the rollout of new TLDs. ICANN is prepared to significantly amend the Guidebook in consideration of the work that has been done. The Board has set ambitious timelines for the development and consideration of solutions to facilitate the timely launch of the new TLD process. The IRT has responded in kind, with rapid development of detailed, meaningful suggestions. ICANN will work towards a timely launch of the process but will not move forward until appropriate solutions are in place.

Enhanced Whois Requirements

I. Key Points

- Comments propose that all new gTLDs offer a thick Whois registry to reduce the burden on those seeking to protect against abusive registrations, and provide additional protections for registrants in the event of registry or registrar failures. For discussion, ICANN proposes this suggestion be adopted in a change to the registry agreement.
- In order to address improved accuracy in Whois, ICANN is soliciting proposals on whether practical, cost effective solutions can be adopted for enhanced Whois accuracy in new gTLDs. In the absence of identifying one solution applicable to all new gTLDs, ICANN will consider requiring applicants to identify their procedures for enhancing Whois accuracy in their proposed gTLD.

II. Summary of Comments

Thin/Thick Whois in New TLD Registries. The issue of whether to require new TLD registries to provide thick Whois needs more consideration, and a more detailed, explanatory response on this issue needs to be provided by ICANN. The response in the analysis that “this was not changed because of the multitude of applicable laws in different jurisdictions” is not sufficient. Many commenters explained in the previous round why they were strongly opposed to what was in Version 1 on this question, and changes were not made in Version 2. *S. Metalitz, IP Constituency, GNSO Transcript at 72-73 (28 Feb. 2009)*. See also *SIIA (13 April 2009)*. ICANN should reconsider its minimum requirement calling only for a “thin” Whois registry model. Without a centralized Whois database at the Registry Operator level, brand owners will struggle to obtain accurate Whois information required to combat online fraud. We support a requirement being evaluated by ICANN that Registry Operators would have to collect additional data, and we ask that the data be escrowed by the Registry Operator and made immediately available in the event of non-cooperation by any registrar and in the event of online fraud or abuse. Whois issues have not been addressed adequately and absent more stringent policies, registrars will have control over Whois information with no binding obligation to ensure publicly accessible and accurate Whois information. *MarkMonitor et al. (10 April 2009)*. Before allowing new gTLDs, ICANN must address the significant problems that currently plague the Whois database. ICANN should require gTLD applicants to commit to participating in an open and transparent Whois database. The Guidebook is conspicuously silent on this issue. *NBCEP (13 April 2009)*. Effective implementation of Whois policies needs to be assured in any rollout of new gTLDs; this is a critical aspect of the overarching issues of trademark protection and malicious behavior because it is essential to have a way to ascertain responsibility for malicious or bad faith behavior. *SIIA (13 April 2009)*.

Mandate “Thick” Whois. It is unacceptable that ICANN did not mandate thick Whois in all cases. Part of the technical and business evaluation of an application should address the

applicant's commitment to maintaining and enforcing Whois requirements with a focus on standard and accurate information. *AT&T (13 April 2009)*. See also *IACC (13 April 2009)*.

Thin/Thick Whois in New TLD Registries. ICANN's policy shift on Whois needs to be reversed; every new gTLD should be required to take on so-called "thick" Whois obligations. *COA (13 Feb. 2009)*. New gTLDs must operate as "thick" registries. Policies should be established about enforcement of Whois data accuracy and use of proxy or private registrations. *AIPLA (13 April 2009)*.

Proxy Registration Services—Universal Standards and Practices. Universal standards and practices need to be developed for proxy domain name registration services, as a condition precedent to the new gTLD program for the global business community. *M. Palage (14 April 2009)*.

Require "Thick" Whois Registry Model. ICANN should require that all new gTLDs function as "thick" Whois registries, which will make information about miscreants more accessible to police misconduct and protect victims of phishing and fraud. *INTA (8 April 2009)*. ICANN should require a "thick Whois" model for all registries so that access to full ownership records is ensured by ICANN, an especially important issue for addressing consumer fraud enabled by domain name abuse. Thin registries do not afford proper safeguards to protect brand owner rights or support the needs of law enforcement given that control of the registrant's data is largely held by the individual registrar. *MarkMonitor (10 April 2009)*. *Microsoft (Guidebook, 13 April 2009)*. All new gTLD registries should be required to adopt the "thick" registry model for capturing and maintaining registrant data; this is beneficial in terms of inter-registrar transfers functions. *M. Collins, K. Erdman, M. O'Connor, M. Rodenbaugh, and M. Trachtenberg (12 April 2009)*. By adopting the thick Whois model utilized in the .biz and .info registries ICANN will have a smaller pool of entities to police, and consumers, law enforcement and brand owners will have a more centralized location to obtain accurate Whois information. *Yahoo! (13 April 2009)*. See also *Lovells (13 April 2009)*; *COTP (13 April 2009)*. All registries should have to maintain thick centralized Whois data as part of their registry agreements and all registrant agreements must include the acceptance of that requirement. The terms of registry and registrar agreements should ensure the maintenance of accurate, publicly accessible and thick Whois data, with appropriate proxy registration services standards, with enforcement throughout the contract hierarchy. *AT&T (13 April 2009)*.

Reverse Withholding of Data by Thick Registries (specification 4). ICANN should reverse its inexplicable decision to allow even thick registries to withhold nearly all the collected contact data from registrants via registrars from their publicly accessible Whois services. The omission of a thick Whois requirement which has been imposed on virtually every new gTLD by ICANN throughout its history is unjustified, will have a detrimental impact on a wide range of consumer protection efforts, and should be eliminated. *eBay (13 April 2009)*.

Opposition to Thick Whois at Registry Level (Evaluation question 45). Thick data collection or display at the registry level should not be mandated. The guidebook states that thick data is not

intended for display, so by implication this measure is not intended as an IP RPM. New registrar data escrow requirements make it unnecessary at the registry level. It would incent registrars to mask data they send to registries for competitive reasons. It creates additional risk that customer data will be available to spammers, phishers and other abusive parties. It was not required in previous rounds. The registry will not receive the information behind proxy services in any case, so parties who want access to the data will have to go to the registrar. *Demand Media (DAG, 13 April 2009)*.

Whois and Privacy. Whois is essentially broken at present. The rights of individuals to protect their privacy needs to be addressed. Any registry operator who proposes a TLD that will differentiate between private and corporate registrations (e.g. .tel and many ccTLDs) should be encouraged and not hampered. *M. Neylon, Blacknight Solutions (13 April 2009)*.

Opportunity to Enhance Whois. It was noted that ICANN should not rely on past precedent but use the new TLD process as an opportunity to address some of the concerns related to Whois. One comment noted that it is important to raise the bar for gTLD and ccTLD operators, especially given growth of e-crime (noting that staff in version 2 did not embrace suggestions of NetChoice on how to raise the bar for registry applicants through additional requirements such as industry best practices for consumer protection; a global brand registry to prevent brand-jacking and measures for prevention of phishing/consumer fraud; a thick Whois for all applicants; and a rapid takedown procedure). *S. DelBianco, NetChoice, Public Forum Transcript at 16 (5 Mar. 2009)*.

III. Analysis and Proposed Position

Several comments have suggested enhanced Whois requirements in new TLDs to easily identify potential infringers and cybersquatters. The comments recommend that ICANN mandate thick Whois in all cases. The comments also advise ICANN to increase its compliance activities with regard to maintaining accurate Whois in new TLDS.

Other commentators opposed the requirement of thick Whois, either because of privacy concerns or because it is unnecessary as an IP RPM. One commentator noted that new registrar data escrow requirements and other RPMs make it unnecessary at the registry level.

It was noted that it is important to raise the bar for gTLD AND ccTLD operators, especially given growth of e-crime.

ICANN recognizes the importance of Whois to brand holders and others seeking to address abuse and protect consumers in the new TLDs. To address these concerns, ICANN proposes mandating thick Whois requirements in new TLDs. With the introduction of potentially hundreds or thousands of new TLDs, maintaining a thick Whois is viewed as an alternative to identifying potential abusers through the decentralized Whois systems maintained by registrars. This should lessen the burden on brand holders, law enforcement and others seeking to minimize abuse in new gTLDs.

Several comments requested enhanced accuracy in new TLDs, without providing details on how such accuracy could be achieved. ICANN supports the need for more accurate Whois in new TLDs and is open to suggestions from the Community on appropriate mechanisms to be considered for improved accuracy of Whois in new TLDs. These proposals should focus on practical, cost effective solutions that could be implementable in new TLDs which would result in enhanced accuracy in Whois. In the absence of solutions that can be implemented universally across all new TLDs, ICANN is seeking input on whether contractual revisions to the registry agreements would be an appropriate mechanism to achieve a more accurate Whois system.

Additional Top Level and Second Level Protections

I. Key Points

- As described above, the IRT has been established to propose solutions to protect against trademark abuse at the top and second level. In developing rights protection mechanisms, ICANN was advised not to expand the scope of protection that is available under international trademark law.
- After the conclusion of the public consultations, ICANN will consider recommendations from the IRT and any other proposals submitted to address trademark protection in new TLDs to identify an appropriate solution that is technologically feasible and cost effective.

II. Summary of Comments

Negative Economic Impact on Brand Owners. There is only limited protection for brand owners, the fee structure is unreasonably high as a protection measure, and the administrative procedures are unduly burdensome. The application and objection procedure will be prohibitive in cost and/or time and will exponentially compound the already crowded UDRP space. *Visa Inc. (11 April 2009).*

Trademark Recommendations for IRT's Final Report and ICANN's Revised Proposal

- 1 **Sunrise Period**—implementation of a detailed, objective uniform and cost-based sunrise process for all new gTLDs, whereby trademark holders can register domain names before the registration process is opened up to the general public; trademark owners could be charged only a reasonable minimum fee to register their protected names;
- 2 **Protected Name Registry**—as alternative to sunrise period, create a Protected Name Registry allowing brand owners to apply to have their trademark put on a reserved list. This could be achieved by expanding the existing Top Level Reserved Names List in Module 2 to include trademarks or creating a separate database of trademarked terms for pre-registering IP rights to protect them within the proposed new gTLDs; and
- 3 **Brand Category Applications**—a separate process for applications from trademark owners wishing to register their trademark as a new gTLD string, distinguishing them from open and community-based applications. *European-American Business Council (1 April 2009).* The Czech Republic supports the comments and recommendations of the EABC toward achieving effective, balanced pre- and post-delegation solutions to the trademark protection in connection with the introduction of new gTLDs. *M. Pochyla, Ministry of Industry and Trade of the Czech Republic (10 April 2009).*

Balancing Interests, Including End Users’. Trademark holders may have legitimate concerns; concerns from small, specific user groups should not outweigh the legitimate requests of end users. Brand managers’ fear of infringement should not cripple what could amount to a second wave for the Internet in many respects. *M. Neylon, Blacknight Solutions (13 April 2009).*

Defensive Registration Costs. The issue of disproportionately high costs for defensive registration must be managed by ICANN in order to protect national and trademark protection. *J.A. Andersen, Director General, Ministry of Science Technology and Innovation, National IT and Telecom Agency, Denmark (2 Mar. 2009).* The new gTLD proposal raises the potential need for entities in the financial services sector to apply for and shoulder the costs of new gTLDs merely for defensive purposes. One of the program’s design goals should be to eliminate the incentives or need to engage in defensive registrations. *Regions (13 April 2009).* See also *Lovells (13 April 2009).*

Impact on Financial Sector Costs. Defensive registration costs would be large and burdensome for the financial sector, already under significant strain. Many other direct costs would be involved if the financial community found it necessary to register for new gTLDs because of this program’s launch, including switching costs, governance costs, monitoring and enforcement activities and fees and costs for the objection process. *Regions (13 April 2009).*

Concern of Corporate Enterprises. ICANN staff should pay close attention to the trademark issues because the enterprises are getting very concerned with that. And I don’t think you have an adequate resolution process in place for them. *T. Davis, GNSO Transcript at 95 (28 Feb. 2009).*

Burden on Companies—Existing RPMs Inadequate. It is unfair to force companies to increase their legal expenditures by requiring expensive sunrise registrations and UDRP filings to correspond to the rising number of gTLDs. These approaches are not reasonable in light of the economic conditions and in the face of potentially thousands of new gTLDs. Sunrise periods have amounted to a fee shifting exercise from registries to brand owners to fund start up costs to launch new extensions. *MarkMonitor et al. (10 April 2009).*

Applicant’s Rights to be Acquired in the gTLD (Terms and Conditions, paragraph 10). This paragraph should be revised to distinguish, in the case of branded gTLDs, an Applicant’s pre-existing rights in the brand reflected in the applied-for gTLD. *Microsoft (Guidebook, 13 April 2009).*

Open TLD-“.brand”. Allow legitimate trademark owners to register the extension corresponding to their trademark without requiring the active use of the extension or the fulfillment of technical back-end requirements (trademark blocking registration). *Visa Inc. (11 April 2009).*

Reduce Brand Owner Defensive Costs. Develop a mechanism to safeguard brand owners from massive defensive registration costs. Allow a trademark registration at little or no cost to

holders with real, well established trademarks for each new gTLD, while preventing sham trademarks on clearly non-protectable terms from countries outside the G20 which have issued trademarks on clearly non-protectable terms. *Worldwide Media, Inc. (13 April 2009); J. Seitz (11 April 2009)*.

Sunrise and Trademark Registry. Create a trademark registry to be used for all subsequent sunrise periods to eliminate the need and cost to validate rights for each extension launch or new gTLD application process; this registry can be used as a reference for both first and second level registrations. *Visa Inc. (11 April 2009)*. Dot Eco LLC supports Bart Lieben’s trademark validation database proposal. *Dot Eco (13 April 2009); Minds and Machines (13 April 2009)*. One RPM could be a uniform sunrise process for all new gTLDs whereby trademark holders could at very low fees register domain names before the general public. An alternative would be a form of protected name registry (centralized database overseen by ICANN) allowing trademark owners and certain other community representatives to apply to have their trademarks or relevant strings placed on the reserve list. *Regions (13 April 2009)*. ICANN should create a mechanism for automatic rejection of names infringing on existing legal rights. *BITS (13 April 2009)*.

Second Level—Sunrise and Reserved Names. For the second level dispute process, ICANN should mandate a standard sunrise process and incorporate the reserved names for second level domains also. *Hearst Communications, Inc. (13 April 2009)*.

Rights Protection Mechanisms. ICANN should take reasonable steps now to develop robust RPM models that will be low-cost, efficient and will scale. If these RPMs are not developed before launch of new gTLDs, large and small businesses will likely be unfairly prejudiced or burdened. Options include: a Reserved Trademark List open to as many trademark owners as possible and subject to challenge; designing a few basic RPM models from which applicants could choose; creating a database of cleared rights; creating a centralized access point interface within each TLD allowing trademark owners to choose which RPMs to participate in, with direct billing provided. *INTA (8 April 2009)*. All applicants should be required to submit a detailed plan of their pre-launch and post-launch RPMs, specifically: the sunrise or challenge mechanism; character string requirements, charter enforcement, eligibility cut-off dates; usage requirements; if there will be a premium names scheme and if so its process; how the maintenance of community IDs will be monitored; how applications will be selected, appeals or reconsideration processes, and cost to rights owners of participation in the RPMs. RPMs should be graded the same way as the Technical and Financial capabilities, and applicants with low RPM scores should fail. *MARQUES (13 April 2009)*.

Rights Protection Mechanisms—Fundamentals for Addressing Trademark Concerns.

Fundamental RPMs include:

- 1 A no-cost or low cost expedited suspension mechanism on a “loser pays” model to combat cybersquatting;

2 Creation of a gTLD Reserved List for global trademark owners for names of new gTLDs and at the second level within each new gTLD; the list should be available to those showing that their marks historically have been subject to cybersquatting and not be turned into a list of famous or well-known marks. The list should minimize or remove the need for defensive registrations of key trademarks;

3 Post-delegation dispute resolution procedures as proposed by WIPO, based on “loser pays” and applied to both registries and registrars; the policy should be required by ICANN under each new registry and registrar agreement. Verizon looks forward to a fuller list of mechanisms after completion of the IRT’s work. *Verizon (13 April 2009)*. See also *IACC (13 April 2009)*.

Rights Protection Mechanisms—Standard, Uniform Set. ICANN should develop a standard set of RPMs which are low cost, efficient and uniform across all new gTLDs and which are in place before any new gTLDs are launched. Uniformity is key to avoid burdening consumers and businesses with having to deal with a diverse set of RPMs. *Regions (13 April 2009)*.

Suggested Rights Protection Mechanisms. ICANN and the IRT should consider: (1) an Expedited Remediation Process; (2) an expanded Reserved Names list including marks of rights holders; (3) availability of open, publicly available Whois information with strict proxy registration guidelines; and (4) flexible rights protection mechanisms that can be adopted by new gTLDs. *MarkMonitor et al. (10 April 2009)*. At time of registration, registrants should be provided with a warning that, pursuant to terms of the Registry Agreement, any domain names that infringe on IP rights and are being used in bad faith will be confiscated without refund and returned to the legitimate rights owner and subject to the express remediation procedure. *MarkMonitor (10 April 2009)*.

Rights Protection Mechanisms—Comment. Any approach to RPM that relies on uniform treatment of all SLDs in all TLDs will not work (e.g., the SLD “mcdonalds” must necessarily be treated differently in the .hamburger, .family and .wendys TLDs.). Lists and mandated uniform sunrise rules are not used in other areas of commerce involving IP rights. Pre-usage approval mechanisms will harm TLDs by hindering their ability to service legitimate registrants. *Demand Media (DAG, 13 April 2009)*.

Rights Protection Mechanisms—City TLDs. City TLDs should deploy rights protection mechanisms to protect IP rights of third parties but implementation details should be delegated to the respective community. *City Top-Level Domain Interest Group (12 April 2009)*.

Support for Reserved Names List for Top and Second-Level Domains. LEGO et al. strongly support the suggestion by AT&T in its letter of 15 December 2008 regarding the creation of a list of reserved names for both top and second level domains and agree that such a list could be based on the extent of active use of the trademark, registration in multiple gTLDs or ccTLDs, existence of a verifiable web site and evidence for defensive actions against infringers. (See also the similar suggestions of USTelecom, Microsoft, and the U.S. Chamber of Commerce). Such a

list of reserved names for both the top and second levels will reduce the material negative effects of new gTLDs for brand owners without giving rise to problems for law abiding registrants. In this regard, standard terms and conditions are of course necessary across all new gTLDs. *LEGO et al. (6 April 2009)*. See also *CADNA (13 April 2009)*.

Address the “Trademark Reserved Names” List. In its Analysis of Public Comment document, ICANN refers to the objections to including ICANN names on a reserved names list but fails to address the common theme of those objections which is to be fair and include a “trademark reserved names” list as well. *INTA (8 April 2009)*.

Use Reserved Brand Names Principle in String Confusion Review (2.1.1.1). The principle of recognized brand names for the Reserved Names Review should also apply in the String Confusion Review. In combating abuse at the second level, experience has shown that detrimental user confusion and misrepresentation has resulted from registrations by unaffiliated parties that include strings that are similar to or include recognized brand names. *IHG (Module 2, 9 April 2009)*.

Top-Level Reserved Names List—Financial Sector. To avoid the need for defensive registrations, Regions strongly supports the proposal for a top-level reserved names list that includes certain strings relevant to the financial sector (.bank, .fin, .finance, .banc, .ins, .insurance, .broker) until such time as a representative body of the financial sector makes an appropriate proposal to ICANN. The costs of any challenge are to be borne by the challenger-applicant unless the applicant succeeds in the challenge. If ICANN does not agree to remove financial-type gTLDs from the process, then assurance will be required that any financial sector gTLD registration has both community and regulatory body approval. *Regions (13 April 2009)*.

Dilution Protection. Clarification should be provided on whether dilution-type protection will be afforded without requiring a showing that the applicant’s mark is famous. *AIPLA (13 April 2009)*.

Post-launch—Expedited Takedown for Clear and Blatant Infringement. The optimal protection mechanisms for trademark holders comes after launch with a fast takedown mechanism for clear infringements. Pre-launch lists work poorly for TLDs, and sunrise procedures at launch are a one-time solution. Expedited takedown could also potentially be applied to .com and existing TLDs and it should reduce the ongoing need for UDRPs. (See comments text for specifics of the proposed Expedited Takedown Measure —Demand Media comments at 6-7: complaint via bonded complainer; fee per name to Complainant; complaint assessed by standing judge; notice sent to registrant using existing Whois information if clear and blatant infringement; takedown command directed to registry by judge if no response from registrant within limited period; further judge review if there is response, etc.) The details of this proposal are open to discussion and amendment; goal is to show overwhelming benefits of a takedown procedure for clear trademark infringement, as opposed to other RPMs which have conceptual and practical problems. *Demand Media (RPMs, 13 April 2009)*. Dot Eco LLC supports Demand

Media's rapid takedown proposal. *Dot Eco LLC (13 April 2009)*. See also *Minds and Machines (13 April 2009)*.

At-Launch Sunrise Recommendations. If there is to be a sunrise for new TLDs, it should be separated into two phases: (1) validation phase—with a centralized repository of authenticated and verified trademark holders and their marks, preventing trademark holders from having to be authenticated multiple times at multiple registries; and (2) protection phase—which would allow registries to use the authenticated data to allocate or otherwise protect trademark strings in accordance with their TLD-specific policies. Registries should choose or develop the protection phase method that best suits their TLD, even though the TLD may be open and generic. *Demand Media (RPMs, 13 April 2009)*.

RPMs at Top Level—Balance Needed. The need for defensive TLDs at the top level is very low; it is unlikely an entity will pay \$185K to for example get .microsoft—the applicant would know it would lose the TLD and the fee during the dispute phase. Also, rational applicants will not want to engage in disputes with large corporations with well-known trademarks. *Demand Media (RPMs, 13 April 2009)*.

WIPO Registry Sanctions. There is some merit to WIPO's 13 March 2009 letter to ICANN proposing a graduated series of sanctions on registries with trademark abuse in their TLDs. WIPO does not address key details such as how much abuse, the extent of registry liability and when the sanctions kick in. These details need to be fleshed out if this proposal is to be seriously considered. *Demand Media (RPMs, 13 April 2009)*.

ICANN Reserved Name List—Add Famous Trademarks. Famous trademark holders (shown by a final decision of a court or trademark office in any jurisdiction) should be allowed to add their name to the existing ICANN Reserved Name list. *Visa Inc. (11 April 2009)*. The reserved name list should include trademarks designated as well-known globally. *Hearst Communications, Inc. (13 April 2009)*.

gTLD Reserved Names List for Global Brand Owners. An automatic "Reserve Name List" should be created for global brand owners. To be on the list the global brand owner must have a trademark that is registered in multiple international jurisdictions and at least one jurisdiction must have a stringent review process for registrations. The list database could be run by a third party but ICANN must maintain ultimate responsibility and accountability. It must have an appropriate challenge procedure to seek removal of a name from the list. *MarkMonitor (10 April 2009)*; *MarkMonitor (Module 1, 10 April 2009)*. See also *Hearst Communications Inc. (13 April 2009)*; *COTP (13 April 2009)*; *IHG (Module 2, 9 April 2009)*. ICANN should extend the benefit of a Reserved Names list, which ICANN has given to itself, to globally strong and well-known trademarks, and is hopeful that the IRT may propose a solution based on this concept and that ICANN will support it. *Microsoft (Guidebook, 13 April 2009)*.

Create a Second Level Reserved Names List (specification 5). A second level reserved names list database similar to the reserved names list for gTLDs should be created based upon

submission of trademarks by corresponding rights owners, with a proper challenge procedure for removing any name. Only those rights which have been granted by jurisdictions requiring trademark review and evaluation would be eligible for inclusion in the reserved names list. Only legitimate owners of names appearing in the reserved names list should be allowed to register these domains and variations thereof. *MarkMonitor (10 April 2009)*.

Pre-Launch: Include Global Brands on Reserved Names List. The guidebook should be modified to include a category of global brands for inclusion on the reserve list based on clearly defined objective criteria, and with contract terms in registry agreements requiring all new string applicants to adopt and adhere to this list. If an applicant pursues a name on the reserve list, a dispute procedure should be provided with cost borne by the registry applicant. (See comments text for additional objective criteria proposed.) ICANN itself should use the reserve list to deny third party applications for TLD strings that correspond to or are confusingly similar to reserved brands. A WIPO-operated mechanism for appealing ICANN decisions based on the reserve list should be established. In the application process, “automatic opposition” status should apply to applications for TLD strings that correspond to or are confusingly similar to global brands not yet on the reserved list or which have been otherwise identified after the initial application screening. *AT&T (13 April 2009)*. See also *M. Palage (14 April 2009)*.

At-Launch: Use of Global Brands Reserve List for Second Level; Standard Sunrise Process. The reserve list should also help prevent infringing or confusingly similar third party registrations at the second level. ICANN should mandate a standard sunrise at the second level and the reserve list at the top level should be used to establish eligibility for second level domain sunrise priority rights (but such sunrise protection will not be limited to such names for trademark holders). A centralized credentialing process should be developed by ICANN to allow one stop confirmation of eligibility to participate in the new gTLD sunrise processes and to establish rights in dispute resolution processes. All registry operators should be required to follow and facilitate this standard sunrise approach. *AT&T (13 April 2009)*.

Post-Launch Expedited Takedown. Applicants should be required to implement procedures for rapid takedown of registrations that infringe IP rights. *AIPLA (13 April 2009)*; *Regions (13 April 2009)*; *COTP (13 April 2009)*. A post-launch rapid takedown procedure has much going for it. *Lovells (14 April 2009)*.

Second Level – Expedited Suspension Mechanism. An expedited domain name suspension mechanism is essential to safeguard trademark owners’ interests whether implemented exactly as WIPO suggests or like another model. *MARQUES (13 April 2009)*. See also *M. Palage (14 April 2009)*.

Threat to Olympic Trademarks and Need for Solutions. The concerns of the International Olympic Committee (IOC) about the proposed new gTLD system, including the threatened proliferation of cybersquatting and as expressed in its letter of 5 Dec. 2008, have not been addressed to the IOC’s satisfaction. The IOC should not be put in the position of having to spend time, energy and funds to engage in protracted and costly proceedings to protect the Olympic

trademarks against cybersquatting under the new gTLD system. In addition, the possibility of numerous ambush marketing opportunities by third parties would likely threaten the revenue base of the IOC and other members of the Olympic Movement. Notwithstanding the IOC's continued opposition to the new gTLD project, the IOC strongly suggests and holds ICANN responsible for implementing solutions. Measures such as the "Pre-Delegation Dispute Resolution Procedure" and the proposed WIPO "Post-Delegation Dispute Resolution Procedure" are useful starting points to address higher level responsibility regarding the expected increase in cybersquatting from the new gTLD system. The system should expressly provide effective remedies for trademark owners and a list of reserved Olympic Trademarks, based on the statutory protection afforded to the Olympic Movement which sets it apart from other commercial entities. IOC reserves its right to take action against ICANN for damages resulting to the IOC or Olympic Movement from the implementation of the gTLD proposal. *International Olympic Committee (9 April 2009).*

Cost Shifting from Brand Owner to Infringer. LEGO et al. agree with AT&T in its letter of 15 December 2008, that any costs and fees associated with an infringement should shift from the brand owner to the infringer (See also letter of Corporation Service Company, 15 December 2008, and letter of ITT Corporation, 15 December 2008). *LEGO et al. (6 April 2009).*

Bad Faith Registrations. ICANN should consider a less costly and more efficient IP protection solution that shifts burden of proof from legitimate brand owners to bad faith infringers. The application procedure should initially include due diligence by ICANN regarding serial domain name abusers. During the objection period, the DRSP should have discretion to give strong consideration in favor of brand owners when dealing with repeat offender cases. Brand holders should have the ability to consolidate complaints against the same party to lower costs. *Visa Inc. (11 April 2009).*

Effective Preparation Suggestion re: Trademark and Malicious Conduct Fora. Prior to holding meetings/fora about trademark protection and malicious conduct, it is suggested that a catalog of possible solutions be assembled (e.g., existing practices at gTLD and ccTLD levels) so they can be discussed at the meetings. *A. Abril i Abril, GNSO Transcript at 58 (28 Feb. 2009).* It is important that the forum discussions be highly focused on specific solutions, not just a rehash of what is already known. *C. Gomes, GNSO Transcript at 56-57(28 Feb. 2009).*

Focus on Timing. The forum work and discussions should include a focus on timing –i.e., what can be done pre-registration (e.g., sunrise); at time of registration (e.g., verification and notification) and post-registration (e.g., takedown). *P. Sheppard, GNSO Transcript at 58-59 (28 Feb. 2009).*

Clarification Needed on Cases of Corporate Brand Registry and Subsequent Closing with No Rebidding. Further clarification and thought is needed to cover situation where a company applies for a string identical or confusingly similar to its name, but then decides to shut it down; the guidebook does not seem to have a recognition that this is a unique circumstance and that this type of registry cannot be rebid by ICANN (i.e., rebidding of registry associated with a

trademark and highly identified with a brand would put ICANN at great legal risk). *M. Cade, GNSO Transcript at 69-71 (28 Feb. 2009)*. This concern regarding a shutdown with no rebidding should also be looked at in context of community TLDs. *T. Ruiz, GNSO Transcript at 71 (28 Feb. 2009)*

Clarify Corporate Brands Issue. More clarity is needed on the issue of corporate brands; they don't fit into either the community or open models. *F. Felman, MarkMonitor, GNSO Transcript at 72 (28 Feb. 2009)*.

Second Level Fairness Concerns re: Disputes. Is ICANN considering additional procedures applicable to these new gTLDs for second-level disputes which will either be supplementary or alternative to the existing UDRP? It is unfair and unbalanced to change the rules for second-level disputes in the context of a proposal for expanding at the first level. The way to address that is for a separate comprehensive review of the existing UDRP on its own and not as a kind of tail on this new gTLD dog where only one side's complaints are being really taken into account at this stage. If you are going to have a UDRP for second level post-launch disputes, it ought to be uniform across all TLDs; there shouldn't be some separate or alternative process that applies to new gTLDs. *P. Corwin, Internet Commerce Association, GNSO Transcript at 91-92 (28 Feb. 2009)*. The UDRP by itself could be a subject for a very extensive review to deal with all the problems that have arisen in its application over the last dozen years. We don't want to see far-reaching changes in protections at the second level kind of as an afterthought in the new gTLD process. *P. Corwin, Internet Commerce Association, Public Forum Transcript at 43 (5 Mar. 2009)*.

No Expansion of Rights Beyond Existing Law; Opposition to Trademark Reserved Names List. We need to take care that trademark protection solutions protect existing rights under national and international law and do not give rights in the DNS that don't exist under existing law. *P. Corwin, Internet Commerce Association, Public Forum Transcript at 43 (5 Mar. 2009)*. ICA objects to creation of a reserve list of trademark names as this would provide rights protections beyond the geographic and relevant marketplace limitations of trademark law. *ICA (13 April 2009)*

UDRP Substitution Concerns. ICA also objects to imposition of new rights or procedures to supplant or supplement the UDRP absent extensive consideration of such proposals in a process that ensure consideration of registrant concerns about current UDRP enforcement trends. In particular, WIPO correspondence to ICANN shows that a substantial substitution for and undermining of the UDRP is being put in play in one-sided fashion in the new gTLD process. *ICA (13 April 2009)*.

UDRP Enhancement. Efficient, reasonably priced, standardized mechanisms must be available to resolve second level registration conflicts. The UDRP should be reviewed and enhanced as needed to respond to the planned expansion of the domain name space. New registry agreements should ensure operator and registrar adoption and enforcement of any UDRP enhancements. *COTP (13 April 2009); AT&T (13 April 2009)*. Such mechanisms could include,

e.g., a central list of strings found to be registered in bad faith via UDRP; automated notice to prevailing party of subsequent registration of previously adjudicated string; opportunity to require registrant to demonstrate good faith registration. *IHG (Module 3, 9 April 2009)*.

The gTLD Proposal Opposes the Territoriality Principle; Auction Concern. The new gTLD proposal opposes both the Paris Convention and trademark law principle of “territoriality.” The DNS is international and assigns automatically international rights over the uniqueness of the domain name. No such automatic registration system exists for trademarks. If two valid and legitimate trademark owners apply for the same string, the suggested “string contention” procedures do not answer this problem, and therefore the proposed auction mechanism will take place more often than not. Given the nature of the auction mechanism, trademark owners with a stronger financial basis will prevail over other legitimate mark owners. *NCUC (13 April 2009)*.

The gTLD Proposal Bypasses the International Trademark Law Classification System and Creates “Genericness” Doctrine Problems. The current international system allows multiple identical marks to exist under different classes of goods and services. How will this be addressed? The proposal also does not address the issue of generic names and how it will determine who will have rights upon words—e.g. if a wine company applies for .wine; this contradicts genericness doctrine of trademark law and raises anti-competition questions. *NCUC (13 April 2009)*.

III. Analysis and Proposed Position

Many comments called for enhanced rights protection solutions to address trademark infringement in new gTLDs, including expedited suspension mechanisms, global brands reserved names lists, standard sunrise periods, and post delegation dispute resolution procedures.

Specifically, ICANN was requested to create a trademark registry to be used for all subsequent sunrise periods to eliminate the need and cost to validate rights for each extension launch or new gTLD application process; this registry can be used as a reference for both first and second level registrations. One RPM could be a uniform sunrise process for all new gTLDs whereby trademark holders could at very low fees register domain names before the general public. An alternative would be a form of protected name registry (centralized database overseen by ICANN) allowing trademark owners and certain other community representatives to apply to have their trademarks or relevant strings placed on the reserve list.

It was suggested that a less costly and more efficient IP protection solution that shifts burden of proof from legitimate brand owners to bad faith infringers be considered.

One comment noted that the current international system allows multiple identical marks to exist under different classes of goods and services and proposals should address the issue of generic names and who will have rights upon words.

It was also noted that ICANN needs to take care that trademark protection solutions do not give rights in the DNS that don't exist under existing law.

The implementation issues associated with protection of trademarks are complex and require additional analysis to develop a robust solution that is both practical and cost effective. As described above, public consultations will evaluate the recommendations developed by the IRT, and alternative proposals from the public consultations and comment periods, in order to develop solutions that reduce the burden on brand holders in policing infringing registrations in new gTLDs. The solution should be narrowly tailored wherever possible to address concerns that the new rights protection mechanisms should not expand the rights currently available to brand holders under international trademark principles.

ICANN notes the substantial and significant work of the IRT in developing solutions to address trademark protection issues. The work includes several substantive and detailed implementation recommendations. These proposals will be considered specifically in ensuing consultations. The recommendations can be read at https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:200904281.

The recommendations include (as explained in the report):

- IP Clearing house, Globally Protected marks and associated rights protection mechanisms, and standardized pre-launch rights protection mechanisms,
- Uniform Rapid Suspension System,
- Post-delegation dispute resolution mechanisms at the top level,
- Whois Requirements for new TLDs, and
- Use of the algorithm in string confusion review during initial evaluation.

While it is anticipated that the proposals will not be adopted verbatim or necessarily as a complete set, they represent an extremely well thought out set of proposed solutions for serious consideration and it is anticipated that the Guidebook will reflect all or most of this work.

The unique issues raised by the financial industry merit additional evaluation and consideration. Because of the increased risk of identity theft and abusive registration targeting the financial industry, ICANN will carefully review the recommendations proposed by the APWG and other industry groups to develop solutions to address malicious abuse in new gTLDs.

TLD DEMAND & ECONOMIC ANALYSIS

I. Key Points

- The economic analysis published to date describes benefits of expanding the domain space.
- The report is being augmented to map more closely to the questions originally set out by the Board and indicate the importance of determining demand for new TLDs.

II. Summary of Comments

No public demand. The public has spoken loud and clear. New gTLDs are not wanted or needed. As stated in the “ICANN at a Crossroads” report, ICANN should constrain itself and do what it is intended to do since its inception which is make sure that the Internet’s technical infrastructure works properly. *D. Harris (29 Mar. 2009)*. Registration statistics, comments from the U.S. Dept. of Justice and the distribution of UDRP cases all demonstrate user preference for legacy gTLDs. New TLDs are sub-prime. Consumers are not driving the demand for more gTLDs. New gTLDs have been added successfully to the root but they have neither increased user satisfaction nor solved identified problems. Trademark owners have felt the pressure to make defensive registrations. Now we are poised to do the same thing over again. *K. Ryan (13 April 2009)*. Additional TLDs are not needed at this time. It is not ICANN’s role to dictate policy but to moderate and build consensus among Internet users. Since the vast majority of Internet users oppose any effort to introduce new TLDs it would make sense for ICANN to acknowledge this and act accordingly. *Khamma Group LLC (13 April 2009)*. There is no evidence to suggest that new TLDs are in fact needed to promote competition and choice. *NBCEP (13 April 2009)*.

Demand study needed; cancel 2009 launch. We ask ICANN to conduct broader, global public studies to validate its assumptions about the demand for these new TLDs. To allow more time for this research, the 2009 launch of the new TLD program should be cancelled. ICANN may ultimately find there is no need for new TLDs to exist since .com has been and continues to be the dominant extension among users. *Visa Inc. (11 April 2009)*. Do not dilute the current gTLD pool, there are still a lot of excellent .coms to purchase; the new proposal will bring more ICANN revenue but create problems for everyone else; as in case of .biz and .info, more suffixes doesn’t instantly generate more relevancy. *C. Gelinias (13 April 2009)*.

Need to justify demand. ICANN has not yet provided meaningful data on consumer demand/need or offered a satisfactory consideration of the potential exposures to consumers and brand owners that could arise from the gTLD program’s implementation. ICANN needs to commission and publish an in-depth and neutral scholarly analysis accompanied by thorough fact finding on all the key issues. Anything less is inadequate to justify an undertaking so massively transformational to the Internet and world commerce. *ANA (12 April 2009)*. Whether new gTLDs are needed in the first place should be extensively evaluated. *COTP (13 April 2009)*.

See also *Lovells (13 April 2009)*. Version two of the guidebook did not address the request that ICANN examine seriously for whose benefit the proposed new gTLD round is being launched. The need for the new gTLDs has not been adequately substantiated and as currently scoped presents serious concerns for consumers and brand owners. Launch should be delayed until strong need for more gTLDs is demonstrated with adequate safeguards in place to prevent exploitation of others' brands and consumer confusion and harm. *Time Warner (13 April 2009)*. See also *Hearst Communications, Inc. (13 April 2009)*. A majority of MARQUES members question the value of expanding gTLDs, and have great concern that the new gTLD program will increase administrative and financial burdens for trade mark owners. *MARQUES (13 April 2009)*. See also *AIPLA (13 April 2009)*. Based on industry consultations, there is no demand for new community-based gTLDs in the financial sector. ICANN has not squarely addressed the majority of first round comments, which were against the launch of new gTLDs. ICANN has failed to show that the benefits of new gTLDs outweigh the costs and risks to consumers and businesses. Launch should be suspended until such time as the program can be entirely reconsidered. *Regions (13 April 2009)*. There is still a lack of assessment of the need for any new gTLDs that offer a clearly differentiated domain name space with mechanisms in place to ensure compliance with purposes of a chartered or sponsored TLD. *SIIA (13 April 2009)*.

TLD Justification. Each applicant should provide a detailed analysis justifying a request to establish a new TLD, identifying any risks to health and safety of consumers, the impact on Internet stability and any economic benefit of the new TLD. The current global recession should be treated as a presumption that strongly weighs against any widespread introduction of new gTLDs. *Verizon (13 April 2009)*.

Expand the DNS in a controlled fashion and for specific reasons. Any DNS expansion should be done in a controlled fashion where the clear benefits of expansion far outweigh the attendant costs to Internet users and be done for specific reasons, such as: careful introduction of country-specific IDNs to meet the Internet demand in non-ASCII characters, especially for emerging markets; or expansion of the DNS to include gTLDs that are specific to certain groups or communities, provided that such gTLDs have up-front verification mechanisms to ensure that registrants meet all enunciated registration criteria and have rights in the second level domain they wish to register. In contrast, there is no need to expand the pool of open TLDs beyond those entered into the root in previous rounds of expansion. *Yahoo! (13 April 2009)*. Regions would support a very limited rollout of new gTLDs (an option which ICANN appears already to have rejected). *Regions (13 April 2009)*.

The new gTLD program is necessary and beneficial. The .com namespace is overcrowded. Opening up the TLD space will allow registrants, for the first time, to be able to obtain reasonable domains at a reasonable price. It will also allow legitimate trademark holders to own their own trademark in a TLD that is relevant to their industry. Domain holders will self designate under top level domains as the process rolls out (e.g., United Airlines might own united.air; United Van Lines might own united.vans). The plan will help consumers. For example with the addition of a top level ".eco", users and search engines can differentiate between sites with an ".eco" labeling that aim to serve an eco-friendly purpose, versus other sites. The new

TLDs will focus the meaning of URLs—as opposed to creating confusion, as some have claimed. *Dot Eco (13 April 2009)*.

Demand for new gTLDs exists and competition to .com will emerge from new gTLDs. We cannot support comments that claim there is no demand for new TLDs or those that assert that there is little probability of successful competition to .com market predominance. Competition will evolve as a consequence of many new TLDs in the aggregate (and has begun with .mobi which may become the de facto domain for the mobile environment). *e-COM-LAC (13 April 2009)*. The new TLD process will bring innovation and competition to the DNS in a responsible and controlled manner. *Demand Media (DAG, 13 April 2009)*.

Support for Expedient introduction of new gTLDs. The At-Large Advisory Committee agrees with and supports the expedient introduction of new gTLDs especially those offering support for IDNs. A number of components of the proposed policy present unnecessary barriers to entry for the broadest possible variety of gTLD applicants. *ALAC (19 April 2009)*.

Economic Report Lacks Analysis of gTLD Impact on Emerging Countries. The economic report does not analyze the impact of the new gTLD program on emerging countries (e.g., in Africa, Latin America, Mexico). Many emerging countries are concerned about the new gTLD impact on e-crime and the ability to deal with it. Emerging countries concerns need to be studied to ensure that the new gTLD program does not further the digital divide. *A. Mack, AM Global, Public Forum Transcript at 28-29 (5 Mar. 2009)*.

Economic Report generally lacks analysis; need for comprehensive study. The economic statements are not analysis documents, but rather are statements (i.e. position papers). Are we getting a real economic analysis funded by ICANN or must the community fund and do the economic analysis it asked for? *M. Cade, Public Forum Transcript at 39-40 (5 Mar. 2009)*. The reports fall far short of the comprehensive economic analysis that helps ICANN identify how to structure the rollout of new TLDs in a manner and pace that will most likely result in increased competition and choice. The posted reports do not meet the criteria for this study set by the ICANN Board more than two years ago. ICANN should commission a comprehensive economic study; its results must be fully considered by the ICANN community before this overarching issue can be considered resolved. *Time Warner (13 April 2009)*. See also *3M Company (15 April 2009)*. ICANN should make clear that the new gTLD application window will not be opened until it has commissioned, received and published an economic study responsive to the Board's October 2006 directive with reasonable opportunity for public review. Such an approach would not be incompatible with carrying through the IDN ccTLD fast track initiative and perhaps even a limited launch of other IDN gTLDs. *COA (13 April 2009)*. See also *AIPLA (13 April 2009)*. No clear plan has been presented for how more work will be done on the overarching issue of "demand and economic analysis." *IPC (13 April 2009)*.

Economic report is seriously flawed in its gTLD pricing analysis. The report is more in the nature of an opinion piece and the analysis of price caps and pricing issues is deficient. *ICA (13 April 2009)*. See also *COTP (13 April 2009)*.

Economic report fails to answer basic cost questions. The economic study fails to answer basic questions such as what value registrants place upon their domain names, the level of switching costs, and what the true cost of providing domain registry services is. ICANN fails to explain why domain registration costs at the wholesale level are going up toward \$7/year and beyond (and not facing competitive tenders) whereas comparable services for toll-free 800 numbers cost only 10.49 cents/month and have been going down. These are very similar technologically, central databases of comparable size with first-come, first serve allocation methods, deletions, registration records, etc. Internet domain name databases arguably have even lower costs operationally relative to the telephone system. *G. Kirikos (7 April 2009)*. ICANN should abandon the March 2009 economic study; it fails to answer any of the questions the Board put to ICANN staff in October 2006. ICANN has not yet made a cogent and defensible case about the economic effect of DNS expansion as proposed in the draft guidebook, and ICANN must do so before moving forward. *Yahoo! (13 April 2009)*.

More complex economic analysis needed. The report on competition and pricing is too generic and does not reflect the complex economics of the DNS. SIDN therefore does not comment on the report since this topic needs careful consideration which is not stimulated with such a generic economic approach. SIDN looks forward to providing comments on a more detailed and funded analysis of the economics of the DNS and the impact on it of introducing new gTLDs. *SIDN (14 April 2009)*. ICANN needs to complete the “full market” economic analysis as represented by ICANN’s President and CEO at the October 2006 annual ICANN meeting. Failure to do so calls into question the entire foundation upon which ICANN has based the new gTLD process; it is a condition precedent. *M. Palage (13 April 2009)*, citing reference article “*ICANN’s Economic Reports: Finding the Missing Pieces to the Puzzle*”). The report has fatal flaws; it lacks empirical data and other academic rigor sufficient to support its conclusions and should be set aside. A new comprehensive empirical study of the domain name marketplace should be undertaken. *COTP (13 April 2009)*. Version 2 also lacks a requisite economic and demand basis for the major undertaking of rolling out new gTLDs. Based on public actions to date, ICANN staff have not carried out the directive of the ICANN Board on this matter. The study is insufficient to answer the Board’s questions or to serve as a basis for evaluating the effect of increasing the number of gTLDs before proceeding. *SIIA (13 April 2009)*. The two reports ICANN issued after release of version 2 of the guidebook seeking to address consumer benefits and the lack of need for price caps are based on unproven and untested assumptions. *AT&T (13 April 2009)*. Economic analysis should not be confined to the issue of predicting TLD demand but rather to identifying through analysis of available data how the new gTLD rollout can be implemented in a way that maximizes competition and increased choice for consumers; comprehensive analysis of the market—as requested by the Board in 2006—is needed before the new gTLD launch proceeds. *eBay (13 April 2009)*.

Independent economic study of the market. ICANN should pay for a truly independent economic study of the market (instead of commissioning an economic advocacy paper designed to support its wish to rollout new TLDs). In view of this market analysis it could be determined whether the goal of the scheme is proportionate to the potential effects of new TLDs on

consumers and business owners. In addition, it may show that a gTLD expansion (if any) should be limited until adequate, low or no-cost safeguards are in place to protect consumers, businesses and brand owners from brand abuse, confusion and cyber fraud threats. *European-American Business Council (1 April 2009)*. See also *Regions (13 April 2009)*; *COTP (13 April 2009)*.

Economic study does not global demand or economic impact on registrants. A study that evaluates global demand and accounts for the current global recession would be more appropriate; it might suggest that ICANN launch a program isolated only to IDNs or geographic-based TLDs that are supported by a significant community demand. *MarkMonitor et al. (10 April 2009)*.

III. Analysis and Proposed Position

ICANN appreciates the comments that it has received with respect to the question of demand and the effect of demand upon the new gTLD program. Some of the comments ask ICANN to provide further economic analysis to support a demand for new gTLDs, while other comments suggest that such demand already exists and that no further study is needed. Some of the comments also ask ICANN to commission the economic report that the Board requested in October 2006 in conjunction with other matters.

On March 4, 2009, ICANN posted two reports written by Dennis Carlton, a professor at the University of Chicago and the former chief economist for the United States Department of Justice Antitrust Division. In those reports, Professor Carlton set forth his preliminary views that new gTLDs would enhance consumer welfare in a number of areas, in particular by decreasing prices, increasing output, and increasing innovation.

ICANN has asked Professor Carlton to supplement his work by addressing the comments that ICANN has received on these topics. ICANN intends to post the results of Professor Carlton's work prior to the Board Meeting in Sydney.

POTENTIAL FOR MALICIOUS CONDUCT

I. Key Points

- As the level and sophistication of malicious conduct involving the DNS increase, the processes for combating it must evolve and match those increases in scale. ICANN agrees with the commenters that have recommended that it should enable and promote the development of more efficient processes for mitigation through the incorporation of additional provisions within the registry contracts and registrar accreditation agreements.
- The addition of new gTLDs provides an opportunity to improve the current mechanisms and the enforcement of contractual requirements for implementing those mechanisms.

II. Summary of Comments

Working Group. ICANN should initiate a process similar to the IRT to identify best practices and mandatory rapid response and remediation procedures to minimize consumer harm from fraud and malicious conduct. *AT&T (13 April 2009). IHG (Module 5, 9 April 2009).*

Impact of More TLDs. “About the amplification of malicious conduct, I think malicious conduct is doing very well right now with all the TLDs that are currently in operation. I [fail] to see how adding more TLDs will compound this problem. I think you have to solve malicious conduct. And perhaps if you look at one of the main vehicles for this, which is spam, that’s one thing you could probably look at, but I really don’t see how adding these – adding a new round of TLDs will increase or severely aggravate this type of conduct.” *T. Harris, GNSO Transcript at 57 (28 Feb. 2009).*

Effective Preparation Suggestion re: Trademark and Malicious Conduct Fora. Prior to holding meetings/fora about resolving trademark protection and malicious conduct concerns, a catalog of possible solutions should be assembled (e.g. existing practices at gTLD and ccTLD levels) so they can be discussed at the meetings. *A. Abril i Abril, GNSO Transcript at 58 (28 Feb. 2009).*

Increased risk of fraud and other malicious conduct. The new gTLD proposal will escalate fraudulent and/or malicious activity, particularly through use of Internet domain capture and brand impersonation. The proposed extension of the gTLD space threatens to increase the burden on consumers and service providers without addressing the structure for management of web domains to offset these risks, to the detriment of consumers, businesses and the Internet as a whole. To address this ICANN should consult more widely with the Internet business and consumer communities and with consumer organizations in all of the major geographic areas to assess and address the impact of imperfect domain management on these stakeholders. *P. Taylor, Bradford & Bingley (5 April 2009).* The proposal could escalate fraud (e.g., phishing, pharming) and other malicious activity and further erode public confidence in

the financial sector at a time of general instability. *Regions (13 April 2009)*. Concrete steps have not yet been taken to advance efforts to identify, analyze, and make recommendations on the critical issue of malicious conduct, which must be done before a full rollout of new gTLDs can be undertaken. Malicious behavior using false or misleading domain names costs industry as well as society and consumers billions of dollars in efforts to prevent phishing, false domain resolutions, fictitious identities and other malicious behavior. *SIIA (13 April 2009)*.

Community outreach encouraged. eBay looks forward to learning more about how ICANN plans to address the third and fourth “overarching issues.” Our companies have considerable expertise and experience regarding security and stability issues, and especially with regard to the fight against phishing and other online misconduct, fraud and criminal behavior. We hope that ICANN’s approach to these issues will be outward-facing and will take advantage of the considerable community resources available. We commend ICANN for reaching out to the Anti-Phishing Working Group for its assessment of the risks of increased criminal abuse in the new gTLDs and how this risk might best be mitigated. This is a good first step. *eBay (13 April 2009)*.

Security and stability threat. INTA views malicious conduct as a threat to the security and stability of the Internet as a commercial marketplace and addressing this issue must be afforded equal weight with the technical security and stability issue. *INTA (8 April 2009)*

Evolving Risks to Health and Safety of Consumers Require Analysis; Burden on Brand Owners. Brand abuse and online fraud will likely increase exponentially upon introduction of hundreds or thousands of new gTLDs. Domain name abuse problems are growing both in numbers of incidents and in complexity and ingenuity of the attacks. Consumers are the ultimate victims, suffering loss of time, money and even health and safety. While the risk may be mitigated by the mechanisms to be proposed by the IRT and adopted by ICANN, the tangible and intangible costs of policing and remediation of top-level and second-level strings will continue to be shouldered by brand owners. *MarkMonitor et al. (10 April 2009)*.

Standardize Measures Against Abuse (question 43). ICANN should mandate measures to mitigate abuses so that they can be fully vetted and standardized. Allowing registries to define their own policies for policing, managing and remediating is too vague. There appears to be industry support for a group like the IRT to assist in establishing and developing draft proposals, including an effective mechanism for insertion in registry contracts to deal with malicious conduct. *MarkMonitor (10 April 2009)*. Instead of allowing each registry to define policies against abuses which would be inefficient and confusing, ICANN should create standardized mechanisms against abuse, including the adoption of the post-delegation dispute resolution procedure suggested by WIPO. In addition, outside of the de-accreditation process, ICANN should explain how it intends to improve its own internal compliance activities to deal with future registry and registrar abuses. ICANN must ensure there are adequate means to issue sanctions and punishments to any registry or registrar that engages in unlawful activities. *Verizon (13 April 2009)*. If the IRT recommends the adoption of standardized measures to serve as a “floor” then Microsoft would endorse such a recommendation. *Microsoft (Guidebook, 13*

April 2009). Consideration should be given to the WIPO post delegation dispute resolution proposal. *COTP (13 April 2009)*.

Strong controls on registries, registrars and registrants help prevent malicious conduct. Such controls would include an effective methodology to identify all irresponsible parties and rapid and strong action by ICANN against any party shown to be undertaking or facilitating malicious activity, as well as protection against abuse such as web browser and email security requirements. *BITS (13 April 2009)*.

III. Analysis and Proposed Position

Comments suggest that increasing the numbers of TLDs will multiply the opportunity for, and the conduct of, malicious actions. Without much thought, this is obviously true in a set of scenarios. In other cases, increasing the number of top-level domains will serve to decrease opportunities for malicious conduct. Many types of this conduct depend upon the existence of large registries. As the distribution of registrations is spread across more registries, the payback for some of the malicious conduct models decreases. Also, as trademark holders brand their own TLD, consumers will become accustomed to visiting that site rather than the current “brand.tld” model. Since the brand owners will be able to restrict registrations, they can naturally prevent opportunities for malicious conduct. Finally, as the number of TLDs increases, users will rely more on search, denigrating models that depend on typos and URL random searches.

Having said that, the comments recommended that ICANN: 1) establish formal mechanisms to mitigate malicious conduct; and 2) institute a group, similar to the Implementation Recommendation Team (IRT), to oversee the implementation of those mechanisms.

The comments received do not specify which specific types of malicious conduct nor describe scenarios that would cause the most concern but several mention phishing, pharming, spam and other conduct that takes advantage of user confusion and similarity within domain names.

While ICANN did not receive the highest volume of comments on the issue of the potential for malicious conduct on the Internet, this subject is of concern and comments are taken seriously, especially giving ICANN’s stability and security mission. Malicious conduct—such as spam, phishing, fraudulent email, the distribution of malware and the control of networks of compromised computers (botnets)—primarily victimizes end users who are not as well represented by organized groups as other stakeholders in the public comment process.

Most comments concern the types of malicious conduct which would take advantage of potential user confusion surrounding domain names. Most of the current criminal activities which take advantage of domain name confusion (e.g., phishing, pharming, fake pharma) take advantage of second level names and do not appear to be linked to numbers of or specific strings of top level names. Most studies report that phishing and pharming are concentrated within a relatively small number of TLDs and take advantage primarily of confusion at the

second level. The most recent additions of new generic TLDs in 2001 and 2002 (.biz, .info, .name, .pro, aero, .coop, and .museum) were not accompanied by notable increases in phishing using those TLDs.

The use of the DNS for general malicious conduct (to propagate malware or control bot networks) is already expanding significantly without the addition of new TLDs. Efforts to combat or mitigate many forms of malicious conduct are not necessarily hampered by the total number of TLDs involved but rather by the number and nature of the registries and registrars involved. The recent example of the Conficker worm illustrates this point. This worm utilized a large number of pseudo-randomly generated domain names to obfuscate its points of control. Effective collaboration to combat the spread of this worm was ultimately complicated not so much by the total number of domain names involved or generic TLDs utilized but instead by the involvement of ccTLDs with smaller, independent registries, without contractual obligations to adopt DNS-wide stability / security measures.

Efforts to control future malicious conduct similar to conficker will be complicated but are likely to be less dependent on the total number of gTLDs than on the number of registries and registrars managing them and how well those bodies are governed by ICANN. The addition of new gTLDs, if managed properly, should pose less concern for potential malicious conduct than more autonomous ccTLD names currently pose. If stronger compliance measures are implemented for new gTLDs, overall improvements in mitigating abuses involving gTLDs should be possible. However, no such potential advantage exists for improving controls over domains within ccTLD operations.

ICANN has been criticized for failing to adequately control current levels of malicious conduct using the compliance mechanisms currently available. Multiple contributors propose that ICANN form a group similar to the IRT to implement controls over registries and registrars. These contributors believe the IRT has acceptance as an effective model for the monitoring and auditing of these bodies.

The addition of new gTLDs provides an opportunity to improve the current mechanisms for enforcing compliance. As the level and sophistication of malicious conduct involving the DNS increase, the processes for combating it must evolve and match those increases in scale. ICANN agrees with the commenters that have recommended that it should enable and promote the development of more efficient processes for mitigation through the incorporation of additional provisions within the registry contracts and registrar accreditation agreements. This process should consider a wide range of possible options and additions to those contracts and attempt to gain consensus for the most effective choices.

The recommendation by some commenters to form a group similar to the IRT for the purpose of overseeing implementation of these measures is a logical one. The practicality of forming such an organization is not clear. The constituents of the IRT are corporations and partnerships representing stakeholders with strong financial interests in protecting intellectual property. An 'IRT' for malicious conduct issues (such as phishing, spam, fraud and distribution of malware)

would not have as clear a constituency. It would probably be comprised of security organizations and associations representing those with the greatest financial stake in reducing spam, phishing and the spread of malware.

The overall level of malicious conduct on the Internet and the forms of malicious conduct that utilize the DNS both appear to be increasing. ICANN agrees with the commenters that it should make every effort to establish mechanisms, such as new provisions in registry contracts and the Registrar Accreditation Agreements, to mitigate this conduct.

As an alternative to the formation of a single working group, process improvements can be developed by consulting with several existing groups dedicated toward the same purpose. ICANN has solicited the participation of several organizations concerned with DNS stability and security and, in particular, with preventing malicious acts. ICANN requested and received preliminary studies by the Anti-phishing Working Group (APWG) and the gTLD associations that address similar concerns – e.g. RISG. Those reports will be published when the groups writing them deem them ready. Other groups are being consulted, such as FIRST, and companies that are primary targets of attack that have instituted comprehensive security and preventative measures.

The preliminary reports indicate several areas where changes might be implemented immediately (i.e., included in the next version of the Guidebook:

- Background checks to determine if applicants have criminal records or a pattern/practice of cyber-squatting or other malicious acts,
- Facilitating the creation of security-specific TLDs that adopt stringent safe-guards,
- Implementation of standardized rapid take-down procedures,
- Consideration of heightened requirements for registrar accreditation,
- Amendment of Whois practices – e.g., requiring thick Whois, implementation of IRIS databases to facilitate universal understanding of Whois information in different languages, and
- Requiring removal of glue records for deleted registrations that can be used for phishing attacks.

ROOT ZONE SCALING

I. Key Points

- The study currently being commissioned through RSSAC and SSAC should answer key substantive questions about the effects of the coincident introduction of new TLDs, DNSSEC, IPv6, and IDNs on the DNS infrastructure.
- Secondary effects on other facets of the network and its usage are being considered and addressed in other fora.

II. Summary of Comments

Security and Stability. It must be ensured that the introduction of new gTLDs, including internationalized domain names, will not put at risk the security and stability of the DNS. *J.A. Andersen, Director General, Ministry of Science Technology and Innovation, National IT and Telecom Agency, Denmark (2 Mar. 2009)*. The Czech Republic recommends the reconsideration of the whole process of the introduction of new gTLDs and that an analysis be carried out which would confirm that the stability and security of the DNS system will not be endangered by this process. *M. Pochyla, Ministry of Industry and Trade of the Czech Republic (10 April 2009)*.

Scope of study. Conduct a high-integrity study from a truly neutral company on the potential effects of introducing new gTLDs on Internet stability and massive consumer confusion. *Worldwide Media, Inc. (13 April 2009); J. Seitz (11 April 2009)*. Security and stability, identified as an overarching issue, has received less than adequate attention by ICANN in the context of the new gTLD proposal. The focus on implications for the root zone operations is too myopic given the fundamental changes likely to result from the dramatically expanded approach to bringing new gTLDs online. The effect on the root zone is just one of the key areas touching on the concern regarding security abuses scaling with more TLDs. Broader and thorough review is needed (including assessing implications for many commercial and noncommercial operations which act as key facilitators of DNS distribution), with due regard for the increasingly complex and threatening environment in which security over the Internet takes place and for how stakes and risks have been raised in the current period of global economic uncertainty. *SIIA (13 April 2009)*. What has not been and should be addressed is how simultaneous introduction of vast numbers of gTLDs, IDNs, IPv6 transition and the DNSSEC will affect the larger ecosystem of Internet intermediaries (e.g. network operators, ISPs and web hosting entities). *AT&T (13 April 2009)*. It is unclear whether many of the technical concerns Microsoft raised in its prior technical comments will be considered within the scope of the SSAC and RSSAC joint study. ICANN should provide further clarity on the manner in which questions will be gathered and catalogued concerning the scaling-up of the root and whether those questions will be answered in this study. Microsoft reserves further comment until the results of that study are made available. Microsoft also welcomes ICANN's acknowledgement that registrant protection and

avoidance of end user confusion are security and stability issues. *Microsoft (Guidebook & Technical, 13 April 2009).*

Registry failures. ICANN needs to have a plan to deal with the possibility of multiple registry failures and conduct further analysis of associated risks to DNS stability and security. *AT&T (13 April 2009).*

Security and stability—financially-oriented sites. ICANN should compel registry operators of such sites to create and operate them only if they adhere to a minimum set of security requirements, including DNSSEC; controls over registry operators such as a limited number of registrars, background checks, approval by regulatory authorities and by the financial community; and other controls over registrars and registrants. The concept of security should extend beyond security of the DNS itself and also cover other situations involving inappropriate security or fraud risks. *BITS (13 April 2009).*

New gTLD proposal will cause instability and be harmful. ICANN, the DOC and the DOJ should review a paper about new TLDs written in 2004 by the W3C Technical Architecture Group and Tim Berners-Lee (<http://www.w3.org/DesignIssues/TLD>) which resonates about the instability and harm that could flow from the massive introduction of new gTLDs. *G. Kirikos (9 April 2009).* This unlimited TLD proposal should be shelved; the Internet does not need “innovation” but does need stability. Continuing to push for this TLD proposal will threaten the stability of the Internet and further undermine the public’s confidence in ICANN’s decision making and loyalties. ICANN is failing to address the core criticisms and concerns contained in the public record because the problems posed by the TLD proposal are insurmountable. *M. Menius (10 April 2009).* See also *R. Jackson (11 April 2009).* At some point the number of extensions will cause mass confusion, and the DNS system will be unmanageable for users, domain holders, website owners and trademark holders. *Worldwide Media, Inc. (13 April 2009); J. Seitz (11 April 2009).*

Impact on Security. Quadrupling the name space will only exacerbate the inadequacy of ICANN’s existing resources to police the domain name space for problems. Administration of the Internet and cyber security are inversely related – less oversight means more security issues for consumers and businesses. *European-American Business Council (1 April 2009).*

Scarcity of IP Addresses. The introduction of an unlimited/unknown number of new domain names does not seem to take the scarcity of IP-address resources into consideration. *J.A. Andersen, Director General, Ministry of Science Technology and Innovation, National IT and Telecom Agency, Denmark (2 Mar. 2009).*

Technical concern: is there major software support for new TLDs. Has ICANN communicated with any of the larger software providers (e.g., Microsoft, Mozilla) and major e-mail services to ensure they support the addition of new TLDs? If they are not willing to support these in a timely manner, it renders the entire new TLD process useless, which could be detrimental to long-term Internet stability and operation. ICANN must enter dialogue with these organizations

and create standards for adding new TLDs to software and other programs prior to such a massive expansion of new TLDs (re: Module 1, 1.2.3). *A. Allemann, DomainNameWire.com (6 April 2009).*

Interoperability concern. In Section 1.2.4 ICANN stresses that although it will delegate the TLD, this cannot force software manufacturers to support that TLD. ICANN needs to accept that its core mission statement is to make the Internet interoperable, stable and secure. If ICANN is not prepared to work with new gTLD applicants to ensure that their new TLD is accepted top down, then this questions ICANN's entire mission statement and the new gTLD program. If ICANN wants to pursue new gTLDs on such a vast scale, then it has to accept, plan and budget for work across the community to ensure their acceptance keeps the Internet operable. *M. Mansell, Mesh Digital Ltd. (2 Mar. 2009).*

III. Analysis and Proposed Position

Ensuring security and stability of the Internet as a whole as the number of TLDs grows was a major concern in many of the comments. One comment went as far as to state that the "Internet does not need "innovation" but does need stability" which could be articulated as that innovation should not come at the cost of stability.

With resolution 2009-02-03-04, the ICANN Board asked the Root Server System Advisory Committee (RSSAC), the Security and Stability Advisory Committee (SSAC), and the ICANN staff to study the potential impact on the root zone stability that might arise when IPv6 address records, IDN top level names, other new TLDs, and new records to support DNS security are added to the root zone.

The scope of this study includes all aspects of root zone operations. Root zone operations is understood to mean all aspects of root zone data production, compilation, publication to the root servers, including anycast instances, and serving data from the root servers.

Aspects that are specifically within the scope of this study are:

- Addition of IPv6 to glue records,
- DNSSEC signing the root zone,
- Addition of DS Resource Records to the root zone,
- Addition of IDN TLDs,
- Addition of new TLDs at an accelerated rate and, and
- The impact of accumulated growth of the root zone.

Although changes to the root zone operations may affect user systems such as browsers or may affect local environments, those impacts are outside the scope of this study. They may well merit study in a separate effort.

The work is based upon a detailed terms of reference and the initial report is due in August 2009.

Many of the comments are about the secondary effects that may come from increasing the namespace rather than about how the DNS itself is affected.

Some of the comments are also not directly related to number of additional TLDs but to side effects that could be an issue with any number of additions. Some of these concerns, such as the acceptance of a TLD by software, have already been demonstrated in previous rounds of expansion and have proven not to be a threat to the system as a whole.

Calls for further outreach and study of such side effects of massive expansion run throughout the comments.

The study currently being commissioned through RSSAC and SSAC should go a long way towards answering questions about the effect of introduction of large numbers of new TLDs on the DNS infrastructure. However, it is not designed to answer questions about secondary effects on other facets of the network and its usage.

As a recommended course of action ICANN should continue to catalog all known studies on the expansion of the name space and publish this in a dedicated section of the new TLD site. This would allow the community and other interested parties to more easily find answers to their questions or concerns. It will also allow us to identify places where further study is warranted. Where clear gaps in knowledge are identified, additional independent studies should be considered.

EVALUATION

Procedures

I. Key Points

- The applicant evaluation questions and criteria are intended to clearly describe the information applicants need to provide to ICANN in order for ICANN to conduct the initial and, if necessary, extended evaluation of applications for new gTLD strings. The evaluation process is also intended to be fair and scalable.
- As much as an examination, the evaluation questions and criteria are intended to provide a guide to prospective TLD operators regarding preparatory steps necessary to start and operate a TLD registry.
- ICANN will publish additional information on the evaluators and the selection process, and will provide more detail on the conflicts of interest policy to be followed, after the Sydney meeting.

II. Summary of Comments

Pre-contract review; information re-certification. Given the potential delay between initial application and Transition to Delegation, ICANN should conduct a pre-contract review of each applicant to confirm that all eligibility criteria continue to be met. If material changes are uncovered, then ICANN should have ability to refuse to enter into the Registry Agreement. ICANN should also require that applicants re-certify the information they have provided in their initial application, in particular what is required in Section 1.2.3 of Module 1. ICANN should also state for all stages the responsible person(s) for conducting the pre-contract review and the pre-delegation technical check (Module 5 is silent). *INTA (8 April 2009)*.

Fair evaluation process. If an applicant fails initial evaluation and applies for extended evaluation it should have the option to engage the same panel or choose a different panel. *Zodiac Holdings (13 April 2009)*.

Objection filing (1.1.2.4). BITS is concerned that for applications that go into extended evaluation and are later approved there will be no opportunity to file an objection because the objection period closes after the initial evaluation stage. *BITS (13 April 2009)*.

Who makes decision. More clarity is needed about who will make decisions regarding the need for an extended evaluation. *BITS (13 April 2009)*.

ICANN should take a two-pronged approach to evaluation:

- 1 “Raise the curtain” —provide for greater transparency and stakeholder inquiry of an applicant’s proposed mechanisms to minimize abusive registrations and other activities that affect the legal rights of others—and
- 2 “raise the bar”—increase the criteria for earning a minimum acceptable score on proposed policies to minimize abusive registrations. A passing score of 1 on Q 31 (now Q 43) should only be given to applicants whose proposed mechanisms for minimizing abuses meet registry best practices. The standard for minimizing such abuses is to look at the best practices employed by existing registries or proposed by other registry applicants in the new round of gTLDs. ICANN should consider NetChoice’s specific suggestions for improving the application evaluation process (see comments text for details of proposed implementation and NetChoice version 1 comments). *NetChoice (Module 2, 13 April 2009)*.

Understanding Before Filing an Application the Criteria Used by External Evaluators. ICANN should publish the criteria and information that its external consultants will get so applicants can see what those evaluators are going to see before they apply so they can better judge how many points they might get, whether they would win a dispute, etc. *P. Stahura, GNSO Transcript at 96 (28 Feb. 2009)*.

Proposal re: Right to Operate Translations/Transliterations of the Same Name. This issue was not addressed in the first and second guidebooks. New gTLDs must be generic words and community-based to qualify for the right to operate translations/transliterations of the same name. Specific industry sector or well-defined global community gTLDs that meet the criteria to manage a top level domain space for such defined communities should be given the further responsibility of offering that community a gTLD in whichever languages or scripts individuals in that community wish to use. User confusion must remain a key concern in approving gTLD strings both in ASCII and IDN. There should be opportunity for applicants that intend to use generic words that hold meaning for well-defined/documented communities they represent to offer their constituents IDN options along with ASCII, rather than financially penalizing them as the current guidebook pricing structure does. One manager of single community ASCII and IDN Domain Names better serves registrants. Allowing the charging of potential community based gTLD applicants multiple times by different operators for each additional translated/transliterated ASCII or IDN name will be confusing to registrants and morally and financially offensive. (See comments text for more details of proposal.) *R. Andruff (13 April 2009)*.

IDN/ASCII Equivalents. Applicants must be permitted to apply for more than one string in an application if those other strings are IDN/ASCII equivalents of the base application, and ICANN must only charge the additional cost recovery fees associated with the string evaluation, not a separate application fee for each string. *M. Palage (14 April 2009)*.

Evaluators. The second version of the guidebook contains no selection criteria or qualifications for evaluators. ICANN’s decision to include this information in its 25 Feb. 2009 “New gTLDs: Call

for Applicant Evaluation Panel Expressions of Interest” means it is likely to be read by a significantly smaller population than that which reads the DAGs. *INTA (8 April 2009)*.

Lack of appeal. Whether to proceed to evaluate an application is entirely at ICANN’s discretion with no appeal on any ground, and the applicant has to agree not to challenge the outcome of ICANN’s decision. This contradicts existing common legal practice for organizations serving the public such as ICANN. While ICANN has to limit appeal possibilities to make the process manageable, the right balance between those aspects should be found. In addition, the guidebook lacks information on appeals against decisions of initial evaluation, extended evaluation, objections procedure, contention procedure, board evaluation, and board negotiations. *SIDN (14 April 2009)*.

Conflicts policy. What is the ICANN policy for consultants and suppliers to the new gTLD process. No person or organization supplying such services to ICANN during any part of the process should be involved in any application. *MARQUES (13 April 2009)*. ICANN should publish a policy for evaluators, other contractors and DRSPs, that makes clear that no person or organization supplying consultancy services to ICANN during any part of the process can be involved in an application in any way and that provides a way for applicants to know who will evaluate their application and to challenge them for cause shown. *IPC (13 April 2009)*. Version 2 did not address this need for transparency in the evaluation process. *SIIA (13 April 2009)*; *eBay (13 April 2009)*. See also *Microsoft (Guidebook, 13 April 2009)*.

Dialog with ICANN constituencies and community. ICANN should require contractors and DRSP providers to ICANN to engage in dialog with constituent parts of ICANN with relevant expertise and hold open meetings with the community where they outline draft procedures and receive feedback. *IPC (13 April 2009)*. See also *SIIA (13 April 2009)*.

Pre-Application Opinion. Is there a way for ICANN to provide a pre-application opinion regarding whether or not a proposed gTLD is “too similar to a Reserved Name,” such that the would-be applicant can get a determination from ICANN before filing the application? *F. Hammersley, SAIC (Module 2, 24 Mar. 2009)*.

Application amendment. Section 1.1.1 is unreasonable; considering how complex the process is it is unreasonable to reject an application based on missing documentation. Applicants should be allowed a reasonable timeframe to submit any extra documents. Especially in light of the fees that ICANN is demanding, all serious applications should be given due consideration. *M. Neylon, Blacknight Solutions (13 April 2009)*.

Obligation to update application. Microsoft endorses the new requirement that applicants notify ICANN and submit updated information if previously submitted information becomes untrue or inaccurate. *Microsoft (Guidebook, 13 April 2009)*.

Evaluation fee payment deadline. In terms of the payment deadline, it is impractical for many businesses to make a payment without being in receipt of any form of invoice; a single payment

may not be viable for some of the community applicants. *M. Neylon, Blacknight Solutions (13 April 2009)*.

Electronic filing. Some ICANN language about electronic systems being online and reachable would be helpful (e.g., what if the ICANN servers were undergoing a denial of service attack on the day of the application submission deadline). *M. Neylon, Blacknight Solutions (13 April 2009)*.

TLD Policies Question. There is still a surprising lack of “question in the evaluation regarding the policies the TLD will apply...how the TLD would look...” *A. Abril i Abril, GNSO Transcript at 75 (28 Feb. 2009)*.

Evaluation panel selection procedures; conflicts. There are no published procedures on selecting Comparative Evaluation panelists. ICANN should conduct a conflict of interest check and institute other procedures. *Minds and Machines (13 April 2009)*. Review committees should be chosen in a random fashion to avoid bias and more information is needed on who will be on panels. Conflict of interest guidelines for panels should be published. Panelists should be required to specify and publish conflicts of interest. Review committee members should be reviewed for conflict of interest. Persons with conflicts must be replaced. *Dot Eco (13 April 2009)*. ICANN should clarify how expert panels will be formed, including the Geographical Names panel (e.g. who will sit on panels and how will their performance be monitored). *IPC (13 April 2009)*. For any community-based financial gTLD, the issue of whether the evaluator should have a general knowledge of the financial service industry should be considered; any financial sector gTLD applications should be referred to the appropriate financial sector regulatory and industry bodies. *Regions (13 April 2009)*. The conduct and competency of the external evaluators for .org and later .net redel left a great deal to be desired. While in 2004 there were better evaluators, the scale of the current round makes it possible that less competent evaluators will be selected. *E. Brunner-Williams (Module 2, 14 April 2009)*.

Evaluator requests for more information. It is disappointing that the second version made no change regarding evaluators seeking more information. In cases where information required is not made explicit evaluators should be able to easily identify that and be required to make an explicit request for more information. *RyC (Modules 1-4, 13 April 2009)*.

Limiting Evaluators’ Requests for Further Information; Communications Channels. Providing only one opportunity for clarification (and only upon the evaluator’s request) conflicts with the goal of allowing evaluators to obtain sufficient information to decide applications on their merits. *INTA (8 April 2009)*. Additional exchanges of information should be allowed; the current one exchange limitation is extremely inflexible given the level of commitment made by the applicant. Also, the provision for providing additional or clarifying application information should be amended to allow a more structured communication channel between applicants, evaluators and ICANN. *MarkMonitor Inc. (10 April 2009)*. The one communication limitation certainly will not work with applicants whose first language is not English, and especially since IDN applications are expected. *NCUC (13 April 2009)*. *DotAfrica (Module 2, 12 April 2009)*; *Y. Keren (Module 2, 13 April 2009)*; *L. Andreff (Module 2, 13 April 2009)*. *S. Subbiah (Module 2, 13*

April 2009); D. Allen (Module 2, 13 April 2009). The limitation in 2.2.1 is too strict and will harm achieving diversity in new gTLD applications. S. Soboutipour (Module 2, 12 April 2009).

Fraud Question. Why was there not included a question in the draft application inquiring if the applicant or any of its officers or directors had been found to have committed fraud in the past? K. Rosette, *GNSO Transcript at 80-81*(28 Feb. 2009).

Additional disclosures. Applicants should disclose whether they or their funders have been enjoined from cybersquatting or been found to have violated others' trademark rights. Applicants should also answer the same series of questions as required under the Sponsoring Organization's Fitness Disclosure (see INTA comments text for specific questions). *INTA (8 April 2009)*. In addition to requiring proof that an applicant is legally established and in good standing, thorough investigative checks of applicants are necessary, including board members, executives, and funding sources to identify any involvement in criminal or other wrongful activity associated with the domain name industry by those who seek to control a registry. Applicants with significant or repeated ties to illicit or wrongful activities should not be allowed to proceed. Falsification, misleading or omitted data should result in applicant disqualification or in the case of a delegated registry, a re-delegation. *MarkMonitor (10 April 2009)*. There is no reason not to require disclosure; the ongoing absence of questions about fraud, fiduciary breaches, financial-related crimes, etc., is startling. *Microsoft (Guidebook, 13 April 2009)*.

Applicant's Ethical and Legal Conduct. The initial evaluation process omits consideration of whether the applicant meets minimum standards of ethical and legal conduct; such standards must be considered and met. An applicant with a demonstrated pattern or practice or who has been found liable for cybersquatting, breach of registrar or registry agreements, domain related abuses or other fraudulent conduct should be ineligible to operate a registry. Because the applicant's pattern, practice or liability or unethical, unlawful or fraudulent conduct is not an enumerated basis for filing an objection, this criterion should be included as a ground to be explicitly considered during the evaluation of public comments under section 1.1.3. An application by an applicant that fails to meet minimum standards of ethical and lawful conduct should fail the Initial Evaluation with no possibility of Extended Evaluation. *INTA (8 April 2009)*. The application procedure should initially include due diligence by ICANN regarding serial domain name abusers. ICANN should also evaluate the applicant's commitment to maintaining and enforcing publicly accessible, free, and accurate Whois requirements. *Visa Inc. (11 April 2009)*. The evaluation process should take into account the record of past abusive conduct by the applicant or its associates in the existing or new TLD space. *Time Warner (13 April 2009)*. See also *Hearst Communications, Inc. (13 April 2009)*; *Verizon (13 April 2009)*; *CADNA (13 April 2009)*.

Applicant Legal Record. Being convicted of a crime, on its own, should not disqualify someone from being part of an application, with the exceptions of people convicted of fraud and officers of any ICANN-contracted party that has been de-accredited. *ALAC (19 April 2009)*.

Trademark Question. As part of the initial round of “Evaluation Questions,” a question should be added requiring applicant disclosure of whether it has been involved in any administrative or other legal proceeding, as plaintiff or defendant, in which allegations of trademark infringement of a domain name or cybersquatting (made by or against applicant) have been made, and the applicant should provide an explanation relating to each such instance (similar to SEC reporting requirements of litigation in the U.S.). *INTA (8 April 2009)*.

IDNs Evaluation: Language. Expert panels for all evaluation processes of an IDN TLD must include an expert from the local language community; this should cover initial evaluation, extended evaluation, comparative evaluation and dispute resolution. *CNNIC (13 April 2009)*.

III. Analysis and Proposed Position

A number of commenters are concerned about the Initial and Extended Evaluation procedures, when objections can be filed, whether there should be an appeal process, and how ICANN intends to conduct pre-delegation review.

Several comments addressed the applicant evaluation criteria and questions. Some commenters suggested alternate or additional questions focusing on the applicant’s ethical or legal conduct, involvement in prior cybersquatting cases or trademark disputes, and applicant plans for use of the TLD or procedures to deal with abusive registrations. Including such questions has always been a consideration, The countervailing concern has been the ease with which such criteria can be avoided or gamed by substituting straw man applicants of some other cloaking device. Balancing these concerns, it is appropriate that the process signal that applicants involved in unacceptable prior conduct should not apply and, if they do, they will be excluded. Even if this provision is gamed in the application phase, it will still be effective post-delegation – ICANN recently de-accredited a registrar due to the conviction of an officer. These requirements will be reflected in additional questions in the Guidebook.

Comments also noted that ICANN needed to describe in better detail the selection criteria for evaluators, the criteria to be applied by those evaluators to applications, and the policy for dealing with conflicts of interest among evaluators.

The applicant evaluation questions and criteria are intended to clearly describe the information applicants need to provide to ICANN in order for ICANN to conduct the initial and, if necessary, extended evaluation of applications for new gTLD strings. The evaluation process is also intended to be fair and scalable. It is also intended to guide aspiring registry operators. The Guidebook is really a compilation of the discussion and papers written regarding TLD operation and process over the past 10 years.

One commenter suggested that if an applicant fails initial evaluation and applies for extended evaluation, it should have the option to engage the same panel or choose a different set of evaluators. This was not explicitly made part of the process in the past, as it seemed to work against the goal of a relatively speedy process. There are also safeguards in place – e.g.,

evaluator scores will be 'normalized' before publication to ensure consistency among scores. The scores of all panels on one subject will be compared to ensure consistency of results. However, by and large, there is not an overriding interest to disagree with this request, and to the extent that this point was not made clear, the option to request an alternative panel in extended evaluation will be incorporated into the next version of the Guidebook.

Another commenter asked that ICANN clarify who will make the decisions on the need for an extended evaluation. ICANN will identify the evaluators to be used in the new gTLD program. Decisions will be made based on which aspect of initial evaluation was not successfully passed by the applicant. For example, if the applicant failed technical evaluation, the applicant would have to remedy that section of its application. If an applicant applied for a geographic name and did not include an authenticated letter of support from the appropriate government, it would have to update that section before extended evaluation can be conducted. This extended evaluation process is similar to an appeals process. While the evaluation process does not have an "appeal" per se, the process does afford the applicant the ability to remedy application defects after the evaluation is complete. With the next version of the Guidebook, the process will also allow the applicant to select a panel other than the one that performed the initial evaluation. Therefore, the process already includes many of the hallmarks of an appeals process.

A number of comments focused on the evaluators, ICANN's process for selecting evaluators, the criteria to be used by evaluators and the conflicts of interest policy to govern evaluator conduct. ICANN will publish additional information on the evaluators and the selection process, and will provide more detail on the conflicts of interest policy to be followed, after the Sydney meeting.

It was noted that expert evaluators for an IDN TLD must include an expert from the local language community, and that this should cover initial evaluation, extended evaluation, comparative evaluation and dispute resolution. ICANN is in the process of identifying linguistic expertise as part of the applicant evaluation and is examining ways to include representation from the local language community for applications in IDN strings.

Some of these questions might be answered by ICANN's release in April for requests of expressions of interest by companies that might provide evaluation services. The announcement (link below) described the process for securing these services, including that the evaluation process will be open and transparent. The requests defines requirements for evaluation service providers including multicultural / multilingual aspects. Evaluation service providers also will have to address technical aspects of the different evaluation process and the ability to address varying volumes of work. As the process is conducted, additional information will be provided on the process for initial and extended evaluation, when extended evaluation is used, and how information is supplemented from applicants to evaluators. ICANN published the call for expressions of interest for independent evaluators on 2 April 2009 (<http://www.icann.org/en/announcements/announcement-2-02apr09-en.htm>). This announcement included links to further detail on each of the evaluation roles. Explicit in the

posting is the requirement for each potential provider to disclose all potential conflicts. These responses will be publicly posted. ICANN will publish more information following the Sydney meeting on how the evaluation panels will be formed and the criteria to be used by evaluation teams.

The evaluation process is not complete until a pre-delegation check is conducted. That process will ensure that the applicant continues to meet the criteria published in the Guidebook and has undertaken substantial steps to fulfill the commitments to meet the criteria made in the application. ICANN will provide additional detail regarding the pre-delegation check in the third version of the Guidebook.

In conclusion, ICANN intends to update the applicant evaluation questions and criteria for inclusion in the next Applicant Guidebook.

The deadline for expressions of interest in one of the applicant evaluation roles closes on 11 June 2009. ICANN intends to update the community on the process for selecting evaluators during the Sydney meeting.

DNS Stability & String Requirements

I. Key Points

- Two-letter ASCII names will not be delegated as ICANN relies on the ISO-3166 list as the authoritative basis for country-code TLDs. If a two ASCII letter label were to be allocated as a gTLD, it would create the opportunity for future collision between ISO-3166 country-code TLDs and gTLDs.
- Experience has shown that presentation behavior of strings with leading or trailing numbers can be unexpected and can lead to user confusion. As such, a conservative approach is to disallow numerals leading or trailing top-level domain labels.

II. Summary of Comments

Zone file question. An “important” zone file question posed by Joseph Lam was not answered. In this regard, ICANN should state clearly that registries will not be allowed to insert the TLD string alone as an A record or as an MX record in the TLD zone file. *W. Staub (13 April 2009).*

Two character limit exception. HP requests an exception to the two-character limit; it would prevent the company from acquiring “.hp,” putting it at a competitive disadvantage. There should be exceptions and escalated review in cases like this one. HP should also be able to acquire IDNs without the 2-character limit. *HP.com (15 April 2009).* ICANN should accept less than 3 character IDN gTLD applications, especially geographical names. *S. Yanagishima (Module 2, 10 April 2009).*

ISO 3166. The “collision” with ISO 3166 can be solved in a simple way—that ISO 3166 two character namespace is limited, so the IDN provision can be changed so that 2 letter IDN strings visually similar within the ISO 3166 namespace will not be allowed, but any other strings will be allowed. *Y. Keren (Module 2, 12 April 2009).* *L. Andreff (Module 2, 13 April 2009).*

Purely numeric labels. What are the issues involved with that? *E. Brunner-Williams, GNSO Transcript at 98 (28 Feb. 2009.)* In section 2.1.1.3.2, the staff is reasonable in adopting the more conservative view, for the time being. *E. Brunner-Williams (Module 2, 14 April 2009).*

Allow a “.4u” gTLD. The gTLD rules should be changed to allow a .4u gTLD; based on our research there is an inherent desire for a .4u designation. The current process of looking into 1 and 2 character IDNs provides an opportunity to look at this issue. Also, regarding the restriction that a TLD cannot start or stop with a numeric number, this should be changed to allow for a TLD to start with a valid acceptable numeric character. We understand that IETF is removing this except for a numeric 0 or numeric 1. Regarding the restriction that 2 digit TLDs are reserved for country codes, there are no country codes that have a starting numeric digit, and some 2 digit TLDs are not country codes. *R. DeFee (10 April 2009).*

III. Analysis and Proposed Position

The majority of comments in this round were directed at the three character limitations, particularly with respect to CJK script, arguing that

- Risk of confusion between ISO-3166 ccTLDs would be minimal for non-alphabetic strings comprised of less than three characters; and
- Failure to allow fewer than three characters would be problematic for certain cultures and/or business interests.

Two comments indicated clarification is needed for the rationale limiting all-numeric and initial-numeric strings.

Three comments focused on the case where a label consists of an internationalized string, the arguing that the transliteration of that internationalized string should be allowed to be registered by the same applicant at reduced evaluation and annual fees.

One comment expressed concern that ICANN should work to ensure interoperability of new gTLDs.

One comment requested an explicit statement that registries will not be allowed to associate address or mail exchange resource records with the TLD.

These issues are discussed below.

Three-character TLD limitation. The gTLD Applicant Guidebook (version 2.0) stated that *"Applied-for strings must be composed of three or more visually distinct letters or characters in the script, as appropriate"*. It also noted that ICANN has received a number of comments suggesting that gTLDs consisting of fewer than three characters should be allowed in some cases. The cases relating to IDNs are treated separately in the "IDN" section below. This analysis focuses on the non-IDN cases.

The concern with allowing (ASCII) strings of two characters that do not currently correspond to ISO-3166 country codes is a result of the fact that the ISO-3166 list of country codes is not static and assignment of codes is the responsibility of the ISO-3166 maintenance agency. ICANN relies on the ISO-3166 list as the authoritative basis for country-code TLDs. If a two ASCII letter label were to be allocated as a gTLD, it would create the opportunity for future collision between ISO-3166 country-code TLDs and gTLDs.

Leading-, Trailing-, or All-Numeric TLDs. The primary concern relating to leading- or trailing-numeric labels in TLDs is due to issues raised by bi-directional scripts when used in conjunction with labels that have leading or trailing digits. Experience has shown that presentation behavior of strings with leading or trailing numbers can be unexpected and can lead to user confusion. As

such, a conservative approach is to disallow numerals leading or trailing top-level domain labels.

This concern also applies to all-numeric strings; however, a larger concern with those strings is the risk of confusion and software incompatibilities due to the fact that a top-level domain of all numbers could result in a domain name that is indistinguishable from an IP address. That is, if (for example) the top-level domain .151 were to be delegated, it would be problematic to programmatically determine whether the string "10.0.0.151" was an IP address or a domain name.

Transliterated strings. Whether or not requests for transliterated strings by a single applicant should be considered for reduced fees is outside the scope of review for string stability and is covered in the Evaluation Fees section. An analogy can be made to the labels "labor" and "labour" and the arguments as to whether they should be considered for reduced fees if allocated to the same registry may apply.

Interoperability. While ICANN does have as its core mission statement to make the Internet interoperable, stable, and secure, it is beyond the capability and scope of ICANN to ensure acceptance of any top-level domain by all software manufacturers. Indeed, some software manufacturers may choose to disallow certain TLDs for their own reasons. ICANN can and does document and publicize the strings allocated for TLD use; however, software developers are ultimately responsible to ensure their applications work with the changing DNS environment. ICANN will continue to use the tools at its disposal to ensure acceptance of new TLDs by software applications. Those tools include: public relations campaigns, technical papers, and participation in public meetings.

TLD Address and/or Mail Exchange Resource Records. Within the DNS protocol, it is possible for registries to assign address (either "A" or "AAAA") and/or mail exchange ("MX") resource records to the TLD label itself, thereby allowing references to the TLD without any preceding labels to resolve for those lookups. In fact, ICANN notes that several top-level country-code TLDs already permit these assignments. However, the utility of these assignments is limited due to applications automatically appending various strings to non-fully qualified domains or applying other heuristics that would result in DNS queries not being sent to the name servers for the TLD label.

The draft application guidebook currently has no prohibition against address or mail exchange (or other) records at the top-level and there has been no consensus policy decision to prohibit this. However, it is anticipated applicants would be counseled that such records are unlikely to work as they would expect.

In conclusion:

Restrictions against 2 ASCII character top-level domains should remain in place to ensure there is no chance of confusion with current or potential ISO-3166 country codes.

Additional clarification may be useful in explaining the rationale behind restrictions against the use of all-, leading-, and trailing-numeric labels. It is proposed the following text be used:

The primary concern relating to the use of leading- or trailing-numeric labels is due to issues raised by bi-directional scripts when used in conjunction with those labels. Experience has shown that presentation behavior of strings with leading or trailing numbers in bi-directional contexts can be unexpected and can lead to user confusion. As such, a conservative approach is to disallow numerals leading or trailing top-level domain labels.

This concern also applies to all-numeric strings, however a larger concern with those strings is the risk of confusion and software incompatibilities due to the fact that a top-level domain of all numbers could result in a domain name that is indistinguishable from an IP address. That is, if (for example) the top-level domain .151 were to be delegated, it would be problematic to programmatically determine whether the string "10.0.0.151" was an IP address or a domain name.

Wording in section 1.2.4 should remain unmodified. Within the communications plan, explicit mention could be made of publicity efforts ICANN will undertake to inform the software development community of the existence of the new gTLDs.

To the extent this information differs from information in the current Guidebook, a proposed revision to this Guidebook section is being published now for comment under separate cover.

String Similarity

I. Key Points

- Comments diverge on the scope of string similarity, where some contend that nothing beyond visual similarity should be taken into account while others urge that wider concepts of similarity be applied. The current approach is to check all proposed strings for visual similarity during the Initial Evaluation, while String Similarity Objections can be assessed based on a wider range of similarities, in line with the adopted policy. The proposed position is to keep the focus on visual similarity for the first check, for reasons of practicability and clarity.
- A comment asks whether a threshold for the string similarity algorithm should be set. Although this is common among trademark offices, a decision has been taken to not employ a threshold in the new gTLD process. The usefulness of the algorithm in providing some automation is expected to increase over time, but ICANN will take a conservative approach in the first round, checking string combinations without reference to a "threshold", and thoroughly evaluate this tool as experience is gathered.
- Some comments propose that strings be checked for similarity to trademarks. This is part of what the IRT and other groups are currently addressing as an "overarching issue"; any response to this awaits the outcome of these discussions.

II. Summary of Comments

String Similarity Examiners—Transparency. ICANN should publish the names, affiliations, and qualifications of the SSEs, require them to abide by a strict conflict of interest policy and allow applicants to submit written objections to an SSE if the applicant has reason to believe that the SSE may have a conflict of interest. *Microsoft (Guidebook, 13 April 2009).*

String confusion objection –negative impact on IDN gTLD applicants. 2.1.1 adds unfavorable terms to all IDN gTLD applicants; objection is not limited to visual similarity but covers confusion based on any type of similarity. This will enable existing ASCII TLD operators to easily block all other IDN applications relying on “meaning similarity theory.” The restriction should only apply to TLD applications in the same language string (see comments text for additional detail). *CONAC (13 April 2009).* The “similar meaning” clause should not be applied across different languages but should be limited within the same language. *CNNIC (13 April 2009).* Per 3.1.1., an existing ASCII ccTLD operator can successfully block an IDN application for a “similar meaning” and in effect own ICANN rights to that meaning in every language; this will limit diversity and result in control mostly by Western or global corporations who got in early. *NCUC (13 April 2009).* *A. Sozonov (Module 3, 9 April 2009).* *S. Soboutipour (Module 3, 12 April 2009).* *DotAfrica (Module 3, 12 April 2009).* *S. Subbiah (Module 3, 13 April 2009).*

Visual similarity only. ICANN needs to clearly state that when it comes to strings between different languages/scripts ONLY visual objection and not sound or meaning based objections will be considered. These criteria should apply not only to the string similarity confusion stage in Module 1 but also in any subsequent objections in Module 3 relating to confusion with existing or currently applied-for strings. The guidebook continues to confuse the “string confusion” issue. *NCUC (13 April 2009)*. ICANN has ignored all decisions made in the IDN working group and added other types of similarity. How could two TLDs from different languages conflict with each other only in sound while they are different even in characters or in meanings? *S. Soboutipour (Module 2 & 3, 12 April 2009)*. See also *A. Sozonov (Module 2, 11 April 2009)*; *Association Uninet (Module 2, 12 April 2009)*; *DotAfrica (Module 2, 12 April 2009)*; *S. Subbiah (Module 2, 13 April 2009)*; *E. Brunner-Williams (Module 2 & 3, 14 April 2009)*. If phonetic and meaning similarities were considered, a gTLD based on a generic word would have the right for that word and concept in all languages and all scripts, which is unjustifiable and may not be legal. Aural and meaning similarity should be removed. *Y. (Module 2 & 3, 13 April 2009)*; *L. Andreff (Module 2 & 3, 13 April 2009)*; *A. Mykhaylov (Module 2 & 3, 13 April 2009)*; *D. Allen (Module 2, 13 April 2009)*; *Association Uninet (Module 3, 10 April 2009)*. String similarity should be explicitly restricted to visual or typographical similarity, and not perceived contextual similarities (e.g. .biz has not caused confusion with .com). *ALAC (19 April 2009)*.

String confusion clarification helpful (2.1.1.1). The clarity added to the string confusion definition in the second version—“confusion based on any type of similarity (including visual, aural, or similarity of meaning)” —is helpful for both potential applicants and existing gTLD registry operators. When performing string confusion review against existing TLDs, an appropriate exception should be allowed where the applicant is applying for an IDN version of its existing gTLD name. *RyC (Modules 1-4, 13 April 2009)*.

String confusion standard—include phonetic and conceptual similarity. Microsoft continues to believe that the string confusion standard should include phonetic and conceptual similarity. *Microsoft (Guidebook, 13 April 2009)*.

String confusion – “preliminary” clarification needed. What is meant by identifying comparison as “preliminary” in section 2.1.1.1? *Microsoft (Guidebook, 13 April 2009)*.

String similarity threshold. Has ICANN made a final decision to use a 60% string similarity score as the threshold? If not, what is the new threshold? What is the floor below which no review will be conducted? *Microsoft (Guidebook, 13 April 2009)*.

Future new gTLDs (3.4.1). Recommendations regarding future new gTLDs should be maintained and not confused with the current “string confusion” in the applicant book. *DotAfrica (Module 3, 12 April 2009)* Strongly object to 3.4.1. *S. Subbiah (Module 3, 13 April 2009)*.

String Evaluation. HSBC/HBOS examples are simply going to encourage early protective registrations that won’t be used. There is no semantic relevancy to ICANN’s direct comparative string evaluation and there maybe should be. It’s open to interpretation of a review across all

others. If 20,000 applications are received, how can ICANN be sure an Examiner's review will be comprehensive with such a vast list to review? *M. Mansell, Mesh Digital Ltd. (2 Mar. 2009).*

Expand Initial Evaluation similarity analysis, including trademarks. At the very least the Initial Evaluation period should include more than visual similarity. While INTA appreciates that after the application is approved and during the dispute resolution procedure a trademark owner can object based on other forms of similarity (aural, visual or similarity in meaning; see DAG v 2 at 2-4), including those types of similarity during the Initial Evaluation period would cut down on the number of times a trademark owner has to initiate a high-cost dispute resolution procedure that could have been avoided during initial review. Given the advent of gTLDs in multiple character sets, the string similarity analysis should also encompass trademarks and other reserved names that are the equivalent of the TLD in a foreign language or character set, both in terms of literal meaning (translation) and phonetic or visual similarity (transliteration). *INTA (8 April 2009)*. Use of algorithms based only on visual similarity is not a panacea for protection of IP rights; there must be manual reviews to ensure adequate protection of marks. Visual, aural and semantic similarity should be emphasized. *COTP (13 April 2009)*.

III. Analysis and Proposed Position

Multiple comments discuss the scope of the string similarity check and include opposing viewpoints; some contend that nothing beyond visual similarity alone should be taken into account at any stage of the evaluation while others assert that wider concepts of similarity should be applied even in the Initial Evaluation. The current approach is to check all proposed strings for visual similarity during the Initial Evaluation, while String Similarity Objections (in Module 3) can be assessed by the Dispute Resolution Service Provider based on a wider range of similarities, as specified in the adopted policy developed by the GNSO. In this approach, the GNSO policy requirement is fully addressed in the objection process where two policy recommendations stated that: (1) strings should not be confusingly similar to existing TLDs(etc), and (2) ICANN should implement dispute resolution procedures. Therefore, the additional first string similarity check can be called "preliminary." There are good practical reasons to limit the first check to a clear and well-defined scope in view of the potential numbers of such checks that may need to be performed; therefore, the proposed position is to keep the limitation to visual similarity for that first check.

A comment questions whether any threshold has been set for the string similarity algorithm intended to assist the process by highlighting string combinations requiring closer inspection. Although thresholds are set for trademark offices regularly using this algorithm, the decision for the first round is that no threshold will be set in the new gTLD process, since the circumstances differ from trademark office practices and the final decisions are wholly with the examiners. While the objectivity of the algorithm will be of aid to the examiners and its precision will increase thru refinements over time, ICANN intends to take a conservative approach in the first round and thoroughly evaluate this tool as experience is gathered. This may imply manually checking string combinations that score far below any "threshold," both to gain experience and to catch any potential errors in the scoring.

Some comments address the relationship of trademarks in the string similarity checking from another perspective—namely, that the string similarity check should be performed against established trademarks as well. This is one potential aspect of the broad trademark protection considerations being addressed by the IRT group as one of the identified "overarching issues".

Technical/Operational and Financial Evaluation

I. Key Points

- ICANN intends to update the applicant evaluation questions and criteria for inclusion in version 3 of the Draft Applicant Guidebook. This will include updates to the financial instrument, proof of good standing requirement, and financial scoring. This will also include clarifications on the technical evaluation and scoring, and continuity questions.
- Several of those changes – made to improve criteria and scoring clarity - will be published now for comment.

II. Summary of Comments

Evaluation Criteria: Raising the Bar. The ICANN Board should address as openly as possible the tensions between respect for old processes and “precedent” and respect for reality of what is happening in the world right now. E.g., it is important to raise the bar for gTLD and ccTLD operators, especially given growth of e-crime (noting that staff in version 2 did not embrace suggestions of NetChoice on how to raise the bar for registry applicants through additional requirements such as industry best practices for consumer protection; a global brand registry to prevent brand-jacking and measures for prevention of phishing/consumer fraud; a thick Whois for all applicants; and a rapid takedown procedure). *S. DelBianco, NetChoice, Public Forum Transcript at 16-17 (5 Mar. 2009).*

Evaluation Criteria System Flawed. The overall proposal for the evaluation criteria has too much “calculating” and reflects too little “thinking,” and needs more analysis (terms can be misleading, perhaps unintended and nonsensical results will flow from use of this system). *W. Staub, CORE, Public Forum Transcript at 11-12 (5 Mar. 2009)*

Eligibility to apply for a new gTLD (1.2.1). The term “good standing” needs more definition and should at least extend to criminal history or background of applicants, and whether the term “organization” includes legitimate industry-level trade associations should be clarified. *BITS (13 April 2009).*

Financial showing-public and private. There is currently no distinction between public and private bodies when proving financial viability. Assessment of public bodies should be less cumbersome, which should result in a reduction of the costs. *eco (12 April 2009).*

Required Documents—Financial. ICANN needs to add specific minimum requirements. How will the financial statements be used, and what constitutes a viable applicant? Although the latest draft of the guidebook allows organizations created specifically to apply for new TLDs to provide a pro forma balance sheet, it is unclear if this will provide any distinction between a viable and unviable applicant. Is a balance sheet with \$1M satisfactory, or more or less? What if

the \$1 M is in the form of a note payable? One option is to provide documentation of outside funding commitments. Will precedence be given to applicants with cash in hand as opposed to just commitments from outside parties? There are scaling differences for a limited TLD v. a generally available gTLD, but some sort of baseline needs to be provided (re: Module 1, 1.2.3). *A. Allemann, DomainNameWire.com (6 April 2009)*. Microsoft welcomes ICANN's clarification that new gTLD applicants that are newly formed entities may comply with the financial statements requirement by providing a pro forma balance sheet. *Microsoft (Guidebook, 13 April 2009)*.

Evaluation Criteria-Scoring. Expanding the evaluation criteria scoring scale is helpful but a broader expansion (to 10 points instead of 4 points) would provide greater flexibility and granularity. *Microsoft (Guidebook, 13 April 2009)*.

Further Consideration of Continuation Funding Issues. The guidebook states that the applicant will be asked to provide 3-5 years funding for continued operation in the case of failure. This is naïve and will result in low forecasts from applicants. In addition, businesses fail when they run out of money, not when they say they only have 3-5 years left in the bank. This needs much more thought and maybe contractual protection with deposits, etc. Even then, there will still be statutory legal issues. Also, how regularly will/should ICANN review this cash position? With the volumes expected in the first round, it is likely that registries could fail in the first year as the market is flooded with competing TLDs. *M. Mansell, Mesh Digital Ltd. (2 Mar. 2009)*.

Registry Failure-documentary evidence re: operations continuity. Regarding the guidebook statement—"documentary evidence of ability to fund ongoing basic registry operations for registrants for a period of three to five years in the event of a registry failure or default until a successor operator can be designated"—it seems that a registry will have to prove it can operate the TLD for a certain period of time and have enough cash on hand to operate it for 3-5 additional years if it fails. By definition, a company or registry fails when it runs out of money. This seems like an implausible requirement. Furthermore, the exact amount of money required should be defined (re: Module 1, 1.2.3). *A. Allemann, DomainNameWire.com (6 April 2009)*. It is not clear from this requirement whether this can include any portion of advanced but unearned revenue or perhaps be addressed through contract arrangement with third parties. A detailed description of "basic registry operations" is also missing (at a minimum it could include the continued resolution of DNS queries for existing registrations, but blocking the creation of new registrations). *Go Daddy (13 April 2009)*.

Continuity. Microsoft continues to believe that the operator of a brand gTLD (bTLD) should have flexibility to decide to stop operating the bTLD and that in such case it would be inappropriate for a third party with no rights in the brand to operate the bTLD. *Microsoft (Guidebook, 13 April 2009)*.

Continuity. The Registry Agreement should specifically contain the requirement of continued ability to fund operations for 5 to 7 years. ICANN should also require annual submission of specific evidence of funding sufficient to cover service, not only to "then existing registrants"

but to projected growth. More information is needed on the role of the “Registry Services Continuity Provider” and how it will interact with the Registry Operator under normal circumstances. *INTA (8 April 2009)*.

Financial institutions—creditworthiness. ICANN needs upfront to make clear to applicants in light of the global financial crisis the meaning of “creditworthy” institutions that will secure suitable financial instruments. To fulfill the goal of diversity it will have to allow for the creditworthiness of diverse and varied local financial institutions. *NCUC (13 April 2009)*. *A. Sozonov (Module 5, 9 April 2009)*. *Association Uninet (Module 5, 11 April 2009)*. *S. Soboutipour (Module 5, 11 April 2009)*. *Y. Keren (Module 5, 12 April 2009)*. *L. Andreff (Module 5, 13 April 2009)*. *S. Maniam (Module 5, 13 April 2009)*. *DotAfrica (Module 5, 13 April 2009)*. *S. Subbiah (Module 5, 13 April 2009)*.

Good standing details; notarized affidavit-concerns. The guidebook allows an applicant to provide a notarized affidavit in lieu of proof of legal establishment and proof of good standing. This is insufficient from the perspective of financial institutions for any community-based gTLD that would purport to represent financial institutions. *Regions (13 April 2009)*. ICANN should explicitly describe how it would vet the entity attesting to the applicant’s good standing to assure its veracity and legitimacy. ICANN should specify the types of documents accepted to validate good standing (e.g., for financial institutions, a charter from a country’s banking regulator). *BITS (13 April 2009)*.

DNSSEC clarification. ICANN should clarify very specifically before applications are filed if signing up for DNSSEC will be a requirement of the Registration Agreement if the applicant wins and has no interest in offering DNSSEC. Other countries are still reviewing their position on DNSSEC in light of perceived U.S. control and after winning applicants from these countries should not be caught between their national law and evolving ICANN positions on DNSSEC requirements. *NCUC (13 April 2009)*. *A. Sozonov (Module 5, 9 April 2009)*. *Association Uninet (Module 5, 11 April 2009)*. *S. Soboutipour (Module 5, 11 April 2009)*. *Y. Keren (Module 5, 12 April 2009)*. *L. Andreff (Module 5, 13 April 2009)*. *S. Maniam (Module 5, 13 April 2009)*. *DotAfrica (Module 5, 13 April 2009)*. *S. Subbiah (Module 5, 13 April 2009)*. DNSSEC should be required for any new gTLD serving the financial services industry. *Regions (13 April 2009)*; *BITS (13 April 2009)*. For technical and business reasons, new gTLDs need to factor into their plans the cost and technical resources necessary to fully implement DNSSEC within the next two years. Failure to prepare applicants for this will give them the “defense” that they were not “informed” of the requirement to support DNSSEC. (See text of comments for proposed language change to Item 50.) *R. Hutchinson (Module 2, 13 April 2009)*. Applicants must demonstrate familiarity with DNSSEC and provide an implementation plan when it becomes widespread in line with ICANN policy. *ALAC (19 April 2009)*. DNSSEC falls into the category of post-start changes to operating procedure to be sought by consent of the operator. *E. Brunner-Williams (Module 5, 13 April 2009)*.

Do not require IPV6 for now. ICANN should provide clarity that IPV6 will not be required for now. It is difficult to find ISPs providing it, and this could be an especial burden for IDN

applicants trying to find IPV6 ready ISPs or data hosting centers in other countries. *NCUC (13 April 2009)*. *A. Sozonov (Module 5, 8 April 2009)*. *Association Uninet (Module 5, 11 April 2009)*. *S. Soboutipour (Module 5, 11 April 2009)*. *Y. Keren (Module 5, 12 April 2009)*. *L. Andreff (Module 5, 13 April 2009)*. *S. Maniam (Module 5, 13 April 2009)*. *DotAfrica (Module 5, 13 April 2009)*. *S. Subbiah (Module 5, 13 April 2009)*. *A. Mykhaylov (Module 5, 13 April 2009)*. *E. Brunner-Williams (Module 5, 13 April 2009)*.

IPV6—impact on existing TLDs. Any registry operator for a new TLD should be able to offer a full suite over IPV6, either native or tunneled. If IPV6 is a technical requirement for new gTLDs, will the same criteria be applied to existing registry operators? Any changes that affect new TLDs need to be viewed against arrangements for existing TLD registry operators. *M. Neylon, Blacknight Solutions (13 April 2009)*.

Knowledge of IDNs. Applicants must have knowledge of IDNs; however, applicants for non-IDN TLDs should not be required to implement IDN technology. *ALAC (19 April 2009)*.

III. Analysis and Proposed Position

The applicant evaluation questions and criteria are intended to clearly describe the information applicants need provide to ICANN in order to ICANN to conduct the initial and if necessary extended evaluation of applications for new gTLD strings. The evaluation process is also intended to be fair and scalable.

The commenters noted that more definition was needed on good standing. It was suggested that ICANN clarify the language on the financial instrument, notarized records and proof of legal establishment and good standing. ICANN intends to update the proof of good standing and legal establishment questions to better describe the approach and documents required.

ICANN intends to update the financial criteria to provide a range of options on the financial instrument. Specific minimum requirements will be added in the next version of the Applicant Guidebook. ICANN will also add detail on how financial statements will be used in the evaluation.

One commenter suggested that ICANN broaden the evaluation scoring to 10 points instead of 4 points. ICANN has examined the scoring and intends to make some changes in the next version of the Guidebook.

Several comments were received on registry continuity, particularly on funding for continued operation in cases of registry failure. ICANN has been developing a gTLD Registry Continuity Plan (25 April 2009 version located at <http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf>). ICANN intends to update the continuity question in the Applicant Guidebook to provide a range of options to applicants. One option may be to create a continuity fund for registries that would help support the maintenance of critical registry

functions until a successor registry could be identified or notice can be provided to the community of closure of a TLD.

ICANN is aware of the concerns raised by brand owners such as Microsoft that they should have flexibility to decide to stop operating a brand TLD and that it might be inappropriate to identify a third party to assume management of that TLD. This situation is already contemplated in the gTLD Registry Continuity Plan.

INTA noted that more information is needed on the “Registry Services Continuity Provider.” ICANN will clarify this in the next version of the Guidebook.

Several commenters stated that ICANN should clarify whether DNSSEC will be a requirement, as applicants need to factor in the additional cost of fully implementing DNSSEC. DNSSEC is currently optional in version 2 of the draft Applicant Guidebook.

This same group of commenters noted that ICANN should not require IPv6 for the first round, as it could be a burden on gTLD applicants. IPv6 is currently mandatory in version 2 of the draft Applicant Guidebook.

ICANN intends to update the applicant evaluation questions and criteria for inclusion in version 3 of the Draft Applicant Guidebook. This will include updates to the financial instrument, proof of good standing requirement, and financial scoring. This will also include clarifications on the technical evaluation and scoring, and continuity questions.

As described above, there will be several changes made to the Guidebook as a result of comment. Some of those have been written for public comment and will be published along with this analysis. Some of these changes are:

- **Proof of Legal Establishment & Good Standing:** This section has been revised to allow for flexibility according to the entity’s type and jurisdiction, so that an applicant may provide proof of legal establishment and good standing in a variety of ways. The documentation requirements are based on consistency of documents with information provided, and ability to show the chain of authority rather than on specific document types which may or may not be meaningful in a given jurisdiction.
- **Contact information:** Eliminated some redundant questions.
- **Background Check:** Added requirements for applicant to disclose convictions or other disciplinary actions of its officers, directors, or shareholders, with description of circumstances in which ICANN may deny an application on this basis.
- **Cybersquatting/Domain Name Abuses:** Added requirements for applicant to disclose history of cybersquatting or domain name abuses, with description of circumstances in which ICANN may deny an application on this basis.
- **Community-Based Designation:** Revised the questions for community-based applicants to align with the comparative/CPE criteria, to ensure that information provided is

relevant to this task. Added more detail to give guidance to applicants on expected components in answers.

- Technical Criteria: Revised language in technical section so that scoring levels are consistent across questions. (We have not changed the scoring itself.)
- DNSSEC: Clarified that this is an optional service, but that we expect it within 5 years to be a requirement for all gTLDs.
- Security: Enhanced security question to require applicants for a string with a unique trust niche (e.g., financial services) to show what augmented security levels are proposed to be consistent with the nature of the string and to address significant trust issues.
- Financial Statements: Provided a list of options in order of preference, to give applicants greater flexibility. (ICANN continues to encourage audited financial statements.)

FINANCIAL CONSIDERATIONS

I. Key Points

- Significant, thoughtful comment was received regarding the new gTLD Applicant Guidebook Version 2, mostly suggesting some form of fee reduction, either for all applicants or for creating a special class of applicant for the purpose of segregating fee structure.
- Reduced fees for a separate category of TLD based on need will be considered in the second round, taking into account results and data from the first round.
- The evaluation fee is cost-based and revenue neutral. Work will continue to verify estimates and if that work so indicates, the fee will be altered.
- The annual fee has been reduced so that it represents only 1/6 – 1/5 of one full time equivalent for all support for a TLD: registry liaison, contractual compliance, IANA services, finance, and other support functions. If anything, the fee seems too low.

II. Summary of Comments

Annual Fees

Costs still excessive; barrier to entry. The only major change was the proposed reduction of annual registry fee to \$25K per year, \$6250 per quarter. The gTLD application fee remains unchanged at \$185K. These minor changes will do little to offset the significant burden imposed by the proposed system. *European-American Business Council (1 April 2009)*. Cost scheme is still prohibitively high. *Adobe Systems Incorporated (10 April 2009)*; *NCUC (13 April 2009)*. Fees must be revised to allow smaller players to participate and have a well balanced, sustainable business without excessive or unjustified burdens. The policy development and risk component of the fees should be removed because they are unjustified. There should be a reduced application fee and a pay as you go scheme. Extended evaluation and contention costs would be covered by extended and contentious applications. *NIC Mexico (14 April 2009)*. The fees are unreasonable and make ICANN seem to be a big business seeking profit rather than a public service organization. *D. Allen (Module 1 13 April 2009)*. The current fee structure is a clear barrier to entry especially for those potential applicants who have no interest in monetizing their TLD. *ALAC (19 April 2009)*.

German language issue: Umlaut. An application should be able to comprise more than one string with and without the Umlaut at a reduced application and annual fee since the operation of the registry will be the same. The same should apply to abbreviations or city names or names of regions. *eco (12 April 2009)*. See also *dotKoln (13 April 2009)*.

Registry Services Review Fee. A separate Registry Services Review fee on top of a \$185k application fee is unreasonable, especially since ICANN claims the frequency is going to be very low. *Sophia B (Ethiopia) (12 April 2009); NCUC (13 April 2009). A. Sozonov (Module 1, 11 April 2009); DotAfrica (Module 1, 12 April 2009); S. Soboutipour (Module 1, 11 April 2009); Association Uninet (Module 1, 12 April 2009); Y. Keren (Module 1, 12 April 2009) S. Subbiah (Module 1, 13 April 2009).*

Registry services review fee. ICANN should establish a fee range and identify the fee ceiling. The guidelines should clarify the circumstances under which a 5-person panel would be required instead of a 3-person panel. If ICANN determines that the registry services review fee could exceed \$50,000 for a particular application, then ICANN should provide a clear justification for such a high fee. *INTA (8 April 2009).*

Other Currencies. ICANN should accept payments in other currencies at a rate fixed at the time the applicant's guidebook is published. Accepting only U.S. dollars places high risk on business plans of those applicants that work in other currencies. *P. Vande Walle (23 Mar. 2009).* Regarding Section 1.5.2.4, ICANN should at least support the top 3 global currencies natively. ICANN wishes to separate from their U.S. Government agreement in order to be more global, but will only allow payment in U.S. dollars. In the current climate the particular FX loss/gain can change a business plan overnight. This isn't a global strategy. *M. Mansell, Mesh Digital Ltd. (2 Mar. 2009).*

Cost recovery. ICANN should charge all registries on an actual cost recovery basis and not an arbitrary or unjustified tax based on registry revenue or a per domain name tax that discriminates between registry operators. *M. Palage (14 April 2009).*

Lower fees. The fees discriminate against smaller entities. ICANN should lower allover fees for the first three years to not more than US \$100,000 including the application fee. *eco (12 April 2009).* The registry fee should be lowered for city and linguistic TLDs to \$2,500 per calendar quarter. *dotBZH (Module 5, 13 April 2009).*

Should be reduced for city TLDs. We call upon ICANN to reduce the annual fees for city TLDs to not more than \$US 10,000 minimum annual fees. *dot berlin (27 Mar. 2009).* The fee for city TLDs should be reduced to \$US 10,000 and suggest an annual fee of \$US 0,25 from the 10,000th domain name registered by individuals and/or organizations. City Top-Level Domain Interest Group (12 April 2009). ICANN's role to encourage DNS innovation is smothered by the proposed fees and reserve recommendations; these will hinder innovation in how the DNS can help to address civic communications needs. ICANN costs will be lower in working with cities and fees should be lower. *Connecting.nyc (13 April 2009).*

Justification of registry fees. ICANN's downward adjustment to the registry fees fails to take into consideration differences among potential gTLDs apart from registry size. ICANN should articulate why the base amount so far exceeds the annual registry fees for some existing TLDs (\$10,000 annually in registry fees for .cat, .travel and \$500 annually for .museum). Given

ICANN's mandate that any fees represent only cost recovery and its nonprofit status, it is unclear what the basis is for a \$0.25 per year additional fee for registries exceeding 50,000 and what cost ICANN would be recouping by imposing this fee. *NYC (13 April 2009)*. Even though reduced in version 2, ICANN has still failed to justify the registry fee. *Microsoft (Guidebook, 13 April 2009)*.

Postpone annual registry fee. ICANN should consider postponing for 2 or 3 years the collection of the annual registry fee to allow new gTLD operators to start operating in a financially sound context with no loans and other debts that may compromise their start-up. This would contribute to DNS stability. *P. Vande Walle (23 Mar. 2009)*.

Fee justification needed. It is still unclear what the underlying ratio is for the annual fees, especially for the "per transaction" costs. ICANN should provide an explanation similar as it did for the application fee. Also, future registries should know in advance what services ICANN will offer in return and under which conditions and terms. *SIDN (14 April 2009)*. ICANN has still failed to provide any acceptable rationale for the imposition of an annual registry fee of not less than \$25,000 when one considers that one registry currently pays ICANN only \$500. The reality that a number of successful new gTLD applicants—especially community-based applicants—could operate registries with relatively low numbers of registrants underscores this problem. It is therefore reasonable to expect that the next draft of the DAG will reflect a further reduction in the annual fee. *INTA (8 April 2009)*.

Lower registry fee in cases of registrant verification. ICANN should impose a lower registry fee to reflect the benefits of registrant verification and the lower costs of administering these types of registrant verified TLDs, consistent with the cost recovery mechanism it should be operating by. *M. Palage (14 April 2009)*.

Evaluation Fees

Fees too high for developing nations. The fees are exorbitant in general. The high \$185k fee does not support goal of diverse applicants. *Sophia B (Ethiopia) (12 April 2009)*; *NCUC (13 April 2009)*; *DotAfrica (Module 1, 12 April 2009)*. Unless high costs are reduced by an order of magnitude, ICANN's goal of diversity, especially for IDN TLDs, will not be met. *S. Subbiah (Module 1, 13 April 2009)*. The fees are too high for developing nations. *A. Sozonov (Module 1, 11 April 2009)*; *DotAfrica (Module 1, 12 April 2009)*; *S. Soboutipour (Module 1, 11 April 2009)*; *Association Uninet (Module 1, 12 April 2009)*. Fees are exorbitant for a process that is simple and automated, with the exception of dispute resolution. *DotAfrica (Module 1, 12 April 2009)*; *Y. Keren (Module 1, 12 April 2009)*. *L. Andreff (Module 1, 13 April 2009)*; *S. Maniam (Module 1, 13 April 2009)*; *S. Subbiah (Module 1, 13 April 2009)*. While price differences raise a risk of "gaming," it is preferable that a small number of new gTLDs are inappropriately given lower fees than to keep the current barriers to entry for would-be applicants in developing and least developed countries. *ALAC (19 April 2009)*.

Provide Specific Cost Breakdowns of Major Elements. The \$185K fee is too high for well crafted, responsible applications brought by applicants with registry operator experience and resources. There is no way to show cost avoidance if the “boxes” of costs are not provided. Low cost to process applications should not subsidize high cost to process applications. Applicants should know the real cost of their applications; ICANN staff managing the process also need to understand the costing. ICANN should publish a first guess at the major elements, rephrase the application fee as some sufficient initial commitment, with a variable fee corresponding to the choices the applicant knowingly makes to get the outcome the applicant knowingly seeks, similar to how RSTEP costing is handled. *E. Brunner-Williams (Module 1, 14 April 2009).*

Impact on Cities/Governments. Based on the current economy and very tight budgets, the application, operational and dispute resolution fees for the new gTLD program will be beyond the means of governments already hard pressed to provide core functions and services. ICANN should adopt evaluation and operational fee models that will encourage a broad base of new gTLDs that serve the broader public interest. *NYC (13 April 2009).*

Escrow. In addition to the evaluation fee, ICANN should require an escrow from any registrant to make sure there are funds available to collect in the event of a dispute. *Hearst Communications, Inc. (13 April 2009).*

Longer payment settlement period. ICANN should allow partial payment within ten days and full settlement within 30 days. This will help regarding countries with currency control (e.g., China) where it would take more than ten days to move a large amount of money and have it approved by the relevant authority. *J. Seng (13 April 2009).*

Clarify registration fee. ICANN should clarify the registration fee – one \$100 fee per applicant not per application. If that is not the case, ICANN should explain why not. *INTA (8 April 2009).*

Geo gTLD Fees. There should be no preferential treatment for geo gTLDs on registration and evaluation fees, which should in general be as low as possible for all applicants to provide low market entry barriers. *M. Leibrandt (13 April 2009).*

Credit card processing (section 1.5.2.3). ICANN will accept up to \$20K on a card with no processing charges. This is not common place in today’s world and the membership should not pick up the tab for their acceptance of cards. X% should be charged on top for those wishing to pay by this means. *M. Mansell, Mesh Digital Ltd. (2 Mar. 2009).*

Cost recovery. The fee structure should be based on actual recovery related to current application evaluation procedures, and must not include: amortization of ICANN’s fixed costs or previous gTLD policy work, or speculative “risk” charges. If lower fees result, then the greater numbers of applications submitted would be welcomed. *ALAC (19 April 2009).*

Fee level –discouraging frivolous applications/abuses. The fee level if nonrefundable can deter attempts to register frivolous TLDs, but the new version of the guidebook sets up a graduated

refund structure for unsuccessful applications. *CADNA (13 April 2009)*. High costs are not going to be a barrier for speculators and the prevention of problematic gTLDs should come from other provisions within the gTLD process. *Y. Keren (Module 1, 12 April 2009)*.

Address the proposal that unsuccessful applicants for the same string can have option of participating in the second round without submitting a new application fee. Version 2 did not address this proposal. If ICANN rejects it, it should give the reason why. If 2 or more applicants apply for the same string, there will be 1 winner and the others will end up with nothing and \$185K poorer. Surely applicants who have participated and paid the fee should at least have first option to enter into a 2nd round at a later stage. If this is not done it all comes down to a lottery—if you are lucky enough to be the sole applicant for a name then you win, otherwise you lose everything. *Smartcall (Module 2, 10 April 2009)*.

Lower fees—smaller entities; restricted gTLDs; developing countries. The fees discriminate against smaller entities. ICANN should lower allover fees for the first three years to not more than US \$100,000 including the application fee. *eco (12 April 2009)*. The application fee is still too high and should be reduced for entities such as charitable organizations or a .brand application restricted to employees of a company. *Lovells (13 April 2009)*. There is no difference in fees for applicants from different parts of the world; the fee for a nation-specific TLD should be lower than for a world-wide TLD. Perhaps to promote equity, fees could be indexed according to GDP in an applicant's country. *S. Soboutipour (Module 1, 11 April 2009)*; *Association Uninet (Module 1, 12 April 2009)*; *Y. Keren (Module 1, 12 April 2009)*; *A. Mykhaylov (Module 1, 13 April 2009)*.

Fees based on actual costs. Evaluation costs should reflect the actual cost of doing the evaluation and should not be based on a hypothetical average across all applicants. In cases where a portion of the Initial Evaluation is identical for multiple applications (e.g. technical and operational capability, financial) evaluation fees should be credited with the projected costs of that portion of the Initial Evaluation less any minor amount needed for evaluating such portion for multiple gTLDs. *RyC (Modules 1-4, 13 April 2009)*.

Reduce fee for cultural and linguistic TLDs. The fee should be reduced to \$ US 50,000 for cultural and linguistic TLDs. The \$ US 185,000 fee is too high if you take into account that many applications will be from non profit, non commercial organizations with limited funding and which may have already spent a significant amount of money on following the gTLD process. *Asociacion PuntoGal (13 April 2009)*. ICANN could reduce the fee by setting up a fast track for cultural and linguistic TLDs or by refunding part of the application fee. (See comments text for proposed guidebook language revisions.) *dot BZH (13 April 2009)*. The evaluation fee should be reduced; it could exceed our resources. *dot EUS (13 April 2009)*.

Should be reduced for city TLDs. We call upon ICANN to reduce the application fees for city TLDs to not more than \$US 50,000. *dot berlin (27 Mar. 2009)*. The general evaluation fee is too high and not justified for city TLDs; these will be less contentious and cost less. It should be reduced to \$US 50,000. *City Top-Level Domain Interest Group (12 April 2009)*. ICANN's role to

encourage DNS innovation is smothered by the proposed fees and reserve recommendations; these will hinder innovation in how the DNS can help to address civic communications needs. ICANN costs will be lower in working with cities and fees should be lower. *Connecting.nyc* (13 April 2009). The \$185K fee should be lowered for regional gTLDs; overall fees for the first three years should not exceed US \$100K. *dotKoln* (13 April 2009).

Application Fee Level and Impact. ICANN's analysis did not adequately consider models for different levels of application fees for different types of applicants (e.g., profit or non profit, size of TLD), even though it was presented with proposals for this. The \$185K fee represents a political judgment by ICANN that in the first round only certain larger entities will be able to apply; it would be more honest for ICANN to state this clearly ("that "this is so difficult so we are just starting a first round for these particular type of applicants"). ICANN's representation that the fee level is not so much given that you need at least \$500K to run a TLD is flawed (there are some TLDs that have been running for free for 10 years; you really don't need \$500K). Explanation on this point should be provided. *V. Bertola, Public Forum Transcript at 7-8* (5 Mar. 2009). The costs are unrealistic; I run a TLD for a few hundred dollars a month, and \$500K is absurd. *K Auerbach, Public Forum Transcript at 30* (5 Mar. 2009). \$500K is not an arbitrary number and is quite realistic for a small or a medium-sized registry. *A. Abril i Abril, Public Forum Transcript at 14* (5 Mar. 2009).

Reduce application fee. The amount of the application fee should be reduced as the amount may discriminate against less financially resourceful applicants such as small enterprises and communities. J.A. Andersen, Director General, Ministry of Science Technology and Innovation, National IT and Telecom Agency, Denmark (2 Mar. 2009). Application fee still seems excessively high and should be reduced. *eCO-LAC* (13 April 2009).

Reduce application fee; impact on community-based applications; allow installment payments. The amount of the application fee should be reduced as it may discriminate against less financially resourceful applicants. It is a mistake to assume, as the high fees imply, that all new gTLD applicants will use the .com mass market approach, selling as much as possible, favoring numbers over quality. This is the wrong approach to community-based TLDs. The high fee may have a deterrent impact about frivolous applications, but it will also limit serious applications that would target a limited community. In particular, ICANN should delete \$26K from the fee, which represents the incidence of gTLD development program cost on each application. ICANN's high financial expectations at the application stage may plant the seeds of future registry failure. ICANN should allow installment payments of application fees; a pay as you go approach would make it easier for some applicants to convince investors about their business plans. *P. Vande Walle* (23 Mar. 2009). See also *M. Neylon, Blacknight Solutions* (13 April 2009).

Cost recovery/subsidization. Cost recovery is not just about costs that have been incurred. The \$185K also includes an element of risk calculation. I am concerned that the non-contentious, community-based applicants are actually going to finance the risks or the potential risks that will be brought by bad cases. *B. de la Chapelle, Public Forum Transcript at 31* (5 Mar. 2009).

Burden on Noncommercial Applicants. The \$185K fee burdens noncommercial applicants and will bring a higher risk of failure for those applications; this may increase stability problems. *B. de la Chapelle, Public Forum Transcript at 32 (5 Mar. 2009).*

Application fee. We should try to attempt incorporating historic cost into this evaluation, but overall, we should get away from just looking at domain names as a way of funding Internet governance. *W. Staub, Public Forum Transcript at 12 (5 Mar. 2009).*

Evaluation Fee Discounts. Why wasn't a discount considered for "like TLDs" or variants of IDN TLDs? *E. Chung, GNSO Transcript at 85-86 (28 Feb. 2009)*

"Package" application fee approach—IDNs for smaller language groups. The \$185K fee bar may be set too high for smaller language groups. ICANN should allow a gTLD operator for such groups the ability to activate all new IDNs as part of a package deal, making it less expensive and more attractive for new gTLD operators to offer service in all new IDN scripts as they become available. *A. Mack (Module 1, 13 April 2009).*

Year 2000 Applicants. ICANN should explain why proof-of-concept applicants from the year 2000 would be offered an \$86,000 credit giving them a discount over other applicants for a given gTLD; there is no obvious connection between the applications processes for the to-be-launched gTLDs and the 2000 gTLDs. *INTA (8 April 2009).* The refund credit of \$86K for previous applicants is unfair and does not account for the money that many current potential applicants have spent while waiting years because of ICANN's continuing promises of new gTLDs. *Sophia B (Ethiopia) (12 April 2009).*

Comparative evaluation fee. There should be a set fee range for this with an upper limit set. *INTA (8 April 2009).*

Excess Revenue

Transparent mechanisms. In regard to ICANN's status as a nonprofit entity, transparent mechanisms for the disposition of excess revenues must be in place. *J.A. Andersen, Director General, Ministry of Science Technology and Innovation, National IT and Telecom Agency, Denmark (2 Mar. 2009).* ICANN should commit to expending additional resources to ensure the security, stability and integrity of Internet commerce, including sufficient IP right protection mechanisms for trademark holders. *COTP (13 April 2009).*

Reserves in case of future litigation and registry failures. ICANN should take any gTLD auction proceeds and, instead of putting them into a non-profit charity, ICANN should put them in a financial lockbox in case they need to be used by the ICANN Board to pay for any adverse financial effects of the new gTLD program without negatively impacting ICANN's normal cash flow. *M. Palage (14 April 2009).*

Refunds

Phased fees in place of refunds. An applicant would pay a portion initially and additional fees as each milestone is achieved. ICANN will still be paid up-front for its evaluations, but applicants will only need to pay for the stages that they are able to pursue. *ALAC (19 April 2009)*.

Refunds for withdrawn application due to ccTLD fast track. An applicant that withdraws should be able to get a full refund when the applicant did not know that there was a possible IDN ccTLD fast track coming along. *E. Chung, GNSO Transcript at 86 (28 Feb. 2009)*.

Refund if Reserve Name Similarity. If ICANN finds that an applied-for gTLD “exceed[s] a similarity threshold with a Reserved Name” (as outlined in Section 2.1.1.2 of Module 2) and the application therefore does not pass the Reserved Names review, will the applicant be refunded the entire application fee? *F. Hammersley, SAIC (Module 2, 24 Mar. 2009)*.

Full refunds if an application does not pass string contention. Because there are no concrete examples of what might exhibit string confusion, a full refund should be granted if an application does not pass string contention, unless someone submits a substantial amount of applications to game the system (e.g., typo strings to see if any make it through) (re: Module 2). *A. Allemann, DomainNameWire.com (6 April 2009)*.

Refund abuses. While a refund schedule is appropriate, two changes should be made to discourage abuses: (1) the percentage amount of evaluation fee refunded after posting of initial applications should be reduced to 50%; (2) the percentage of evaluation fee refunded should be 35% for applications withdrawn after objections are filed against them—regardless of whether the application has undergone Initial Evaluation. *INTA (8 April 2009)*. *Microsoft (Guidebook, 13 April 2009)*.

Refunds of Evaluation Fee During Auction (1.5.5.). This section implies that applicant can withdraw during an auction and receive a refund. If that is not so, then ICANN should make that point explicit. *Demand Media (DAG, 13 April 2009)*.

Commentary on Refund Policy. The higher the refund amount and the earlier it is offered, the more applications will be submitted because there is less risk on applicants. With more applications there will be more contention. *Demand Media (DAG, 13 April 2009)*.

III. Analysis and Proposed Position

There are many comments regarding financial considerations for the new gTLDs.

Many comments expressed concerns about the size of the fees, and others requested more information on the details related to the methodology used to determine the amount of fees.

Some comments expressed concern with the refund policy and other comments asked for clarification as to how surplus funds will be handled.

(Note: all \$ amounts are expressed in US Dollars throughout this document.)

The comments can be grouped into the following issue areas:

Fees, including the evaluation fee and annual fee, may be too high. Many comments suggested that both the \$185k Evaluation Fee and the annual registry fee are too high for various reasons. Comments related to these concerns include:

- The application fee for the new gTLD program is still too high and should be reduced for entities such as:
 - Developing nations and governments already hard pressed to provide core functions and services; perhaps to promote equity, fees could be indexed according to GDP in an applicant's country.
 - City and linguistic TLDs:
 - Charitable organizations: or
 - A .brand application restricted to employees of a company.
- The current fee structure is a barrier to entry for those applicants who have no interest in monetizing their TLD.
- ICANN should adopt evaluation and operational fee models that will encourage a broad base of new gTLDs that serve the broader public interest; the high \$185k fee does not support goal of diverse applicants.
- ICANN should justify the registry fee and articulate why the base amount exceeds the annual registry fees for some existing TLDs (i.e., \$10,000 for .cat, .travel and \$500 annually for .museum).
- There should be a reduced application fee and a pay as you go scheme.
- Unsuccessful applicants for the same string should have the option of participating in the second round without submitting a new application fee.
- In cases where a portion of the Initial Evaluation is identical for multiple applications (e.g., technical and operational capability, financial) evaluation fees should be credited with the projected costs of that portion of the Initial Evaluation

Need More Support for Fees. Some comments requested more information related to the details of the evaluation fee development stating that applicants should know the real cost of their applications and ICANN should publish a preliminary estimate of the major elements of the fee. Comments also asked for an understanding of the basis is for the additional fee for registries exceeding 50,000 and what costs ICANN asked for information as to what cost ICANN would be recouping from this fee.

Clarify how Surplus Funds will be Handled. Some comments requested more clarity on how surplus funds, if any, will be handled and mentioned that a transparent mechanism for the disposition of excess revenues must be in place.

Clarify Refunds. Some comments requested additional information regarding the proposed refund policy and many comments provided suggestions on changes to the proposed refund methodology. For example, comments included:

- Nonrefundable fees can deter attempts to register frivolous TLDs;
- Instead of a refund policy, there should be phased fees whereby an applicant would pay a portion of the fee initially and additional fees as each milestone is achieved;
- An applicant that withdraws should be able to get a full refund when the applicant did not know that there was a possible IDN ccTLD fast track coming along.
- A full refund should be granted if an application does not pass string contention, (unless the application was submitted “to game the system”).

Payment Terms, Forms of Payment, and Other Financial Considerations. Many comments expressed suggestions related to the actual payments for application, evaluation and annual fees. For example, comments included:

- Applicants should be allowed to remit payments in other currencies (as opposed to only in US dollars) at an exchange rate fixed at the time the applicant guidebook is published;
- ICANN should allow partial payment within ten days and full settlement within 30 days to help countries with currency control (e.g., China) where it would take more than ten days to have the movement of a large sum approved by the relevant authority;
- ICANN should explain why proof-of-concept applicants from the year 2000 would be offered an \$86,000 credit when there is no obvious connection between the applications processes for the to-be-launched gTLDs and the 2000 gTLDs;
- An extra percentage should be charged for those wishing to pay by credit card; and
- ICANN should allow installment payments of application fees; a pay as you go approach would make it easier for some applicants to convince investors about their business plans.

Analysis follows below:

Fees, including the evaluation fee and annual fee, may be too high. As described in the Cost Considerations of the New gTLD Program paper <http://www.icann.org/en/topics/new-gtlds/costconsiderations-23oct08-en.pdf>, the determination of the new gTLD evaluation fee is based upon the following principles:

- The new gTLD implementation should be fully self-funding (costs should not exceed fees; existing ICANN activities regarding technical coordination of names, numbers and other identifiers should not cross-subsidize this new program).
- The new gTLD policy requires a detailed and thorough implementation process to achieve its goals; this process is inherently costly.
- Since this is a new program, it is difficult to predict costs or volumes with certainty. A detailed costing process has been employed, and costs are in line with historical precedent.
- If all cost-related estimates are accurate, there will be no net increase to ICANN’s funds as a result of evaluating new gTLD applications; fees will just equal costs. After some

time, there will be a careful assessment on whether the actual costs exceeded the estimates (shortfall) or whether the costs were less than estimated (surplus). If there is a surplus, the excess funds will not be used for ICANN's general operations, but rather will be handled in accordance with community consultations.

- In addition to the one time evaluation fee, other fees will be paid directly to providers based upon the requirements of certain applications for technical issues or disputes.
- For those new gTLD applicants that are delegated a registry, annual fees will be assessed in accordance with contract terms and the overall ICANN budget process.

Although the evaluation fee, at \$185k, may be burdensome for certain organizations that are considering applying for a new gTLD, the evaluation fee was developed based upon a policy of revenue-cost neutrality, conservatism, and a detailed cost estimating exercise. The impact on a specific applicant or a class of applicant, by policy, is not a factor in the development of the evaluation fee.

ICANN recently published a solicitation for provision of evaluation services. As those expressions of interest are received and negotiations ensue, ICANN will hone the estimated cost of preparing an application and determine if the application fee (being revenue neutral) should be changed. It is anticipated that with time, greater efficiency and greater certainty, evaluation fees would likely be reduced over time. It may make sense for entities to wait until subsequent TLD rounds to make an application.

Some applications may have lower processing costs than others; they may not require extended review; they may not require technical or other reviews, and they may not require much staff or consultant time to answer questions and process the evaluations. Some applications, such as organizations with multiple strings, may not need discrete applicant evaluations repetitively for each string.

While there are possible reasons why a particular application may cost less than another application to evaluate, it is difficult, if not impossible, to determine which applications will require more or less resources. Application fees are set based upon the estimated average cost of all applications based upon principles of fairness and conservatism.

The GNSO policy recommendations allow for different pricing for different applications. Although the evaluation fee is proposed to be \$185k in all cases, individual applicants will pay different amounts due to refunds and due to other fees. Applicants that choose to withdraw an application can pay significantly less. If an application requires dispute resolution or extra technical evaluation, the application may pay significantly more.

In summary:

- ICANN is a not for profit organization and is dedicated to deliver its services as efficiently as possible. ICANN is not established to grow revenue.
- The \$185k evaluation fee is based upon the estimated costs associated with the new gTLD program.

- ICANN will continue to evaluate the cost estimates. If further research or adjustments to the evaluation process or cost estimating methodology changes the costs estimated to evaluate the applications, suggested changes to the pricing will be proposed.
- If the actual costs for evaluating the applications end up being less than the \$185k Evaluation fee, then the surplus funds will not be used as part of ICANN's general funds. Instead these funds will be distributed in accordance with consultation from the ICANN community.

Need More Support for Fees. The primary financial impacts of the new gTLD program are driven by costs. Accurate cost estimating is a challenge, because this is a new program.

As described in Section 3, Cost Elements, of the Cost Considerations of the New gTLD Program paper <http://www.icann.org/en/topics/new-gtlds/costconsiderations-23oct08-en.pdf>, the \$185k evaluation fee was based on detailed analyses of specific tasks and steps needed to be performed during the evaluation. ICANN has taken a detailed and thorough approach to estimating program development costs, process and risk costs associated with this new program, and consistently used a set of principles in applying the estimation methodology. The results have been tested with sensitivity and other analysis, and appropriate expertise has been retained and applied. For example, to ascertain risk costs, ICANN solicited and obtained expert analysis in this area in order to provide the most accurate and defensible estimate possible.

These costs will be described in additional detail in the next version of the cost considerations paper that will be published after potential providers furnish estimates for evaluation services, which is expected to be prior to the ICANN Seoul meeting.

Regarding annual fees, there were some calls for additional reductions in this area even though the fees were reduced significantly from Guidebook version one to version two. The minimum fee has been reduced to \$25,000 US. This is about 15%-20% of one full time employee for the year in support, i.e.: registry liaison, contractual compliance, finance, legal, IANA services provided in 300 or less hours per year. Viewed this way, \$25,000 does not seem adequate.

Clarify How Surplus Funds will be Handled. As described in the Cost Considerations of the New gTLD Program paper <http://www.icann.org/en/topics/new-gtlds/costconsiderations-23oct08-en.pdf>, if all cost-related estimates are accurate, there will be no net increase to ICANN's funds as a result of evaluating new gTLD applications; fees will just equal costs.

After some time, there will be a careful assessment on whether the actual costs exceeded the estimates (shortfall) or whether the costs were less than estimated (surplus). In order to comply with the principle of being fully self-funding and avoid cross-subsidy of the new gTLD program by existing ICANN registry or registrar fees, the fees for evaluation are to be segregated and to be used for the new gTLD program only. They are not for general purpose ICANN uses. This requires two important finance actions to ensure compliance with the revenue-cost neutrality principles as well as adherence to ICANN's principles of accountability and transparency:

- **Report on cost accounting.** There must be careful cost reporting performed that captures all relevant costs for the new gTLD program. As described in the cost evaluation paper, the \$185k evaluation fee was developed based upon new gTLD development costs initially estimated at \$12.8 million (and assumed to be amortized over the first several hundred applications) plus fixed and variable application evaluation costs, initially estimated at \$100k per application. Each of these costs and the underlying details of the costs are to be captured and presented in an easily understood and reviewable manner. At some point in the future, currently thought to be in two to three years, the costs will be collected and the new gTLD application round will be deemed closed. The total costs expended will be subtracted from the total of all fees including application and evaluation fees collected by ICANN, less any refunds paid out. This net amount, if positive, will be the new gTLD application round surplus. If negative, the net amount will be the new gTLD application round deficit. If there is a deficit, future rounds will pay a portion of the fee.
- **Dispose of surplus.** If the net amount from the new gTLD application round is a surplus, the excess funds will not be used for ICANN's general operations, instead they will be disposed of in a manner consistent with the community's feedback and the policy recommendations. ICANN's multi-stakeholder model for decision making will be employed to ensure that all decisions regarding the underlying guiding principles, amounts, recipients, timing, and manner of disposition of surplus funds, if any, will be handled in accordance with the communities' wishes. Because the amount of any possible surplus is difficult to forecast (other than the current financial forecast of zero), it is hard to determine in advance how such a surplus should be used. Undoubtedly, this would depend in part on the magnitude of any surplus.

Clarify Refunds. A portion of the \$185k evaluation fee could be refunded in certain situations depending on the point in the process at which the withdrawal of an application is made. The refunds allow an applicant to withdraw an application any time prior to completion of the evaluation. The draft Applicant Guidebook (version 2) includes (in Section 1.5.5) details related to refund amounts and timing. In general, the refunds available are roughly based on the principle of returning to the applicant all anticipated costs not yet expended on an application that is withdrawn prior to completion of final processing. The Refund methodology is also designed to encourage unsuccessful or problematic applications to be withdrawn and deter the submission of frivolous applications.

Payment Terms, Forms of Payment, and Other Financial Considerations.

- Because the detailed cost estimation process related to the application evaluation fee (described in the Cost Considerations of the New gTLD Program paper <http://www.icann.org/en/topics/new-gtlds/costconsiderations-23oct08-en.pdf>) was performed using US Dollars, the associated fee has been stated in US Dollars. This estimation methodology did not take into account risks related to future changes in the rates of exchange between the US Dollar and other international currencies. Therefore, to mitigate the concern regarding currency exchange rate fluctuations, applicants could

consider a currency hedging strategy whereby they exchange \$185,000 worth of their local currency into US Dollars, at the time they decide to file an application, and therefore applicants will eliminate the impact of future changes in the rate of exchange.

- Although the dates associated with the opening and the closing of the application submission period have not yet been defined in the Draft Applicant Guidebook, ICANN intends to close the application submission process several months after the publication of final version of the Guidebook. Because the application process will be open for several months, applicants will have sufficient time to obtain approval of for the payment of the application related fees.

The impact on a specific applicant or a class of applicant, by policy, was not a factor in the development of the evaluation fee. When specifying the fee, it was also understood that new registries would require significant additional investment in addition to the application fee to begin registry operations. Therefore, the application fees are not an unreasonable fraction of the entire investment and up-front payment of such fees should be part of the business model developed by applicants.

For the reasons cited above, the Guidebook will remain essentially static pending the completion of final cost data. It is anticipated, but not certain, that the data will verify the cost estimates and the fees will remain constant.

- Retain gTLD Evaluation Fee of \$185k.

The proposed gTLD Evaluation Fee remains \$185k. Although no additional cost estimates or policy decisions indicate the fee should be altered, the cost estimates will continue to be evaluated as the launch date approaches. If any significant cost estimates are altered due to more information becoming available, then the fee could be adjusted accordingly.

No discounts will be made available in this round of the new gTLDs as there is concern with gaming and possible added complexity in the first round. Discounts may be considered in future gTLD rounds.

Support for Fees. As described in the cost consideration paper (<http://www.icann.org/en/topics/new-gtlds/costconsiderations-23oct08-en.pdf>), the \$185k evaluation fee was based upon detailed analyses of specific tasks and steps needed to be performed during the evaluation.

The costs related to the applicant evaluation process will be described in more details in the next version of the cost considerations paper. Key questions that will be addressed include:

- What are the activities that need to be performed for each phase of the application evaluation?
- How are historical costs factored into the development costs?
- What is the impact of the assumptions used for the number of applications?

Clarify How Surplus Funds will be Handled.

Report on cost accounting: When the new gTLD round is deemed as closed, as well as periodically throughout the first-round process, all costs will be captured and reported on in a detailed and readily accessible manner. The total costs will be compared to the total fees collected, less any refunds and a report of the deficit or surplus will be posted. The report will be available for the community and will be reviewed by an independent accounting firm. (While most costs will be apparent at the “end” of the round, the full realization of risk costs may take up to three years. An estimated final cost will accompany each report.)

Use of surplus, if any: A process will be developed and implemented to engage the community in the disposition of the surplus, if any. This will include likely recipients of the funds as well as clarity on the principles (e.g., application of funds against future rounds), amounts, timing, and manner of disposition of the surplus funds, if any.

Clarify Refunds.

- Depending upon the stage of the application’s evaluation processing, refunds for 20%, 35% or 70% of the evaluation fee will be available. Refunds will be made available to applicants whose applications do not proceed through the entire evaluation process. The amount of the refund will be generally based on an amount of the estimated evaluation costs not expected to be spent on the particular application. Any applicant can apply for a refund by submitting a request for a refund along with a request to stop processing the application. Any application that has not been successful is eligible for a 20% refund. The following table summarizes each of the refunds available.
- Applicants should refer to table in Section 1.5.5 of the Draft Applicant Guidebookv2 for further information regarding the refund percentages available.

Payment Terms, Forms of Payment, and Other Financial Considerations.

- To mitigate concern regarding currency exchange rate fluctuations, applicants could consider a strategy whereby they exchange \$185,000 worth of their local currency into US Dollars, at the time they decide to file an application, and therefore applicants will eliminate the impact of future changes in the rate of exchange.
- Because the application process will be open for several months, applicants will have sufficient time to obtain approval for the payment of the application related fees.
- The impact on a specific applicant or a class of applicant, by policy, was not a factor in the development of the evaluation fee. When specifying the fee, it was also understood that new registries would require significant additional investment in addition to the application fee to begin registry operations. Therefore, the application fees are not an unreasonable fraction of the entire investment and up-front payment of such fees should be part of the business model developed by applicants.

Registry Services Fees.

- A small fraction of registry service evaluations result in registry services technical panel (RSTEP) review. Each inquiry costs \$100K-\$125K.

- In an environment with hundreds of TLDs, ICANN would have to budget eight figures to cover these costs alone, There is also a high level of uncertainty as to how many times the RSTEP will be used, so the ICANN budget will have to be conservatively weighted, depriving other uses of those funds.
- Therefore, the RSTEP fee should be paid directly by the beneficiary of the service, the registry operator. Since the fees are paid a relatively few number of times, it should not deter innovation.

GEOGRAPHICAL NAMES

I. Key Points

- Country and territory names can be applied for under the new gTLD process, but applications will require evidence of support, or non-objection, from the relevant government or public authority.
- The requirement to provide evidence of support, or non-objection, from the relevant government or public authority, was developed to reflect the GAC Principles regarding new gTLDs and also address GAC concerns that the objection process was inadequate.
- Greater specificity will be provided on the definition of country and territory names.
- Protection for country and territory names might be provided at the second level – requiring relevant government approval of registration of country names.

II. Summary of Comments

More certainty on scope. The scope of what is to be considered a geographical name should be established with a higher degree of certainty. An exhaustive list of names should be established for the benefit of prospective applicants. *Lovells (13 April 2009).*

GAC Principles. ICANN must take into account the GAC Principles regarding new gTLDs, including national and geographical interests. *J.A. Andersen, Director General, Ministry of Science Technology and Innovation, National IT and Telecom Agency, Denmark (2 Mar. 2009).*

Incorporation of GNSO and GAC Advice. There does not seem to be an explanation as to why ICANN staff ignored the GSNO recommendation and went with the GAC recommendation granting a broad new power to the public sector over geo names at the first level. *P. Corwin, ICA, GNSO Transcript at 92 (28 Feb. 2009).* ICANN should reverse its adoption of the GAC position and revert to the GNSO position that provides governmental entities with standard objection rights. *ICA (13 April 2009).*

Second level geo-domains. Any suggestion that governments have any ability to object to second level geo-domains on any grounds outside the scope of the UDRP should be rejected outright. The direct search industry created by domainers offers consumers an alternative to search engines when they seek information, and geographic names are one of the chief means by which consumers seek relevant information about providers of products and services associated with a particular locality. The GAC continues to press for control of geographic and other names of national significance at the second level of the DNS and ICANN continues to entertain this overreaching. Subjecting second level names to no-cost, on-demand blocking by countries and other entities would be a major policy error detrimental to consumers and entrepreneurs wishing to serve them. ICANN also should not favor multinational companies over smaller businesses in considering this issue. *ICA (13 April 2009).*

Commends consideration of ccNSO WG on geographical names. ccNSO Council appreciates that instead of the official language of the country and the 6 UN languages, all languages are now included, a significant improvement that removes discrimination against languages other than the UN languages. *C. Disspain, ccNSO Council (9 April 2009).*

Government control and other Geo domain concerns. ICANN’s proposal is basically putting all geographical domains in the hands of government, which seems inherently unfair. It is also unclear what is meant by “selected economic and other groupings” included in the definition of a Geo domain; what is an example of that (.wallstreet; .winecountry)? What about if cities with the same name apply for their city’s gTLD (e.g., .springfield in the U.S.)? At a difficult time for city budgets, citizens’ taxes will have to be spent and may have to be increased to give those cities a chance to bid for their extension. ICANN should give governments preference in applications for Geo domains but not absolute control over them. Terms need to be well defined so that people do not expend significant funds to determine if they have interpreted the rules correctly. Geo domains should be awarded to the registry willing to provide the service for the lowest cost and do not make the citizens of a jurisdiction cut government services in order to pay ICANN fees through a bidding war with others. *Worldwide Media, Inc. (13 April 2009); J. Seitz (11 April 2009).* Regarding section 2.1.1.4.1 and 2.1.1.4.2, Utilize the first guidebook approach –with need of local non-objection or support letters when it comes to country exact names and major cities exact names, no more; applying the rule to “appropriate authorities” will open Pandora’s box and could lead to a mess and unpredictable results (and how to interpret “widely understood” phrase itself could create confusion—better to avoid it because there is no precise definition of it). *A. Sozonov (Module 2, 11 April 2009).* It may be reasonable to require applicants of names of countries (official or widely understood) and possibly larger regional (e.g. continental) or capital/larger cities to produce non-objection or simple support letters. The process for review by the governments is onerous and ludicrous—ICANN seems not know how government works. There is also no need for any of the sub-country name level restrictions. Leave this issue as it was in the first guidebook—where local jurisdictions get some say regarding country names and major cities when it is exact or close to the names and no more. *DotAfrica (Module 2, 12 April 2009).* See also *S. Subbiah (Module 2, 13 April 2009).*

Problems with getting government support. While ICANN says it is the applicant’s responsibility to identify which level of government support is required, in many countries there are still conflicts between parallel organizations who are challenging each other about control of the Internet inside the country. In such an area almost no one can succeed in getting government support. Why should government have such control while everybody believes that the Internet must not be under domination of governments? *S. Soboutipour (Module 2, 12 April 2009).* ICANN should define what level of support they require (e.g., a “letter of objection”) given that it may be hard to get any government support in some places and in others the government may not be interested in any TLD application. *Association Uninet (Module 2, 12 April 2009).* The government support requirement is problematic –e.g., regarding the suggestion to create registries for the continents, we should not be turning them over to the

very governments which cause the problem we are trying to solve; also consider the lack of service to Africa, South America and large parts of Asia (why does “.africa” have to wait on a “substantial number” of 53 governments). *E. Brunner-Williams (Module 2, 14 April 2009)*.

Cities and IDN scripts. Any string that is a representation in any language of New York City should have the highest protections. Re: Section 1.3 IDN applicants, under the existing IDN structure New York City would have to file an additional application and pay an additional fee for each IDN representing the city in other scripts. The assignment of these script IDNs should be readily available to respective cities with fees representing additional processing costs only. *Connecting.nyc (13 April 2009)*.

Separate Geo TLD category. Geo TLDs do not fit into a new gTLD process; they are not generic and have more in common with ccTLDs. It would have been better to discuss and establish common rules for them and then start a separate Geo-gTLD process. *M. Leibrandt (13 April 2009)*.

Existing ccTLDs and Geo TLDs. There may be legitimate applications for territory, country, or regional gTLDs which appear to conflict with existing ccTLDs. Due to high ccTLD prices or very restrictive registration policies, the relevant government authority and the affected community may support a new gTLD. If a community and/or government authority wish to support a gTLD application, this should be allowed. *Minds and Machines (13 April 2009)*.

Geo-gTLD Registry Re-delegation. Clear re-delegation rules need to be established before introduction of geo-gTLDs. Geo-gTLDs should reflect a trilateral relationship between ICANN, the registry and the local Internet community. Early termination of the contract between ICANN and the registry must be possible if significant parts of the local Internet community including the relevant government or public authority are no longer satisfied with the services offered by the relevant geo-gTLD registry. *M. Leibrandt (13 April 2009)*.

Support/non-objection of governments. There should be no substitutions for the requirement to provide evidence of support or non-objection from the relevant government or public authority. Sector specific IT regulation dealing with Internet domain names is an important element of operator-independent consumer protection once the geo-gTLD has been introduced. *M. Leibrandt (13 April 2009)*.

Subcountry name restrictions. There is no need for sub-country name restrictions since the current ASCII ccTLDs and the upcoming IDN ccTLDs ensure that every country gets its own TLD to run/operate in a name form that it either chooses (IDN) or historically has and accepted (ASCII postal code). This issue should be left the way it was in the first Guidebook version – where local jurisdictions get some say when it comes to country names and major cities when it is exact or close to the names and no more. *NCUC (13 April 2009)*.

Multiple labels for the same geographical term. From both an IDN and ASCII perspective, current ICANN rules require double (or triple) payment – e.g., .koln, .cologne. Cities or regions

which are widely referred to by multiple labels should be given an opportunity to use all of these labels for the same price. *Minds and Machines (13 April 2009)*.

Geopolitical names. It is going too far to require non-objection or support letters from authorities for names of any place within in a country (e.g., Silicon Valley, Bollywood). *NCUC (13 April 2009)*.

Community requirement. Geo gTLDs should always be based on community based applications for the benefit of a restricted population. Concepts allowing unrestricted global use of well known country, territory or place names should be handled with caution. In general, geo gTLD applications not providing evidence of registration rules limiting the use of the TLD to members of the respective local community should be rejected. *M. Leibrandt (13 April 2009)*.

Geo gTLD Fees. There should be no preferential treatment for geo gTLDs on registration and evaluation fees, which should in general be as low as possible for all applicants to provide low market entry barriers. *M. Leibrandt (13 April 2009)*.

Geographical Names (2.1.1.4.1). Module 2 evaluation procedures are generally acceptable but the identification of city names presents numerous opportunities for collision (at city and even national level, as when two countries share a common language –e.g., U.S. and U.K.) Because the burden falls on the applicant, it is likely that many applications will unknowingly fail to identify all instances of collision. Later modules imply that this would be a material omission and could negatively affect the application’s review. *Go Daddy (13 April 2009)*.

IDN TLD applications—largest users; government. ICANN should request official authentication from government regarding the largest IDN user community, as an effective and supportive document for ICANN on evaluating registrant competition. *CONAC (13 April 2009)*. See also *Internet Society of China (13 April 2009)*. In section 2.1.1.3.2 “String Requirements” under the clauses for IDNs the following language should be added: “Applicant must demonstrate proof or non-objection from governments or public authorities of a country or territory, if the applied [for] string is in the language/script that the residents of that country or territory composed of super majority of the users that are using that language/script in the world.” *CNNIC (13 April 2009)*. See also *NCUC (13 April 2009)*. ICANN needs to clarify before the application round opening the issue of government consent needed where local laws have been issued to prevent the deployment of IDN TLDs in local scripts. *A. Sozonov (Module 6, 9 April 2009)*. *S. Soboutipour (Module 6, 12 April 2009)*. *Association Uninet (Module 6, 11 April 2009)*. *DotAfrica (Module 6, 12 April 2009)*. *L. Andreff (Module 6, 13 April 2009)*. *S. Subbiah (Module 6, 13 April 2009)*. *S. Maniam (Module 6, 13 April 2009)*.

Recommend no consideration given to interests of governments or public authorities in country or territory names. A geographical community as defined by the process may not be the best organization to launch a particular TLD. Bias should not be given to official government compared with the private sector. In the case of a private party working with the government, this scenario is open to bribery, lobbying, etc. TLDs should be allocated based on ability to

perform functions (or auction), not political influence. The loose definitions of who within that community can provide authority on behalf of the community will lead to confusion. In the event of two communities using the same name, it seems that bias may be given to the larger of the communities (e.g., Paris, France as opposed to Paris, Texas) and the section also has a loophole (“An Application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name...Couldn’t I just not ‘declare’?”). (re: Module 2, 2.1.1.4). *A. Allemann, DomainNameWire.com (6 April 2009)*.

Country Names and Territory Names. They should all be ccTLDs—not gTLDs. The dividing line between gTLDs and ccTLDs will be blurred and eventually disappear if ICANN allows any string that is a meaningful representation of a country or territory name listed in the ISO 3166-1 standard, in any language and any script as a gTLD. It is of utmost importance to keep the distinction between gTLDs and ccTLDs. (See discussion in comments text and specific proposed amendment language for section 2.1.4 to address this concern.) *ccNSO Council (9 April 2009)*. auDA strongly supports the ccNSO principle that all country names and territory names are ccTLDs. Any territory name should not be available as a gTLD, including names in any ASCII or non-ASCII script or any recognized language. It is of concern that this has not been fully incorporated in the current version of the draft guidebook. auDA recommends that any meaningful representations or abbreviations of a country and territory name in any script or language should not be allowed in the gTLD space – at least until the related IDN ccTLD PDP has been completed. ICANN should work with appropriate constituencies (e.g. the country code managers and governments through the GAC) to develop a mutually agreeable solution prior to the finalization of the new gTLD applicant guidebook. *auDA (14 April 2009)*. See also *APTLD (Module 2, 13 April 2009)*.

Illogical process. (2.11.4.1 and 2). These items are illogical—ICANN says there must be no conflict with names of any cities, county, province or state, listed in lists that may change from time to time. In one country during a period of 5 years 4 new Provinces were added. How will this work where new cities are added each year? What is the final border of this limitation? Keeping the field open is very uncontrollable. There must be a restriction somewhere; why not ask governments to show their red lines? *S. Soboutipour (Module 2, 12 April 2009)*.

Second Level Clarification/Concerns. If someone applies and is granted dot islands and if someone wants to register Barbados.islands or any specific name of an island at this new TLD, does that applicant need to get the endorsement or at least the non-objection of that government authority, or does that endorsement or non-objection requirement only apply at the top level and not to the second level of new TLDs where the name of the TLD is not any specific country, region, or whatever that’s covered by the overall geo rules? What about municipalities (e.g., la.beaches, rio.beaches)? *P. Corwin, Internet Commerce Association, GNSO Transcript at 92-93 (28 Feb. 2009)*. We would like to see from ICANN in writing the clarification that there is no requirement to get the endorsement or non-objection of a city, country or region for specific gTLD names such as Hawaii.beach, Australia.beach, or Rio.beach. *P. Corwin, Internet Commerce Association, Public Forum Transcript at 43 (5 Mar. 2009)*.

Challenge process. There should be an opportunity to challenge the geographical names process (GNP)—preferably within an ADR. This appears necessary to address situations in which the decision of the GNP may be that the application for the new TLD is not a geographical name. *INTA (8 April 2009)*.

III. Analysis and Proposed Position

Country and territory names

Will allowing country and territory names in the new gTLD application process blur the distinction between what is a gTLD and what is a ccTLD?

The ccNSO and other ccTLD managers have raised concerns that allowing applications for country and territory names in the gTLD process will blur the distinction between ccTLDs and gTLDs. They have requested that applications for country and territory names not be allowed in the gTLD process, at least until the completion of the IDN ccTLD PDP, which will address this issue. The current timetable for the completion of this process is mid 2011. Comments received from others support the notion of country and territory name applications being allowed under the gTLD process.

While understanding the concern that it is important to maintain the distinction between a ccTLD and a gTLD, there is also anticipation that governments may want a .country name TLD, and at this time, this is only possible under the new gTLD process. The GAC has expressed the sentiment of a government's sovereign rights over the use of their respective country name. Therefore, it would seem inappropriate to deny a government (or better that ICANN does not have the authority to deny) the right to submit or support an application for a .country name TLD under the new gTLD process. The new gTLD process is clear that an application for a country or territory name must be accompanied by government support.

The treatment of country and territory names, in version 2 of the Draft Applicant Guidebook, was developed in the context of the points raised by the GAC, the ccNSO, and the GNSO policy recommendations. Applications for country and territory names will require evidence of support or non-objection from the relevant government or public authority, and that evidence must clearly indicate that the government or public authority understands the purpose of the TLD string and the process and obligations under which it is sought. The evidence of support requirement is consistent with the GAC Principle 2.2¹; and the detail to be contained in the letter was developed to overcome the ccNSO's concerns that governments have varying degrees of understanding

Government interests

¹ ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.

What process was undertaken to balance the recommendations of the GNSO with the GAC principles regarding new gTLDs?

Why is evidence of support, or non-objection, from the relevant government or public authority required for the categories of geographic names identified in the Draft Applicant Guidebook?

The new gTLD Program Explanatory Memorandum, Proposed Process for Geographic Name Applications, explains the balancing between the GNSO policy position and the GAC principles <http://www.icann.org/en/topics/new-gtlds/geographic-names-22oct08-en.pdf>

According to Article XI, Section 2.1.j of the ICANN bylaws—the advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

The GAC expressed concerns that the GNSO proposals do not include provisions reflecting important elements of the GAC principles and did not agree that the objection and dispute resolution procedures described by the GNSO policy recommendations were adequate for ensuring that governments and public authorities are aware of applications for strings which represent their country or territory names, or certain other geographic and geopolitical descriptions. The GAC principles state, among other things, that ICANN should avoid such names “...unless in agreement with the relevant governments or public authorities”. The GAC expressed a preference that such applications require the relevant government’s or public authority’s approval as opposed to relying on the objection process. This is why there is a requirement that the applicant obtain evidence of support, or non-objection, from the relevant government or public authority.

The GNSO’s Reserve Name Working Group report does recognize that applicants interested in applying for a geographical name should be advised of the GAC principles and further “...that the failure of the GAC, or an individual GAC member, to file a challenge during the TLD application process, does not constitute a waiver of the authority vested to the GAC under the ICANN bylaws”. With this knowledge, a prudent applicant would take steps to discuss their application with the relevant government or public authority, and seek their support, prior to submitting the application to reduce the possibility of being subject to an objection from the government at a later stage in the process. Prescribing evidence of support or non-objection in the Draft Applicant Guidebook is considered a formalization of this step for the applicant.

Will the requirement of evidence of support or non-objection from the relevant government or public authority be onerous on governments?

It is the applicant's responsibility to obtain the evidence of support or non-objection of the relevant government or public authority, and as such the process is not intended to be onerous on governments. The requirement was developed in response to GAC concerns.

Does this requirement mean that governments have control over all geographic names?

The process was developed to respond to the GAC's concerns and is not intended to give the governments control over geographic names. It does not restrict who can apply for a geographic name, but was developed to provide some protection for geographic names. It is also considered a measure to reduce the likelihood of objections.

Does this requirement mean that governments have control over all geographic names?

The process is not intended to give the governments control over all geographic names, the process was developed to respond to the GAC's advice, and is also considered a measure to reduce the likelihood of objections.

Capital city names

Will capital city name applications be given preference over city name applications for the same name that are not capital cities, e.g. Paris, France over Paris, Texas?

The Draft Applicant Guidebook states that "an application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166- standard" and "an application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city" require documentation of support or non-objection from the relevant government or public authority.

This requirement means that an application for .paris, regardless of whether the applicant intends to represent Paris, Texas; Paris, France; the fragrance Paris; or Paris Hilton, will require documentation of support or non-objection from the relevant government or public authority, which, in accordance with the capital city requirement, in this case would be France.

It is important to note that this rule applies only to capital city names. Given the GAC Principles regarding New gTLDs and general principles of conservatism, the process identifies the limited number of capital city names as being important to government / sovereign interests. Other city names require government approval only if they claim to represent a city in the application, and only from the relevant government of the city they claim to represent. The relevant government in the case of city names depends on the location for example, an application purporting to represent Newcastle, England requires the approval of a different government

than an application representing Newcastle, Australia. An application for “Newcastle Ale” or any other brand or unspecified purpose requires no government approval.

Sub-national names

Why are sub-national names afforded protection under the process?

How does the applicant resolve competing claims of authority?

Sub-national names such as states, counties and provinces have been afforded protection in response to GAC advice that place names only be available with the support of the relevant government or public authority. It will be the applicant’s responsibility to identify if the string represents a place name, other than city name, and also to determine the relevant government or public authority. Some comments stated that protections provided to country names should not be extended to any sub-national names. National governments have vital interests in the name of the country and also in names of sub-national regions. Sub-regional names can be misappropriated for purposes contrary to national purposes (e.g., national security) and so the requirement for government approval is extended to a limited number of additional names. To make the issue clear to applicants the process has provided a bright line rule by limiting the names protected to the ISO-3166-2 list.

Where the string is a sub-national geographical identifier on ISO 3166-2 list over which more than one government or public authority claims authority, ICANN will require the applicant to supply supporting documentation, or evidence of non-objection, by all the relevant governments or public authorities claiming such authority. ICANN is a technical coordination body not an arbiter of political or territorial disputes. This requirement is not a statement by ICANN on the rights of any claim, but rather a reflection of ICANN’s commitment to the stability of the DNS.

Community applications

Should geographic name applications also be community?

In accordance with the adopted policy recommendations, the category of community-based applications was introduced to enable priority for a community-based application to be awarded in a contention situation. Applicants are free to select the preferred category for their applications – community-based or not - and there is no basis in the adopted policy for obliging any applicant to select either category. Therefore, a geographical names applicant can self-select whether to be a community-based application. As a community-based application, the applicant must satisfy the stated criteria: restrictive registration practices, association with and the support of a pre-existing community and so on.

Redelegation

Will there be a redelegation process for geographic names similar to that currently applied for ccTLDs?

The gTLD space does not have a redelegation process as there is a presumption of renewal in all gTLD registry contracts. The gTLD contract also has a change of control provision. In the case of a geographical name that required government approval or non-objection, that change of control will require the approval of the government that supported the initial application. The change of control process is similar to the redelegation process in that the approval of the sponsoring organization, as it exists for that registry, is required.

Also, the ICANN gTLD Registry Continuity Plan was developed to transition a TLD to a successor operator in the event that a registry or sponsor is unable to execute critical registry functions, and continue the operation of a TLD in the longer term. This plan will be amended in light of the new gTLD process and, in the case of geographical names as defined in the limited manner by this process, will require the approval of the relevant government.

Second-level names

Will there be protection of geographic names at the second level?

Recognizing the challenges associated with the GAC principle 2.7² relating to national and geographic names at the second level, the ICANN Board sought assistance from the GAC in developing a solution to enable implementation. The GAC submitted a reply in accordance with the ICANN Board request on 24 April 2009. (<http://www.icann.org/correspondence/karklins-to-twomey-24apr09.pdf> [PDF, 96K]) A final report from the GAC is requested by 25 May 2009.

That report recommends that names contained in certain internationally recognized lists are to be reserved at the second level and that registries develop procedures for the release of those names consistent with GAC principles. It would be the prerogative of the relevant governments to adopt those registry procedures to register the country name.

The report limits the names that would be reserved to those explicitly contained on three authoritative lists:

² Applicant registries for new gTLDs should pledge to: a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD; b) ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.

- The short form (in English) of all country and territory names contained on the ISO 3166-1 list,
- The United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World,
- The list of UN member states in 6 official UN languages prepared by the Working Group on Country Names of the United Nations Conference on the standardization of Geographical Names.

Definition of terms

Can more clarity be provided on what is considered a geographical name?

To the extent possible, the geographical name categories are based on an identified list of names. For country and territory names, this is the ISO 3166-1 list; sub-national place names, the ISO 3166-2 list; capital city names are those of the countries and territories contained in the ISO 3166-1 list; and continent and UN regions are based on the UN “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list. The only absence of a list is for city names and this is because of the duplication across the world of city names, that many city names can be generic terms, and also are brand names.

At the request of the ICANN Board, further work is being undertaken by staff to provide greater specificity on the definition of a country or territory name. The outcome of this work will be reflected in version 3 of the Draft Applicant Guidebook, and the definition will continue to be based on the ISO 3166-1 list. That portion of the Guidebook is being published at the same time as this document in order to point up discussion.

What is meant by “selected economic and other groupings”?

The term “selected economic and other groupings” is part of the name of the UN list “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” used to determine strings which represent a **continent or UN region**. In this context the term relates to developed and developing regions; least developed countries; landlocked developing countries; small island developing states; and transition countries. The full list is available at:
<http://unstats.un.org/unsd/methods/m49/m49regin.htm>

In conclusion, Country and territory names will be allowed under the gTLD process.

The Draft Applicant Guidebook will be amended to provide new detail for public comment:

- Greater specificity on the definition of what is a country and territory name;

- Greater specificity on the support requirements for continent names as requested by the Board; and
- Clarity on the meaning of what is a 'public authority' in the context of the requirements of the Guidebook.
- Handling of country / territory names (as listed in certain specified sources) at the second-level in accordance with implementation advice received by the GAC.

OBJECTION PROCESS

Procedures

I. Key Points

- ICANN will continue to fine-tune the procedures applicable to the dispute resolution process.
- While it will be at the DRSPs discretion, ICANN will encourage all DRSPs to consolidate objections whenever possible.
- ICANN will consider and will discuss with the DRSPs a process whereby a running list of objections are published as objections are filed during the filing period.

II. Summary of Comments

No TLD awarded to anyone if there is successful objection (3.1.2.1). If an existing TLD operator successfully asserts string confusion and the application is rejected, then the string should not be given to anyone else, including the existing TLD operator who won the objection. *NCUC (13 April 2009). A. Sozonov (Module 3, 9 April 2009). S. Maniam (Module 3, 11 April 2009). S. Soboutipour (Module 3, 12 April 2009). Y. Keren (Module 3, 13 April 2009). L. Andreff (Module 3, 13 April 2009). DotAfrica (Module 3, 12 April 2009). D. Allen (Module 3, 13 April 2009). A. Mykhaylov (Module 3, 13 April 2009).*

Different Languages Issue. It is unclear whether two similar TLD requests will be opposed in two different languages or not. *J. Guillon (2 Mar. 2009).*

Public comments role. The role of public comments in the work of evaluators (including at the comparative evaluation stage) and DRSPs needs to be spelled out. *SIIA (13 April 2009).*

“Base” processes needed for all DRSPs. In so far as possible, there should be a consistent set of “base” processes for all DRSPs to follow so that the system does not become overly complicated. *Regions (13 April 2009). See also AT&T (13 April 2009).* ICANN should develop standardized mechanisms for dispute resolution that contending parties can turn to before resorting to auctions; however, no such mechanism should preclude legal processes provided under applicable law. *CADNA (13 April 2009).*

Precedential Value of Successful Objections. In the absence of famous trademarks being added to the reserved names list, successful objections should have precedential value so trademark owners do not have to keep objecting. *European-American Business Council (1 April 2009).* Successful objections by brand owners should have precedential value; this will avoid new case procedures and fees. *Visa Inc. (11 April 2009).* If the objector is successful, then the gTLD should be moved onto the “reserved names” list, and the objector could avoid having to submit and

prosecute objections to the same or similar gTLDs multiple times. *Hearst Communications, Inc.* (13 April 2009). See also *COTP* (13 April 2009). *IHG (Module 3, 9 April 2009)*.

Clarify preclusive effect if any on determinations in string confusion and LRO proceedings.

ICANN should clarify whether and, if so, to what extent determinations in string confusion and LRO proceedings will have any preclusive effect. E.g., will an expert determination in a string confusion proceeding apply to a LRO proceeding between the same applicant and objector regarding the same string? Will an expert's finding in a LRO proceeding that the applied-for string is not confusingly similar to the objector's mark preclude a finding of string confusion if the objector applies in the second round for a gTLD identical to the mark on which it based its objection? *Microsoft (Guidebook, 13 April 2009)*.

Preclusive Effect of Withdrawn Application due to Objection. The guidebook should specify the preclusive effect of the withdrawal of an application after an objection has been filed against it. An applicant should not be permitted to re-file an application for the same gTLD string if its initial application was withdrawn after an objection was filed. *INTA (8 April 2009)*.

Objection Mechanisms. It is important that appropriate objection mechanisms are in place through all stages of the application process to ensure the protection of consumer interests. *J.A. Andersen, Director General, Ministry of Science Technology and Innovation, National IT and Telecom Agency, Denmark (2 Mar. 2009)*.

Objection-Time Limit. Once an objection has been filed, the time limit requirement should be amended to allow for a possible change to the complaint if requested by the DRSP on procedural grounds. This would address a concern that an objector could in some cases run out of time to amend a complaint under the current time limit structure (90 days from the publication of the TLD application). *INDOM.com (10 April 2009)*.

Separate responses and fees for each objection. Section 3.2.3 says applicants must respond to each objection separately and pay the filing fee for each response. Some scenarios may occur involving popular and controversial applications that generate an unexpected number of objections. *Go Daddy (13 April 2009)*.

Failure to file response to objection. Section 3.1.4 seems to suggest that if an applicant does not file a response the objector prevails. This is too careless about the outcomes of a battle-of-the-forms mechanism. *E. Brunner-Williams (Module 3, 14 April 2009)*.

Objector Prevails by Default. If the applicant defaults (whether by failing to respond or by withdrawing application) then the applicant should be precluded from filing another application for the same objected-to string. *Microsoft (Guidebook, 13 April 2009)*.

Untimely Objections—Good Cause Exception. The guidebook and procedure should include a principle good cause exception to allow for filing objections past the deadline in exceptional cases. Because all objections must be filed electronically, this exception should include

technically related, unforeseeable circumstances that would prevent an objector from timely filing and “Acts of God” (e.g., floods, earthquake, etc.) would also be included in the exception. *INTA (8 April 2009)*.

Amending Objections Dismissed on Procedural Grounds. DRSPs should allow objectors a short cure period to amend objections dismissed on procedural grounds to cure the defect and avoid the burden of formally re-filing an objection that can be easily corrected. *INTA (8 April 2009)*.

Burden of proof-standards. The guidebook and Article 20 of the procedure should state clearly the burden of proof employed in the objection process (e.g., “on balance of probabilities” civil law standard or “beyond all reasonable doubt” used in U.S. criminal law proceedings). The burden of proof in LRO proceedings should shift to the applicant to show why the application should not be refused if the applicant has unsuccessfully defended more than a given number of UDRP or gTLD claims in a rolling 12 month period. INTA also renews its version 1 guidebook comments on standards for string contention objections and LRO objections. *INTA (8 April 2009)*.

Repeat offender cases. During the objection period, the DRSP should have discretion to give strong consideration in favor of brand owners when dealing with repeat offender cases. *Visa Inc. (11 April 2009)*. Past domain name abuse should be a factor if raised in any objection. See also *Hearst Communications, Inc. (13 April 2009)*.

Consolidated Objections—Clarification. INTA supports the possibility of consolidated objection, but requests confirmation that, even if procedurally consolidated, the bases and arguments in support of each individual objection will be considered and decided separately and on their own substantive merits. *INTA (8 April 2009)*. Brand holders should have the ability to consolidate complaints against the same party to lower costs. *Visa Inc. (11 April 2009)*. Regarding section 3.3.7, ICANN should clarify how it will handle filing fee requirements when it consolidates objections (e.g., will fees be divided equally between each “consolidated” objector). *BITS (13 April 2009)*. See also *Go Daddy (13 April 2009)*.

Refusal of Consolidation. Both the objector and the applicant should be permitted to refuse consolidation of objections proposed by the DRSP. *Microsoft (Guidebook, 13 April 2009)*.

Avoid duplication and encourage consolidation of objections. Publishing a running list of objections received could reduce pressure for others to file similar challenges. Consolidating objections into a single proceeding should be encouraged to benefit applicants facing multiple objectors and to benefit objectors who wish to challenge multiple applications for the same or virtually the same string. *COA (13 April 2009)*. DRSPs should be strongly encouraged if not required to allow for consolidation of objections where possible and to thereby minimize applicant and objector expenses (1.1.2.6). *RyC (Modules 1-4, 13 April 2009)*. It is not clear that DRSPs should have full discretion on whether to consolidate objections; at a minimum they should publish the criteria used to make such a decision, and DRSPs should be encouraged to

consolidate similar objections into one proceeding if requested by the applicant or any objector. *RyC (Modules 1-4, 13 April 2009)*.

Combining Multiple Objections and Responses. Objectors should be permitted to file against one application a single objection document that delineates the bases for all of its objections against that application. Similarly, an applicant should be permitted to file a single response document that responds to multiple based objections filed by the same objector. The DRSPs should each issue a decision based on the relevant portion. *Microsoft (Guidebook, 13 April 2009)*.

DRSP Transparency. Objections and responses should be made public. Rules and procedures DRSPs will use should be made available and open to public comment. *COTP (13 April 2009)*.

Clarify panel selection and procedures. Objectors should be ensured that the panel is comprised of not only independent experts but of opinion-neutral experts also. DRSPs should be required to consider these concerns when selecting panel members. ICANN should also clarify whether ICANN will specify the rules upon which proceedings will be administered. If the procedural rules are to be designated by the DRSPs, the guidebook should state this in the Adjudication section (3.3.5), and public comment on them should be enabled. *NCUC (13 April 2009)*.

Binding nature of panel decision. The weight of the expert panel decision should be clarified (see 3.3.6 and 1.1.2.6)—is it final on the objection or merely advice ICANN can accept or reject? There is no reason why an expert panel decision should not be binding. If ICANN is allowed to reject the expert decision, then ICANN’s decision making process must be transparent (e.g., ICANN must author a report of its own describing the panel recommendation and why ICANN determined it was not acceptable). *NCUC (13 April 2009)*. *Microsoft (Guidebook, 13 April 2009)*. DRSP decisions should be final and binding on ICANN. *COTP (13 April 2009)*.

Objection Period. ICANN should provide more information on the objection period duration (the “posted deadline date” in 3.2.1) so that there may be more comment on the sufficiency of the length of time to file an objection. Explicit mention of time periods should be provided (i.e. see 1.1.2.4, 1.1.2.3, a chart at end of Module 3 suggesting a 14 day window). *NCUC (13 April 2009)*. The objection filing period should be specified in the next version (1.1.2.4); it should be a function of the number of applications with a minimum of two weeks. *RyC (Modules 1-4, 13 April 2009)*.

Objections-Time Zone. The guidebook and procedure should state which time zone will be used to establish the deadline for filing an objection. *INTA (8 April 2009)*.

Cooling off period. There should be an automatic cooling off period if the parties mutually agree that it would benefit the potential for mediation. *INTA (8 April 2009)*.

Negotiation/mediation—extensions of time. Except in cases where applicants are not involved in negotiation or mediation and more time might negatively impact them, granting a small time extension (not more than 30 days) is a reasonable step if all involved parties agree and it would likely encourage negotiation and mediation. *RyC (Modules 1-4, 13 April 2009)*.

DRSP Contracts Not Finalized. Given the concern that ICANN has not yet finalized its contracts with each of the DRSPs, INTA reserves the right to provide further comments once WIPO and ICDR have published their respective rules for new gTLD dispute resolution. *INTA (8 April 2009)*. To provide certainty, ICANN must complete its agreements with DRSPs and DRSP must finalize all aspects of the respective objection processes. *Microsoft (Guidebook, 13 April 2009)*.

Objection Processes—Consistency. The Legal Rights Objection dispute resolution procedures should be consistent with the UDRP and the rules within the finalized framework of the guidebook and procedure. In light of the success of the UDRP, its adoption would provide brand owners a system that is known, workable and proven. *INTA (8 April 2009)*.

Process clarifications—changes to applicant’s original proposals. ICANN does not describe a process for situations when an objector is willing to settle with the applicant if the applicant changes a substantial part of its proposal, or the outcome of a dispute resolution process is that the applicant will prevail only when it changes a substantial part of its proposal. Will ICANN require an applicant to stick to its original proposal, knowing that in this case the application will be rejected, or will ICANN allow the applicant to change its proposal and re-enter it in the appropriate phase of the application process? If ICANN allows an applicant to change its proposal, could ICANN indicate what parts can be adapted (i.e. string) and what parts cannot be changed (such as community-based to open, see 1.2.3). *SIDN (14 April 2009)*.

Panel Consistency. The number of people on a dispute resolution panel should be consistent—they should be three-person panels. *J. Prendergast, Public Forum Transcript at 20 (5 Mar. 2009)*.

Adjudication. Parties should have the right to submit arguments supporting why a panel should require an opposing party to submit particular documents or answer particular questions, if it reasonably would clarify facts helpful in deciding the outcome. Any hearings requested should be public. New gTLD dispute proceedings should be conducted in English, consistent with worldwide practice for similar proceedings. *INTA (8 April 2009)*.

Hearings. Hearings should be possible in more than just rare instances in order to ensure fairness; costs can be mitigated through phone/conference call recorded hearings. *NCUC (13 April 2009)*. *A. Sozonov (Module 3, 9 April 2009)*. *S. Maniam (Module 3, 11 April 2009)*. *S. Soboutipour (Module 3, 12 April 2009)*. *Y. Keren. (Module 3, 13 April 2009)*. *DotAfrica (Module 3, 12 April 2009)*. *S. Subbiah (Module 3, 13 April 2009)*

Judicial Action Not Precluded. The next draft of the guidebook should explicitly state that expert determinations do not preclude any party from initiating a judicial action in a court of

competent jurisdiction to defend its legal rights. INTA does not believe that this principle is clear in the text of the guidebook. *INTA (8 April 2009)*. See also *COTP (13 April 2009)*. IP rights holders should have legal recourse and the right to appeal an adverse ruling. The DRSP panel decision should not be subject to further review by ICANN but rather to an appeal process by a third party DRSP and/or a court. *Hearst Communications, Inc. (13 April 2009)*. All operative documents must provide that participation in any ICANN registration or dispute resolution process at any DNS level does not foreclose any avenues for rights holders to vindicate their rights in any available forum. *AT&T (13 April 2009)*.

“Legal Rights” Process. “Legal Rights” matters tend to be complicated. ICANN is not a court and should not try to substitute one, especially considering their multijurisdictional, multilingual nature. *A. Mykhaylov (Module 3, 13 April 2009)*.

DRSP Decision publication. To the extent that the right to refrain from publishing certain types of decisions is intended to be reserved, the guidebook and/or the procedure should specify any circumstances under which expert determinations will not be published on the applicable DRSP’s website. *INTA (8 April 2009)*. For transparency, panel decisions should be published. *Hearst Communications, Inc. (13 April 2009)*. Every DRSP panel decision should be published on the DRSP’s website. *AIPLA (13 April 2009)*.

Expert panel—Composition. Either party to the proceeding should have the opportunity to request a three panelist panel and the requesting party should bear the additional costs associated with two additional panelists, which works well in the UDRP system. *Microsoft (Guidebook, 13 April 2009)*.

Expert Panel—language abilities. In choosing experts, at least one expert should be from the corresponding language community while processing the individual IDN TLD applications. *CONAC (13 April 2009)*. See also *Internet Society of China (13 April 2009)*; *CNNIC (13 April 2009)*; *NCUC (13 April 2009)*. *A. Sozonov (Module 3, 9 April 2009)*. *Association Uninet (Module 3, 10 April 2009)*. *S. Maniam (Module 3, 11 April 2009)*. *S. Soboutipour (Module 3, 12 April 2009)*. Panels should feature 3 panelists who know local law and are fluent in languages of each party. *MARQUES (13 April 2009)*. *DotAfrica (Module 3, 12 April 2009)*. *S. Subbiah (Module 3, 13 April 2009)*. *D. Allen (Module 3, 13 April 2009)*.

Expert Panel—Principle for String Confusion Objection Evaluation. Section 2.1.1 has expanded the grounds on which string confusion can be claimed, but it is unclear what principles for evaluation the expert panel will use to evaluate the objection. A guiding principle for the expert string panel should be based on UDRP’s principle of “bad faith.” *Zodiac Holdings (13 April 2009)*.

DRSP Panel—Decision Timing. Timely action by DRSPs is important; ICANN should explain why the target timing language was deleted from 3.3.6 (reasonable efforts to issue all final decisions within 45 days of panel appointment). *RyC (Modules 1-4, 13 April 2009)*.

Publish Applicable Rules (Article 4). The applicable rules and procedures that the different DRSPs will follow should be published and made subject to comment. *RyC (Modules 1-4, 13 April 2009).*

3-Person Panel Option Should be Added (Article 13). A 3-person panel option should be added. It is contrary to normal commercial dealings to allow a single arbitrator to determine important disputes and would inject uncertainty into the process. *RyC (Modules 1-4, 13 April 2009).*

Discretion/fairness and consistency concerns. ICANN affording DRSPs the discretion to consider what public comment to hear and what not to, does not promote consistency or fairness across applicants. The decision to allow them or not should not be taken at this level. *M. Mansell, Mesh Digital Ltd. (2 Mar. 2009).* The role of public comments in the work of DRSPs should be spelled out. *SIIA (13 April 2009).*

ICANN Discretion and DRSP Determination. If ICANN intends to reserve the right not to follow in certain circumstances the expert determination entered by a Dispute Resolution Service Provider, ICANN should clarify any circumstances in which ICANN would not follow the advice of the panel. *INTA (8 April 2009).*

Objection languages. If ICANN is global is it fair to insist objections, responses and dialogue should all be conducted in English, which isn't the world's most spoken language? Multiple languages should be permitted if ICANN is to develop its integrity globally. *M. Mansell, Mesh Digital Ltd. (2 Mar. 2009).*

Challenge of last resort; ICANN Board discretion. Should ICANN devise a mechanism for a challenge of last resort lest an application threatening the process, stability of ICANN or the interests of the Internet community goes forward without any third party objection? What discretion does the ICANN Board reserve to reject an application that has cleared all the steps in the guidebook and how will that discretion be exercised? While it has addressed the issue for morality and community based grounds by proposing an Independent Objector, ICANN has not addressed whether there would be a right of appeal to the Board based on legal rights or string confusion. *IPC (13 April 2009).*

III. Analysis and Proposed Position

Several comments have urged ICANN to adopt and describe the procedures that will be followed to resolve disputes arising from objections to applied-for gTLDs. Other comments have inquired about specific rules and procedures, such as the burden of proof in dispute proceedings, the preclusive effect of the expert determinations that are rendered in the proceedings and the costs of the proceedings.

ICANN has prepared detailed rules of procedure for the resolution of disputes arising from objections to applied-for gTLDs. The procedure is described in Module 3 of the Draft Applicant Guidebook ("DAG"). The New gTLD Dispute Resolution Procedure (the "Procedure") is an

attachment to Module 3. See <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedure-18feb09-en.pdf>. Many of the specific comments and questions that have been submitted have already been answered in the Procedure. For example:

- The Procedure sets various deadlines for filing objections, responses to objections, etc.
- Article 6(e)'s reference to the "residence or place of business of the addressee" establishes the time zone that will be used to establish the deadline for filing an objection.
- Article 7(e) permits an extension of the deadline for filing objections, thus giving objectors an opportunity to cure objections that have been dismissed on procedural grounds.
- Article 13(c) stipulates that experts "shall be impartial and independent of the parties".
- Article 14 includes detailed provisions regarding the payment and the allocation of costs.

While it is true that each DRSP will have its own rules relating to the administration of the proceedings that may not be covered in the Procedure, those rules are not meant to override or be inconsistent with the Procedures. At present, it is intended that the ICC Rules of Expertise will apply to the Community and Morality and Public Order objections. These rules are already in place and not subject to revision through the ICANN public comment process as they are already in use by an established dispute resolution provider. Both WIPO and the ICDR are developing some supplemental rules, which have not yet been established. It is anticipated, however, that the supplemental rules will not be extensive. ICANN will make the supplemental rules available for review upon their completion.

Other comments and questions focus upon points that are not fully explained in Module 3 or in the Procedure. ICANN is pleased to provide additional explanations on these points:

- **Precedential value of successful objections:** The Expert Determinations that result from the objection procedure will normally be published on the website of the relevant DRSP. See New gTLD Dispute Resolution Procedure, Article 21(g). These decisions will not have binding precedential value, in the common law sense of the term, in other objection proceedings. However, published decisions could be considered persuasive authority. A party could cite a favorable decision in a subsequent objection proceeding (involving that same party or other parties). It should be noted that these considerations apply both to successful and to unsuccessful objections.
- **Preclusive effect of withdrawn application due to objection:** If the applicant fails to file a timely response to an objection, the applicant will be deemed to be in default, and the objection will be deemed to be successful. See New gTLD Dispute Resolution Procedure, Article 11(g). The applicant would in that case forfeit a portion of the evaluation fee that it had paid. See DAG, v.2, Section 1.5.5. Under these circumstances, it seems unnecessary for the legal force of the objection to be extended to any new application(s). It is unlikely that applicants will forfeit a substantial portion of the registration fee for the first application and then make a new application for the same

gTLD, which would require payment of the full evaluation fee again. As a general rule, a decision rendered by default would not be given preclusive effect in these proceedings.

- **Burden of proof:** The burden of proof to which reference is made in Article 20 is clearly a civil law standard (which may be expressed in various ways, such as the “balance of probabilities” or the “preponderance of evidence”). ICANN does not intend to establish special rules or burdens upon applicants (or objectors) that are based upon other legal proceedings outside the new gTLD Program. Each application and objection should be judged upon its own merits. The prior conduct of a party (either applicant or objector) could be relevant to the issues in a pending objection. In that case, the opposing party would be free to submit evidence of that prior conduct in support of its position.
- **Consolidated Objections:** The parties (applicant and objectors) will have an opportunity to present their views in favor or against consolidation, as the case may be. However, the DRSP’s decision on consolidation will be final. In a consolidated proceeding, the arguments in support of each individual objection (and, of course, the applicant’s responses to each of those arguments) would be considered and decided separately and on their own merits. Thus, in a consolidated proceeding, the arguments advanced by one of the objectors might not be accepted, while those presented by another objector are accepted. If, for some reason, such detailed and particularized consideration is unlikely to be feasible, this would be a reason to refrain from consolidating the objections.
- **Cooling-off period:** The parties are encouraged, but not required, to participate in negotiations and/or mediation. See Procedure, Article 16. If the parties do not wish to negotiate or participate in a mediation, little will be gained (and time will be lost) by requiring them to do so.
- **Consistency with the UDRP:** It is believed that the new gTLD Dispute Resolution Procedure regarding existing rights objections is consistent with the UDRP, although because the new procedure is operating in a different context, the two procedures are not identical.
- **Document production:** Orders for the production of documents should be very rare, although in **exceptional** cases such orders may be issued. See Procedure, Article 18. Of course, parties are free to argue that documents should be produced and answers given. Depending upon the facts of a given case, the panel may draw negative inferences from a party’s failure to submit certain documents or to answer certain questions.
- **Hearings:** Article 19 of the Procedure provides that the panel shall decide whether the hearing shall be public or private. If the matter concerns only the applicant and the objector (which may often be the case in legal rights objections), a private hearing may be appropriate. One would expect the hearing in a matter that concerns many people besides the parties (such as a morality and public order objection) to be conducted in public. Note, at any rate, that hearings will be rare, and those that are held will normally be conducted by video-conference.
- **Rights of appeal:** The DAG addresses rights of appeal. Recourse from ICANN decisions is provided for in ICANN’s Bylaws, although the basis on which such decisions may be

challenged are limited. This is standard in this type of dispute resolution. More generally, see the explanation provided in the New gTLD Draft Applicant Guidebook: Analysis of Public Comment, 18 February 2009, pp. 86-87 (posted at: <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>).

- **Judicial action:** Participation in the dispute resolution procedure for new gTLDs *does not* preclude judicial action. This principle has been stated in ICANN's responses to comments made with respect to the first version of the DAG, as follows: "It is implicit in the Procedure that an objector does not waive its right to defend its legal rights (e.g., trademark) before a court of competent jurisdiction merely by filing an objection to an applied-for gTLD." See New gTLD Draft Applicant Guidebook: Analysis of Public Comment, 18 February 2009, p. 86 (posted at: <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>).
- **Publication of expert determinations:** Article 21(g) of the Procedure provides that expert determinations shall be published in full on the respective DRSPs' websites, unless the panel decides otherwise. ICANN anticipates that expert determinations would not be published only in cases where it is necessary to protect confidential information or where disclosure would cause identifiable harm to the parties or others. And in those instances, ICANN anticipates that only the confidential portions of an expert determination would be redacted.
- **Public comment regarding pending objection proceedings:** The New gTLD Dispute Resolution Procedure does not provide a separate mechanism for the DRSP panels to review and consider public comments on the matters pending before them, although there is nothing to prohibit the panel from doing so. The panel will base its decision upon the arguments and evidence submitted by the applicant and the objector(s). Of course, the parties to a dispute proceeding are free to provide the panel with information relating to public comment as they see fit.
- **ICANN discretion regarding DRSP panels' expert determination:** As the DAG makes clear, the circumstances under which ICANN would not follow an expert determination would be rare. ICANN cannot describe in advance what those circumstances might be.
- **Objection languages:** Procedure Article 5(a) provides that the language of all submissions and proceedings shall be English. ICANN recognizes the importance of other languages, but for practical reasons, limiting dispute resolution proceedings to English appears necessary and acceptable. The adoption of this rule now does not exclude the introduction of other languages in the future. However, just considering which other languages might or should be introduced shows the complexity of the matter.

It does not appear from the comments that the New gTLD Dispute Resolution Procedure needs to be revised in any significant way. However, fine-tuning remains possible and desirable. For example, it appears that the final sentence of Article 11(g) should be revised to clarify that it refers only to any payments made by the applicant in the dispute procedure – *i.e.*, the filing fee and the advance. In addition, non-exclusive criteria that will guide a panel's decision whether to bar publication of its expert determination could be added to Article 21(g). ICANN will also

encourage the DRSPs to allow for consolidation whenever possible. Finally, ICANN will consider and will discuss with the DRSPs a process whereby a running list of objections is published as objections are filed during the filing period.

Community-Based Objections

I. Key Points

- ICANN agrees that more clarity on the criteria used for standing as a Community-based applicant would be helpful and will revise the next version of the Applicant Guidebook accordingly, and will be posting excerpts concurrently with this analysis.
- If an applicant applies for a non-Community-based TLD, it should not be able to invoke a complete defense in the face of a Community-based objection.

II. Summary of Comments

More details. Further detail is required in the description of the procedure for determining the level of Community support for an objection—i.e., will ICANN survey a community to gauge its opposition to a Community application; is it sufficient that the applicant or objector simply enlist the support of the leadership of the targeted community? *Go Daddy (13 April 2009)*.

Explore alternatives to the International Chamber of Commerce as DRSP. As a business advocacy group it is not able to act responsibly as a non-business advocacy group which is what evaluating community objections entails. Also, the objection fees paid by those with standing to object should not be captured by a business advocacy organization. *E. Brunner-Williams (Module 3, 14 April 2009)*.

Community and Open Definition needed; standing clarification. There is still no definition of community and scope of standing is still unclear. *NCUC (13 April 2009)*. Further clarity is needed on open and community definitions. ICANN should state under what circumstances a corporation could qualify as an “established institution” with standing to pursue a Community Objection. *IPC (13 April 2009)*. Regarding point 4 under section 1.2.2.1, the description of the kind of “institution” needs to be more precise, such as the following suggested text: “4. Have its application endorsed in writing by an established representative institution having the authority to act on behalf of the community the applicant has named.” It is prudent to have a more restrictive definition for an institution with standing to endorse an application compared to an institution with standing to file an objection. *W. Staub (13 April 2009)*.

Eliminate community objection. The community objection along with the entire concept of community should be eliminated (re: Module 3, 3.11). *A. Allemann, DomainNameWire.com (6 April 2009)*.

Determining whether institution is established (3.1.2.4). This should be worded to cover global and local communities, like: “level of recognition of the institution within its community” (instead of “level of global recognition of the institution.”). *RyC (Modules 1-4, April 2009)*.

Community Objection (3.4.4)-revision re: proposed generic string to allow anyone to object. If the comparative evaluation criteria in section 4.2.3 remains unchanged, then where a community is trying to claim a generic word TLD, section 3.4.4 should allow all parties with an interest in the generic word to object, rather than just the specific Community type proposed by the applicant (e.g., .camping proposed by the Boy Scouts). The objector would need to show that awarding community status would prevent access by a broader group of potential users who might want to use the generic string. *Demand Media (13 April 2009)*.

Revise the “Complete Defense”. The complete defense to a community-based objection should be denied to any application not initially presented as a community based application. The burden of showing entitlement to the defense should be placed on the applicant (prove that it would have standing to maintain a community objection to a hypothetical application for the same string). Rather than constituting a complete defense proof of such standing should at most be a factor for consideration, along with other factors such as strength of opposition, degree of detriment shown, the degree to which the objector represents a wholly distinct community that should not be forced to accept the allocation of the string to an unsuitable applicant. *COA (13 April 2009)*.

Remove complete defense language (3.4.4). The complete defense clause must be removed; it means that ICANN, from the outside, imposes some sort of “infallibility dogma” on the community, declaring that certain organizations of that community are immune against opposition from within that community. *W. Staub (13 April 2009)*. The provision produces an absurd outcome. *E. Brunner-Williams (Module 3, 14 April 2009)*.

Religious Tradition gTLDs Discussion Requested. The Holy See would like to bring to the attention of the ICANN Board the possible perils connected with the assignment of new gTLDs with reference to religious traditions (e.g., .catholic, .anglican, .orthodox, .hindu, .islam, .muslim, .buddhist, etc.) These gTLDs could provoke competing claims among theological and religious traditions and could result in bitter disputes forcing ICANN to abandon its wise policy of neutrality by recognizing to a particular group or to a specific organization the legitimacy to represent a given religious tradition. The Holy See recognizes that the Community Objection process proposed as part of ICANN’s draft new gTLD implementation model may be a mechanism for addressing these concerns. Mindful that Article 2.1 of the GAC Principles regarding new TLDs (28 March 2007) prescribes that the latter should respect the sensitivities regarding terms with national, cultural, geographic and religious significance, the Holy See asks the ICANN Board to commence a discussion on the process of assignment of gTLDs with religious significance, including any objection process, before moving forward with its final implementation. *Mons. Carlo Maria Polvani, Holy See’s Representative to the GAC (2 Mar. 2009)*.

III. Analysis and Proposed Position

The possibility of applying for a community-based gTLD and the opportunity to object to such applications elicited extensive comments. Some questioned the rationale for community-based

gTLDs; others requested more detailed definitions of key elements of this category of gTLDs, such as “community”, “established institution”, etc. The rule that an applicant’s satisfaction of the standing requirement for a community objection would constitute a complete defense to the objection (DAG, v.2, Section 3.4.4) was questioned. In general, there was concern about competing applications for gTLD strings with close connections to certain economic, cultural, religious or other communities.

The New gTLD Program, with its dispute resolution and string contention procedures, is designed to safeguard ICANN’s neutrality and to refrain from purporting to recognize the legitimacy of any specific organization as the representative of any group, religion, etc. There may well be multiple applicants and objectors that compete for the same string. The procedures that ICANN is developing are aimed at resolving the conflicts that arise from those applications without compromising ICANN’s neutrality vis-à-vis the parties and others. In short, ICANN’s eventual approval of an application for a gTLD that refers to a particular community shall not constitute and should not be seen as ICANN’s recognition of any particular group or organization as the legitimate representative of that community.

The preservation of ICANN’s neutrality is one of the reasons for establishing the “complete defense” (DAG, v.2, Section 3.4.4). This rule avoids placing ICANN and the DRSP panel in the position of judging which of two competing institutions is the legitimate representative of a community. If both institutions apply for the same community-based gTLD, the string contention procedure (rather than the dispute resolution procedure) will determine which applicant obtains the gTLD. ICANN agrees with suggestions from the community that the complete defense should only be available to those applicants who apply for a Community-based TLD. An applicant for a TLD that does not first submit its application as Community-based should not be entitled to later claim a complete defense in the face of an objection by stating that the applicant meets the Community standing requirements.

As for names of religious significance, ICANN takes seriously all comments, including (and especially) those from the Holy See. As described in the Applicant Guidebook, the community-based objection, in combination with the role of the Independent Objector, is intended to address the concerns regarding applications for names with religious significance. However, the concerns raised in this comment and potential TLD category should not be answered without dialogue. A community discussion will be engaged as requested on this issue (as it has on others).

Finally, ICANN agrees that more clarity can be provided for some of the criteria relating to Community standing and will endeavor to do so in the next version of the Applicant Guidebook. Further, excerpts of Module 3 will be posted along with this analysis containing additional details regarding Community-based Objections, including revisions in accordance with the discussion above and additional comments received to the first version of the Draft Applicant Guidebook.

Existing Rights

I. Key Points

- The standard criteria are flexible by design so that there is a balance between the legal rights of trademark holders and the rights of the public.
- In its current form, the standing requirement was not intended to be limited to an owner of a registration but speaks to a rights holder; an exclusive licensee is certainly a rights holder.

II. Summary of Comments

Existing Rights Objection—clarification (3.4.2). While the guidebook states that it is grounds for objection if the applied-for gTLD is identical or similar in appearance, sound and meaning to an objector’s existing mark, there is a specific sub-situation requiring different treatment and clarification. The party objecting on the basis of similarity under the Legal Rights clause cannot already be an existing TLD operator which is already separately entitled to a similarity review via the String Confusion Analysis. If an existing TLD is not deemed similar in the String Confusion Module 2 step, then it should not be allowed to participate in the Legal Rights objection step. A possible exception could be if and only if that existing TLD string is an issued trademark in every or conceivably every jurisdiction where the Internet is accessible. *NCUC (13 April 2009)*. See also *A. Sozonov (Module 3, 9 April 2009)*. *S. Soboutipour (Module 3, 12 April 2009)*. *Y. Keren (Module 3, 13 April 2009)*. *L. Andreff (Module 3, 13 April 2009)*. *DotAfrica (Module 3, 12 April 2009)*. *S. Subbiah (Module 3, 13 April 2009)*.

Existing Rights Objection Criteria. The eight non-exhaustive factors provide minimum direction for the LRO and determine rights based on loose criteria, such as similarity based on “appearance, phonetic sound or meaning”; it does not account for factors such as similarity of goods and/or services as used in trademark law. Panels will have wide discretionary powers to determine legitimate rights of mark owners. *NCUC (13 April 2009)*. AIPLA supports the likelihood of confusion standards for a LRO and supports the revision protecting unregistered marks when considering LROs. Factor two should be clarified to read: “Whether the objector’s acquisition of rights in the mark, and use of the mark has been bona fide.” Bona fide acquisition without bona fide use should not be considered determinative. *AIPLA (13 April 2009)*. Most of SIIA’s specific concerns about the LRO process (e.g. transparency, panelist expertise) were not addressed in Version 2. *SIIA (13 April 2009)*. Additional language – “indigenous intellectual property” or “traditional knowledge” or “community common property” would be helpful— first, in expanding the legal protections recognized by contract, and second, by allowing most community objections access to the lowest cost objection mechanism. *E. Brunner-Williams (Module 3, 14 April 2009)*.

Existing Rights Objection Standard: How Applied. Greater certainty as to the likely application of the listed factors would be helpful for rights owners and applicants. It is not clear from the list of factors how a DRSP would resolve an objection where both the objector and applicant have legal rights in the same mark, but the geographic scope of the objector's rights far exceeds that of the applicant's, or the objector's mark is more well-known than the applicant's. *Microsoft (Guidebook, 13 April 2009).*

Existing Rights Objection (3.4.2)—maintain a balanced approach. The LRO process must be balanced. E.g., Microsoft should have strong rights to .microsoft, but an entity with a trademark in a generic word (e.g., blog) should not have special objection rights to a .blog TLD. Parties with a dot-generic word trademark cannot meet several of the 3.4.2 objection standards. ICANN should keep this section at its current level of balance. *Demand Media (DAG, 13 April 2009).*

Existing Rights Objection—Standards for Appeal. While in the second draft ICANN appears to have clarified that it will accept the determination and advice of the panel, it does not establish or express standards concerning LRO appeals. *AIPLA (13 April 2009).*

Existing Rights Expert Panel Qualifications. INTA welcomes having three intellectual property experts on a Legal Rights Objection panel if the parties agree. *INTA (8 April 2009).* *AIPLA (13 April 2009).* Panelists should meet certain standard trademark/IP qualifications. *Hearst Communications, Inc. (13 April 2009).* Panelists for LRO proceedings should have a minimum of five years of experience in dispute resolution. *INTA (8 April 2009).* Experts in LRO proceedings should be subject to the approval of both parties. *AIPLA (13 April 2009).* The qualifications of the expert in proceedings involving a community objection are unstated. *E. Brunner-Williams (Module 3, 14 April 2009).*

DRSP selection. The At-Large Advisory Committee has serious concerns about the lack of transparency in initial selection of DRSPs before the selection criteria has been fully published. Parties requiring use of DRSPs must have the right to select the appropriate provider. *ALAC (19 April 2009).*

Existing Rights Objection-Standing. Noting that Section 3.1.2.2 has been amended to reference registered and unregistered marks, INTA believes ICANN should allow both owners of collective marks and certification marks to have standing to file Legal Rights Objections. INTA continues to believe that an exclusive licensee of qualified marks also should have standing to raise a Legal Rights Objection. *INTA (8 April 2009)*

Existing Rights Objection—clarify “unregistered marks” (re: 3.1.2.2. and 3.4.2). ICANN should clarify which type of unregistered trademark can be claimed and if there are differences according to different jurisdictions or countries (e.g., the term can be interpreted as either a common law right (USA) or a sole trademark application (in civil law countries)). *INDOM.com (10 April 2009).*

Existing Rights Objection—identify scope of existing legal rights. Greater precision is needed in identifying the “existing legal rights” about which legal objections can be filed (see e.g., 3.4.2, which seems to place emphasis solely on trademarks and does not specifically mention other IP rights). *INDOM.com (10 April 2009)*.

Scope of Protection: International Trademark Treaties. The Legal Rights Objection protocol exceeds existing territorial and class of goods limitations in current international trademark treaties. Section 3.4.2 allows unrestricted LROs based on similarity of “meaning” to trademarks. This would allow trademark protection well beyond that of TRIPS or the Paris Convention. ICANN should not engage in a regime that goes beyond existing international treaties. ICANN also should recognize the non-trademark “traditional knowledge” rights of Indigenous Peoples, in a manner consistent with international treaties. *ALAC (19 April 2009)*.

III. Analysis and Proposed Position

Comments have been received on various grounds relating the Existing Rights objections. Those comments raise certain issues, including: that an existing TLD operator should not be entitled to bring an existing rights claim based on similarity; that the criteria provide the panels significant discretion and therefore could lead to uncertainty; that panelists should be highly qualified; and that the scope of the intellectual property rights for which objections can be filed need clarity.

While the string confusion objection and legal rights objection do have some overlap, string confusion is not meant to displace the existing rights objection or vice versa. Nothing should prohibit a party from seeking to protect existing rights, to the extent they exist.

With respect to the factors under which existing rights objections will be considered, they are not meant to be exclusive. As such, in appropriate circumstances the similarity of goods or services can be considered if applicable. With respect to the concerns surrounding bona fide acquisition of the rights versus bona fide use of a mark, the standard is flexible and neither bona fide use nor bona fide acquisition is considered determinative.

Further, the standard criteria are flexible by design so that there is a balance between the legal rights of trademark holders and the rights of the public. Unfortunately, it is impossible to predict or create guidelines that will predict any particular fact pattern involving the competing rights of an objector and an applicant. What ICANN attempted to do is establish a standard and a list of factors to assist in the determination of which entity should prevail.

ICANN agrees that the standing requirement to bring an objection should be broad enough to encompass any rights holder who might be affected by the registration of a mark. In its current form, the standing requirement was not intended to be limited to a holder of a registration but speaks to a rights holder; an exclusive licensee is certainly a rights holder. The references to registered and unregistered marks were included to make it clear that the rights owner need not own a registration, not to limit the universe of objections or rights that may be protected. The GNSO policy recommendation indicates that it is the legal rights of others that should be

considered. By definition, this is not limited to applications or registered marks. Drawing lines based upon the laws of different jurisdictions will only lead to forum shopping and inconsistent results.

Finally, ICANN agrees that panelists should have experience in dispute resolution, but it does not appear necessary to stipulate an arbitrary length of time. The quality of the experience matters more than the quantity. Other types of experience in the relevant field of intellectual property could complement experience in dispute resolution. Panelists in all dispute resolution proceedings will be appointed by the DRSP that is responsible for administering the particular dispute (e.g., WIPO for Existing Rights Objections). ICANN is confident that the DRSPs will select panelists who are well qualified. Subjecting the appointment of panelists to the approval of the parties could extend the duration of the proceedings and generate additional controversies.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. At least for this initial round, disputes arising from each type of objection will be administered by a single designated DRSP. See Procedure Article 3. Parties will not have the right to select some other DRSP.

Morality and Public Order

I. Key Points

- The most fair and logical approach to standing to bring Morality & Public Order objections would be to allow anyone to bring such objections, but also to try to formulate a process whereby frivolous objections are quickly dismissed.
- Panels will have discretion to identify standards outside of the three enumerated (incitement to child pornography, incitement to violent lawless action, discrimination), but those standards must be of the same nature and level of the three that have been enumerated.

II. Summary of Comments

Access to Expert Reports/Research and Clarifications Needed. All the experts' reports and research relied upon to come up with the morality and public order grounds for objection should be published and made available. Nothing much changed in this area in the second version of the guidebook. This will help to illuminate, among other things, the process, international standards and resolution of such objections, and the experts involved. *M. Wong, NCUC, GNSO Transcript at 81-82 (28 Feb. 2009).*

Eliminate or limit the morality and public order objection. The morality and public order objection should not exist or should be limited to items in 3.3 (re: Module 3, 3.11). Section 3.1.5 should be stricken; objections should not be made on grounds of morality or public order. *A. Allemann, DomainNameWire.com (6 April 2009).* The At Large Advisory Committee calls for the elimination of the morality and public order objection; this is not ICANN's role, and it will eliminate the risk of ICANN bearing responsibility for delegating morality judgment to an inadequate DRSP. Certain extreme forms of objectionable strings may be addressed through minor modifications to the community objection. *ALAC (19 April 2009).* ICA opposes law and public morality objections to new gTLDs unless narrow and clearly articulated criteria for such objections can be established; otherwise the DNS could become an arbitrary censorship regime. ICANN has not provided clear guidance on what would trigger a determination that an applied-for gTLD "would be contrary to equally generally accepted identified legal norms relating to morality and public order that are recognized under general principles of international law." *ICA (13 April 2009).* If wikileaks submits an application then no objection arising from section 3.1.2.3 is proper. *E. Brunner-Williams (Module 3, 14 April 2009).*

Greater specificity needed. More specificity is needed regarding the fourth ground on which an applied-for gTLD string may be considered contrary to morality and public order. The current formulation—"the applied-for gTLD string would be contrary to generally accepted identified legal norms relating to morality and public order that are recognized under general principles of international law"—provides little guidance. ICANN should at a minimum identify a non-

exhaustive list of such “generally accepted identified legal norms relating to morality and public order that are recognized under general principles of international law.” *INTA (8 April 2009)*.

New guidebook version still does not address the complex legal issues concerning the morality and public order objection category. Some standards in this area are very general and not well-defined. E.g., regarding “incitement to or promotion of violent lawless action”, NCUC does not understand how it is possible for a single gTLD to fit in this category; “incitement to or promotion of discrimination” raises significant issues about certain balances involving free speech and NCUC does not see how a simple gTLD registration will involve an incitement or promotion of discrimination. With “incitement or promotion” to engage in child porn, again it appears that ICANN is attempting to regulate content of websites, not URLs, since a domain name cannot be child porn or sexual abuse of children. Regarding the issue of gTLDs being contrary to equally generally accepted legal norms, this minimizes the substantive evaluation criterion as established by the Convention on Cybercrime. *NCUC (13 April 2009)*.

International Chamber of Commerce as expert panel. ICANN should explain why the ICC is qualified to settle morality and public order disputes. *NCUC (13 April 2009)*.

Standing—Recommendation. The morality and public order objection should be available to anyone that can show a legitimate interest and harm or potential harm concerning the applied-for string, subject to thresholds: (1) General Public (via the Independent Objector); the IO would still be able to raise objections without public petition, but this recommendation would also require the IO to listen to the public and advocate for public objections that the IO deems worthy of representing based on the standing standard; (2) Government Bodies—so long as a given government body is an internationally recognized government body; (3) Communities—so long as the definition of community is met as defined in the guidebook 3.1.2.4 (commercial entities could object through the community category provided they meet the standing standard; they should not have a separate category). *NCUC (13 April 2009)*.

III. Analysis and Proposed Position

The possibility of objecting to an applied-for gTLD string on the grounds that it is contrary to norms of morality and public order that are generally accepted under principles of international law, which is one of the policy recommendations of the GNSO, has been supported by some members of the community and opposed by others. Some of the comments that were submitted in this second round reiterated points made in earlier discussions that were addressed in the Analysis in response to version 1 of the DAG.

The second version of the DAG did include an important new element regarding the morality and public order objection. Section 3.4.3 of Module 3 presented certain standards for assessing such objections. One of the comments called for greater specificity, suggesting that the fourth ground listed in Section 3.4.3 (“the applied-for gTLD string would be contrary to generally accepted identified legal norms relating to morality and public order that are recognized under general principles of international law”) provides little guidance. However, the first three

grounds are specific and do provide guidance. The fourth standard is, indeed, stated in general terms, because panels considering morality and public order should have discretion to consider gTLD strings that do not fit within one of the three specific categories but are nonetheless contrary to generally accepted legal norms relating to morality and public order to the same degree as the first three grounds. Applications for such strings may well be rare or non-existent. However, it appears wise to grant panels the discretion to apply that general rule in appropriate cases. In short, the first three points in Section 3.4.3 are a non-exhaustive list of “generally accepted identified legal norms relating to morality and public order that are recognized under general principles of international law”.

Another comment requested information about the legal research upon which the standards for the morality and public order objection were based. ICANN plans to publish a memorandum that summarizes the research on standards of morality and public order that was carried out in various jurisdictions around the world.

The question of **standing** to file a morality and public order objection remained open in Version 2 of the DAG. Three options for standing have been identified and considered: (1) anyone; (2) only governments; and (3) only someone (or some organization) with a legitimate interest who can show harm or potential harm. Pros and cons exist for each. For example, as set forth in version 2 of the DAG, allowing anyone to object is consistent with the scope of potential harm, but may be an insufficient bar to frivolous objections. On the other hand, while groups such as governments are well-suited to protecting morality and public order within their own countries, they may be unwilling to participate in the process. Finally, in considering a mechanism by which those objecting must show a legitimate interest and harm or potential harm resulting from the applied-for gTLD string, it became clear that such a limitation would be inconsistent with the “universal” dimension of morality and public order objections. Certainly, the harm that is done by incitement to violent lawless action; incitement to discrimination based upon race, color, gender, ethnicity, religion or national origin; and by incitement to child pornography or other sexual abuse of children extends far beyond the direct or immediate victim of the offense.

Looking at the negative aspects of each, and the desire to build a process that is robust and utilized, *it seems the fair and workable solution would be to confer standing on anyone to bring morality and public order objections.* In an attempt to decrease the possibility of frivolous claims that might come from this broad standing, ICANN is looking at whether some type of “quick look” process to identify and eliminate frivolous objections could be implemented without requiring a full-blown dispute resolution proceeding. ICANN seeks and encourages any thoughts, suggestions or recommendations on the development and implementation of such a process.

Finally, it should be recalled that the Independent Objector (IO) would be granted standing to file a morality and public order objection under certain circumstances. The IO’s standing will also play a role in bringing objections under this type of objection.

Excerpts of the next version of the Guidebook, reflecting standing requirements for filing a Morality & Public Order objection, will be published along with this analysis.

Dispute Resolution Fees

I. Key Points

- For Existing Rights and String Confusion objections, a fixed fee for each dispute will be established.
- Morality & Public Order objections shall be processed generally with a capped filing fee, but panelist's fees will be on an hourly basis. Such fees are difficult to estimate, at least at the outset, given the untested nature of Morality and Public Order objections in this newly identified dispute resolution process.
- ICANN continues to encourage the DRSPs to consider consolidation of disputes, whenever possible, which should lead to lower overall fees.

II. Summary of Comments

More details. Further details on dispute resolution fees would be helpful. *J. Prendergast, Public Forum Transcript at 21 (5 Mar. 2009)*. ICANN should confirm and publish a complete table of fees including refund details as soon as possible. *IPC (13 April 2009)*. Section 3.3.7 raises the unquantified risk of runaway fees for applicants (different fee structures based on type of objection, possible advanced payment of estimated fees); ICANN should consider a cap on the maximum Objection Response filing fees any given applicant will be expected to incur (e.g. a fixed dollar amount or percentage of the initial application fee). *Go Daddy (13 April 2009)*. Staff should have reasonably similar cost numbers for each form of objection so we don't end up with objections filed creatively with respect to the categories (e.g. all being filed as "legal rights"). *E. Brunner-Williams (Module 3, 14 April 2009)*.

High costs. The costs for challenging new gTLDs are very high. *Regions (13 April 2009)*. We are concerned about the high costs required for objecting to new gTLDs. *BITS (13 April 2009)*.

Loser pays. Prevailing brand holders in a dispute should not pay any fees or costs; loser pays should cover all costs and expenses, including attorneys' fees and DRSP filing fees. *COTP (13 April 2009)*. IHG supports the rule in 3.3.7 that objection to a gTLD is sustained when an applicant fails to pay the estimated cost in advance, and strongly support DRSP refund of costs paid in advance to the prevailing party. *IHG (Module 3, 9 April 2009)*.

Filing Fee Refunds. ICANN should consider filing fee refunds also to the prevailing party. *E. Chung, GNSO Transcript at 87 (28 Feb. 2009)*

Refunds—negotiated disputes. All or a portion of fees should be refunded when disputes are settled by negotiation without DRSP intervention. *RyC (Modules 1-4, 13 April 2009)*. If an applicant and objector settle a dispute, per 3.1.4, will a refund of fees be considered in this scenario as no costs to ICANN were incurred? *Go Daddy (13 April 2009)*.

Fixed Costs and Ceilings. Costs for morality and public order and community objections should have fixed rates, similar to string contention and LROs. There is an inherent conflict if expert panelists who receive remuneration from parties are paid on an hourly basis in proceedings that are open-ended regarding length and final costs (need for reasonable, pre-set timeframe for resolution and costs particularly a concern with morality and public order and community objections given their likely contentious nature). ICANN has provided no justification for cost disparities. ICANN should provide not only a written explanation to justify costs disparities, but should also set reasonable cost ceilings for all proceedings. *INTA (8 April 2009).*

One objection fee re multiple applications for same TLD. Only one fee should be required in the case of a rights holder's objection to multiple applications for the same TLD. *Hearst Communications, Inc. (13 April 2009).*

Class objections; basis of fees; fee structure favors large entities. Class objections could serve the purpose of more participation and less costs. ICANN should provide the basis for the dispute resolution fee estimates, and describe in more detail what a "proceeding involving a fixed amount" entails. In general the fee structure allows larger, well-funded organizations to dominate the gTLD objection process. *NCUC (13 April 2009).*

Morality and public order objection: fees will render it unavailable. The large amount of fees associated with adjudicating this type of objection will render it unavailable in most situations. This type of objection will be primarily made by non commercial entities. ICANN should attempt to include as many people in the morality and public order objection process as possible by reducing expenses or sharing the cost of this objection with all objectors from all categories. Also, ICANN should state how the Independent Objector will pay the costs of raising a morality and public order objection on behalf of the general public. *NCUC (13 April 2009).*

Impact on governments. Government or sovereign entities may be the most appropriate to raise community or morality and public order objections. While these may be more expensive than legal rights objections, as currently structured by ICANN, governments and sovereign entities making these objections will face the burden of variable fee pricing for these types of objections; ICANN has not set any maximum level for such fees. *NYC (13 April 2009).*

Dispute Resolution Fee Returns; Clarifications. The new gTLD Dispute Resolution Procedure should provide that the filing fee will be returned to the objector in exceptional circumstances, such as when an objection is properly filed and inadvertently not processed by the relevant DRSP. Recognizing that dispute resolution adjudication fees will be refunded to the prevailing party, INTA requests further flexibility enabling a DRSP to return fees in exceptional circumstances. Also, to enable cost management, the guidebook and procedure should also specify when and under what conditions filing and adjudication fees may increase. *INTA (8 April 2009).*

Dispute Resolution Fee Accounts. ICANN should require each DRSP to provide a mechanism for parties to set up an account from which dispute resolution filing and adjudication fees may be deducted, given the regularity with which some entities (e.g. trademark owners) may find that they have to submit objections. *INTA (8 April 2009)*.

III. Analysis and Proposed Position

In addition to expressing a general preference for lower fees in the dispute resolution procedure, comments raised the question whether fees would be properly monitored to ensure that they are reasonable and asked whether fees could be reimbursed under various circumstances.

Article 14 of the Procedure sets out the rules governing the costs of the dispute resolution procedure. It is important to recall that the loser will pay the costs of the proceedings (i.e., the panelists' fees and expenses and possibly filing fees to the extent that a prevailing party is identified). The amounts paid in advance by the prevailing party will be refunded to that party. ICANN is still discussing with the Providers whether filing fees could be refunded in certain circumstances (such as when a prevailing party is determined). The parties must understand, however, that the DRSPs have administrative costs even if a matter is dismissed or resolved without identification of a prevailing party. Certainly in those circumstances it is unlikely that filing fees would or should be refunded. Further, it would not be practical (e.g., because panel decisions will not be legally enforceable) to take a step further and award attorneys' fees and other costs to the prevailing party.

ICANN has previously explained why costs for morality and public order objections and community objections will not be based upon fixed rates (as is the case for string confusion and legal rights objections). See New gTLD Draft Applicant Guidebook: Analysis of Public Comment, 18 February 2009, p. 91 (posted at: <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>).

The dispute proceedings will not be open-ended, and panelists will not have unfettered discretion to set their own fees. The New gTLD Dispute Resolution Procedure limits the proceedings in various ways (e.g., by permitting hearings only in extraordinary circumstances) and sets certain deadlines (e.g., the panel's expert determination should normally be rendered within 45 days of the constitution of the panel). Part of the DRSP's role as administrator of the dispute proceedings is to ensure that the fees paid to the panelists are reasonable.

For example, the ICC's Rules for Expertise (applicable in proceedings arising from morality and public order objections and community objections) provide, in Article 5(c), as follows:

"The administration of the expertise proceedings by the [International] Centre [for Expertise] shall consist inter alia of: [...] supervising the financial aspects of the proceedings".

Appendix II, Article 3(3) of the ICC's Rules for Expertise then stipulates as follows:

“The fees of the expert shall be calculated on the basis of the time reasonably spent by the expert in the expertise proceedings, at a daily rate fixed for such proceedings by the Centre in consultation with the expert and the party or parties. Such daily rate shall be reasonable in amount and shall be determined in light of the complexity of the dispute and any other relevant circumstances. The amount of reasonable expenses of the expert shall be fixed by the Centre.”

It was proposed that the Procedure provide for the refund of fees in exceptional circumstances (such as a DRSP’s failure to process an objection):

- It is highly unlikely that a DRSP will fail “inadvertently” to process an objection. In addition, the objector (who should be following the proceedings closely) can be expected to react if its objection is not processed within the deadlines stipulated by the New gTLD Dispute Resolution Procedure. However if, for some reason, a DRSP does fail to perform its duty, then remedial steps will naturally be taken. Such steps are more likely to involve continuation of the proceedings, rather than refund of the filing fee, so that the objection can be heard and decided (which is presumably what the objector desires).
- It is unclear what else is meant by “exceptional circumstances” that would “enable” a DRSP to return all fees paid by the parties as the Procedure already provides for reimbursement of the prevailing party’s advance payment.

The proposal that DRSPs provide a mechanism for parties to set up dispute resolution fee accounts is worth consideration. ICANN cannot require DRSPs to do this, but will pose the question to the DRSPs and it is possible that the DRSPs would be willing, if asked to do so, in light of the convenience such accounts would offer to the DRSPs.

Filing and adjudication fees may increase in line with other increases in fees paid to professionals and institutions that conduct expert determinations and dispute resolution procedures. At present, inflation is low and economic conditions militate against substantial fee increases. These conditions may, of course, change in the future. ICANN cannot specify when filing and adjudication fees may increase, but will ensure that the DRSPs notify ICANN if and when fees are increased. ICANN will in turn make that information available to the public and those participating in the dispute resolution process.

Independent Objector

I. Key Points

- The ethical rules governing the independence of judges and international arbitrators could provide examples of the means by which the IO would declare and maintain his/her independence.
- The IO's role is to address the situation where, for one reason or another, no objection is filed against a highly objectionable gTLD.
- The standards applicable to morality and public order and community-based objections, will also apply to objections instituted by the IO.

II. Summary of Comments

Independent Objector—Clarifications. Neither the guidebook nor the explanatory memorandum specifies the type of review the Independent Objector will undertake to determine if an application merits an objection, or if there will be a mechanism where a third party can call an applied-for gTLD string to the attention of the Independent Objector. While the explanatory memorandum suggests that the Independent Objector should be allowed to consider public comments in determining whether to file an objection, no mechanism has been identified for the submission of such comments. ICANN should clarify how and when public comments would be solicited by the Independent Objector. Also, if the scope of the Independent Objector's anticipated bases of objection is broader than what is identified in the guidebook, then ICANN should identify with particularity those additional circumstances. *INTA (8 April 2009)*. See also *CADNA (13 April 2009)*.

Independent Objector—Role. It is not clear that the IO would be effective in the cases identified as ones where there may be a need for the IO (no objection filed to a TLD considered widely objectionable, or where a government objects but chooses not to use the dispute resolution procedure and instead goes to court or an outside process to block the application outside of the gTLD process). The IO may have some value where its role is limited to providing a means for those not financially able to file an objection to be able to be heard, but use of the IO in this manner must be tightly limited. (See comments text (at 4-5) for criteria suggested.) *RyC (Modules 1-4, 13 April 2009)*. Is the IO allocated some budget? Is he or she really independent or is the available budget the actual control over the freedom of action of this role? *E. Brunner-Williams (Module 3, 14 April 2009)*.

Independent Objector--Appeal Mechanism. To add transparency to the evaluation process, **the independent objector role should also be able to offer** an independent appeal mechanism in case gTLD applicants believe they were treated unfairly or improperly rejected. *ALAC (19 April 2009)*.

At Large Should Handle Public Interest Advocacy, not the Independent Objector. At Large is the logical and natural source for public interest advocacy. While it is a formal ICANN body and may be considered non-independent, its members have nothing more than a memorandum of understanding and often less than that. At-Large has the grassroots connections to make communities aware of gTLD attempts made in their name. *ALAC (19 April 2009)*.

Independent Appeal Mechanism. To add transparency to the evaluation process, there should also be an independent appeal mechanism in case gTLD applicants believe they were treated unfairly or improperly rejected. *ALAC (19 April 2009)*.

Independent Objector—Qualifications. The explanatory memorandum does not provide sufficient detail about the proposed qualifications for the Independent Objector (IO) or how ICANN will ensure its independence. ICANN should adopt and implement safeguards including accountability and transparency mechanisms to ensure that the IO remains independent and is not inappropriately subject to external influences. The IO selection process should be open and transparent, and ICANN should specify the type and breadth of experience in the Internet and legal communities that is required of successful IO candidates. INTA strongly recommends IO term limits and a regular review process to evaluate IO performance. *INTA (8 April 2009)*. See also *Go Daddy (13 April 2009)*. It is unlikely to be necessary to insist that an IO is unaffiliated with any gTLD applicant. *E. Brunner-Williams (Module 3, 14 April 2009)*.

Standing to challenge objectors. Some mechanism should be established for the responding applicant to challenge the standing of an Independent Objector or indeed any objector without necessarily addressing the merits of the objection. *Go Daddy (13 April 2009)*.

ICANN Challenge. Will ICANN reserve a challenge process for itself to cover cases where an application endangers public order (e.g., an extremist group) but does not attract a challenge from a third party? *MARQUES (13 April 2009)*.

Independent Objector. There did not seem to be a loud outcry for this proposal in the comments; more detail about it is needed, and why it would be needed (i.e. is there a flaw in the process that has given rise to the proposal for “somebody there to be the last line of defense.”) *J. Prendergast, Public Forum Transcript at 19-20 (5 Mar. 2009)*.

III. Analysis and Proposed Position

ICANN briefly presented the idea of instituting an Independent Objector (“IO”) in the DAG, v.2, **Section 3.1.5**, and in a separate memorandum, dated 18 February 2009. Members of the community have asked for more information about the rationale for an IO, the IO’s qualifications, his/her role in the dispute resolution proceedings and the role of public comment in the IO’s action.

ICANN explained in its initial memorandum why it sees a need for the IO. The primary reason for creating the position of IO is to address the situation where, for one reason or another, no objection is filed against a *highly objectionable* gTLD. In such circumstances, ICANN anticipates the value and benefit of obtaining an independent expert determination through the established dispute resolution procedure. To reiterate, objections will be made by the IO only in cases where an objection is *clearly* warranted.

ICANN is preparing additional detail to be included in the next version of the Applicant Guidebook that will address the points raised by those who submitted comments and questions. This will include details describing qualifications and independence of the role. In brief: The IO will review applied-for gTLDs in light of the standards that are set for objections under the two grounds that lie within the scope of the IO's mandate (morality & public order and community-based objections). ICANN does not envisage that the standards for the IO would be different from those applicable to other objectors with standing to file a particular objection. Excerpts of the next version of the Applicant Guidebook, including further elaboration on the Independent Objector, will be published along with this analysis.

Internet constituencies are certainly invited to propose candidates for the position of IO. The services of an IO will be procured through an open and transparent process. The IO's (renewable) term would coincide with a given application round for new gTLDs. The ethical rules governing the independence of judges and international arbitrators could provide examples of the means by which the IO would declare and maintain his/her independence. In order to avoid improper influence upon the IO's action, the IO's tenure and his/her salary should not depend upon the number of objections that he/she files. On the other hand, an assessment of the IO's work would necessarily consider whether he/she filed objections in cases where IO action is expected (i.e., manifestly objectionable gTLDs to which no morality & public order or community objection has been filed).

It has been suggested that public comment should play a role in the IO's activities, and ICANN agrees. Receiving public comments and suggestions could be helpful to the IO, although it will remain the IO's sole responsibility and discretion to decide whether or not to file an objection against a particular applied-for gTLD. The IO will have access to public comments as he/she considers potential action. Comments would have to reach the IO before the deadline for objecting to the relevant gTLD if the IO is to employ them in deciding whether to make an objection. Comments received later than that might be used when the IO prepares additional paperwork for the dispute resolution procedure. Whether comments that are sent to the IO should be made public remains an open question.

The purpose of the IO is to file objections where none has been made and an objection is clearly merited. The IO role is not intended to be an appeal mechanism for a dispute resolution procedure result that is unpopular with one of the parties. The dispute resolution procedures have been carefully thought out and most aspects of those procedures have been in place for many years. ICANN must be careful not to circumvent those procedures in implementation of

the IO role and has taken care to integrate the role of the IO with the previously established dispute resolution procedure.

String Confusion

I. Key Points

- String confusion objections can be based on any type of confusion: visual, meaning or aural similarity.
- Given that, a finding of “too similar to coexist in the root” requires that there be a probability of confusion – it is a high bar that is meant to encourage competition while avoiding harm to consumers.

II. Summary of Comments

String Confusion objection—coexisting synonyms and translations (3.4.1). Consumers are rarely deceived or confused by synonym, translations or like-sounding words. Examples such as .car and .auto, .arrow and .aero and .community, .commerce and .com, can and should reside together at the top level as they do at the second level. This will enhance competition. If we allow synonyms or translations to fall within the charter of confusing similarity we will allow a single registry to block large portions of potential name space. Guidance to DRSPs building on this section should ensure a very high threshold of proof for deception or confusion. The burden of proof should be that the majority of Internet users are already confused or deceived at the second level in existing TLDs such as .com. Demand Media (DAG, 13 April 2009).

III. Analysis and Proposed Position

While there were many comments regarding string similarity, this comment referred to the dispute resolution process particularly and was categorized here. The comment suggests that the string confusion objection not be allowed for cases of similar meaning, as that objection would serve to limit competition. The new gTLD implementation follows the GNSO recommendation that implies that string confusion should be tested in all ways: visual, meaning and aural confusion. After all, if harm to consumers would result due to the introduction of two TLDs into the root zone because they sounded but did not look alike, then both TLDs should not be delegated. Having said that, **the standard indicates that confusion must be probable, not merely possible, in order for this sort of harm to arise. Consumers also benefit from competition. For new gTLDs, the similarity test is a high bar, as indicated by the wording of the standard.** A TLD string that is a dictionary word will not automatically exclude all synonyms of that word (and most TLD strings today are not dictionary words and have no real synonyms).

Therefore, while the objection and dispute resolution process is intended to address all types of similarity, the process is not intended to hobble competition or reserve a broad set of string for a first mover.

REGISTRY AGREEMENT

Obligations for Community and Open TLDs

I. Key Points

- Agreements will impose additional post-delegation obligations on community-based registries.

II. Summary of Comments

Post-delegation Obligations: Apply post-delegation obligations to open and community-based gTLDs. The section 2.11 language about operating the TLD post-delegation in a manner consistent with restrictions should be applied to both community-based and open gTLDs (e.g. an open financially oriented gTLD, registrants to that type of domain should also be restricted as suggested by the language of this section. *BITS (13 April 2009)*).

Community-based Obligations. While Section 1.2.2 suggests that ICANN would consider changes to the community-based nature of the gTLD to be material changes, the next version of the guidebook should specifically state if such changes would in fact be deemed material changes and if so under what circumstances ICANN would approve the material changes. *Microsoft (Guidebook, 13 April 2009)*.

Selecting Which Registrars Have Access to Registry. Community based and corporate branded/single registrant TLDs need to have the same authority that sponsored TLDs have today in selecting which registrars access their registry. *M. Palage (14 April 2009)*..

III. Analysis and Proposed Position

Registry applicants self-select as to whether to represent themselves as a community-based TLD. With that selection comes a possible benefit. Community representation is a factor in determining which applicant is awarded the TLD in cases of string contention for an identical or similar name. Burdens also come with that selection. The restrictions imposed on community TLDs are part of the registry agreement are the subject of contractual compliance oversight. Changes to this section of the agreement will be considered material changes and be the subject of public comment.

The commentary received to date does not indicate a consensus view, however sectors of the community favor differing contractual terms for community-based TLDs (beyond what ICANN has proposed thus far). Whether there should be different contracts for different TLD

categories is also being discussed. The topic of TLD categories is discussed elsewhere in this paper.

Legal Rights Protection Mechanism

I. Key Points

- Further granularity regarding proposed RPMs is necessary and solutions are being discussed in the IRT and among other groups..
- ICANN is considering mandating collection of thick Whois information by new registries. Publication requirements could differ from data collection and retention requirements.

II. Summary of Comments

Protection of Legal Rights of Third Parties (section 2.7). The RyC restates its concerns about this provision in its comments to version 1 of the Registry Agreement. Registries should not be required to shoulder the huge burden of protecting third parties' legal rights. Registries are required to use the ICANN-accredited registrar channel and, thick or thin, the registries have no relationship with registrants. Even if they did, proxy Whois services permit registrars to keep necessary contact data about registrants. As noted in a U.S. federal court decision registries are not capable of assessing what domain names should or should not be registered under trademark laws because they cannot monitor or control the selection of domain names in what is a fully automated process. *RyC (Modules 5-6, 13 April 2009)*.

Thin/Thick Whois in New TLD Registries. The issue of whether to require new TLD registries to provide thick Whois needs more consideration, and a more detailed, explanatory response on this issue needs to be provided by ICANN. The response in the analysis that "this was not changed because of the multitude of applicable laws in different jurisdictions" is not sufficient. Many commenters explained in the previous round why they were strongly opposed to what was in Version 1 on this question, and changes were not made in Version 2. *S. Metalitz, IP Constituency, GNSO Transcript at 72-73 (28 Feb. 2009)*. ICANN's policy shift on Whois needs to be reversed; every new gTLD should be required to take on so-called "thick" Whois obligations. *COA (13 Feb. 2009)*. New gTLDs must operate as "thick" registries. Policies should be established about enforcement of Whois data accuracy and use of proxy or private registrations. *AIPLA (13 April 2009)*. ICANN should require that all new gTLDs function as "thick" Whois registries, which will make information about miscreants more accessible to police misconduct and protect victims of phishing and fraud. *INTA (8 April 2009)*. ICANN should require a "thick Whois" model for all registries so that access to full ownership records is ensured by ICANN, an especially important issue for addressing consumer fraud enabled by domain name abuse. Thin registries do not afford proper safeguards to protect brand owner rights or support the needs of law enforcement given that control of the registrant's data is largely held by the individual registrar. *MarkMonitor (10 April 2009)*. *Microsoft (Guidebook, 13 April 2009)*. All new gTLD registries should be required to adopt the "thick" registry model for capturing and maintaining registrant data; this is beneficial in terms of inter-registrar transfers functions. *M. Collins, K. Erdman, M. O'Connor, M. Rodenbaugh, and M. Trachtenberg (12 April 2009)*. By adopting the thick Whois model utilized in the .biz and .info registries ICANN will have

a smaller pool of entities to police, and consumers, law enforcement and brand owners will have a more centralized location to obtain accurate Whois information. *Yahoo!* (13 April 2009). See also *Lovells* (13 April 2009); *COTP* (13 April 2009). All registries should have to maintain thick centralized Whois data as part of their registry agreements and all registrant agreements must include the acceptance of that requirement. The terms of registry and registrar agreements should ensure the maintenance of accurate, publicly accessible and thick Whois data, with appropriate proxy registration services standards, and with enforcement throughout the contract hierarchy. *AT&T* (13 April 2009).

Reverse withholding of data by thick registries (specification 4). ICANN should reverse its inexplicable decision to allow even thick registries to withhold nearly all the collected contact data from registrants via registrars from their publicly accessible Whois services. The omission of a thick Whois requirement which has been imposed on virtually every new gTLD by ICANN throughout its history is unjustified, will have a detrimental impact on a wide range of consumer protection efforts, and should be eliminated. *eBay* (13 April 2009).

Opposition to thick Whois at registry level (Evaluation question 45). Thick data collection or display at the registry level should not be mandated. The guidebook states that thick data is not intended for display, so by implication this measure is not intended as an IP RPM. New registrar data escrow requirements make it unnecessary at the registry level. It would incent registrars to mask data they send to registries for competitive reasons. It creates additional risk that customer data will be available to spammers, phishers and other abusive parties. It was not required in previous rounds. The registry will not receive the information behind proxy services in any case, so parties who want access to the data will have to go to the registrar. *Demand Media (DAG)*, 13 April 2009).

Whois and Privacy. Whois is essentially broken at present. The rights of individuals to protect their privacy need to be addressed. Any registry operator who proposes a TLD that will differentiate between private and corporate registrations (e.g. .tel and many ccTLDs) should be encouraged and not hampered. *M. Nylon, Blacknight Solutions* (13 April 2009).

Proxy registration services—universal standards and practices. Universal standards and practices need to be developed for proxy domain name registration services, as a condition precedent to the new gTLD program for the global business community. *M. Palage* (14 April 2009).

III. Analysis and Proposed Position

Comments regarding rights protection mechanisms will be handled in a cohesive fashion with comments on trademark protection issues, which is one of the "overarching issues"; see <<https://st.icann.org/new-gtld-overarching-issues/>> for additional details. The question of whether ICANN should require registries to offer thin or thick Whois will be the subject of a separate paper published at the same time as this document.

ICANN is recommending (for discussion) that registries will be required to collect thick Whois information. The benefit from a stability standpoint is that thick Whois will provide another source of data in case of failure. It will also provide a different “sort” of the data – data sorted by registry instead of by registrar – thereby decreasing reliance in one source.

Registry-Registrar Separation

I. Key Points

- On specific points, ICANN is essentially adopting for discussion the definition of “affiliates” recommended in the public comment and has opened for discussion the number of registrations small registries can register through a single registrar.
- ICANN will coordinate additional discussion on this issue given recent statements from gTLD registries that separation should be maintained.
- The number of registrations that can be sponsored by an affiliate of the registry remains open for discussion and could be reduced.

II. Summary of Comments

Special allowance for certain registrant TLDs. It is disappointing that ICANN has not taken steps to allow new registries under appropriately defined circumstances to enter into exclusive arrangements with one or more existing accredited registrars to handle the registration process. This could be appropriate for registries set up to accommodate only registrations by a single company, or for other highly specialized registries, or those in which registration rules are especially restrictive. Allowing a registry to create or acquire as an “affiliate” an accredited registrar of its own is not a substitute for allowing exclusive arrangements in these circumstances. ICANN should reconsider this and explain its reasons if it chooses to reject the proposal. *eBay (13 April 2009)*. The CRAI report recognized the inefficiencies of the registry/registrar model for corporate branded/single registrant TLDs who should not have to seek separate ICANN registrar accreditation in order for that registry to provide domain name registration services directly to its registrants. *M. Palage (14 April 2009)*.

Ability to appoint a single registrar for single-purpose gTLD. MarkMonitor supports nondiscriminatory access for ICANN accredited registrars to offer unrestricted extensions. In cases of gTLDs with a single purpose and use which are limited to defined registrant communities, the registry should be allowed to designate a single registrar. *MarkMonitor (10 April 2009)*. A company that runs a TLD like .company or .brand targeting only a certain community should be able to use only one ICANN accredited registrar. *DOTZON GmbH(13 April 2009)*. Competition between registrars is essential so any move that would permit a registry operator to appoint a single registrar should be strongly opposed. *M. Neylon, Blacknight Solutions (13 April 2009)*.

Quantitative limit relating to relaxation of registry and registrar separation. Section 2.8 tries to create separation between registry and registrar by creating an arbitrary 100,000 limit on registrars affiliated with the registry. Limiting at an arbitrary number does not make much sense; “affiliates” can find ways to legally separate themselves from registry, i.e. loopholes; nondiscriminatory access is good; “uniform agreement” can be biased in registry’s registrar favor (e.g., lower pricing if sell certain number of domains which would benefit bit players such

as eNom and GoDaddy). *A. Allemann, DomainNameWire.com (6 April 2009)*. ICANN should explain the basis of the 100,000 names figure. A percentage of the name space would make more sense. E.g., if the namespace only had 200,000 names then that would make the registry's subsidiary the largest registrar in that namespace, probably not a good idea. *M. Neylon, Blacknight Solutions (13 April 2009)*.

Vigorous enforcement and compliance is needed regarding the narrow exceptions to separation in the CRAI report. The ICANN staff model, a watered down/expanded proposal that is ripe for gaming, should be repudiated. *M. Palage (14 April 2009)*. There has been no discernible policy authorization by the GNSO Council or Board regarding how the CRAI document has entered the new gTLD process. *E. Brunner-Williams (Module 5, 13 April 2009)*.

Should in general preserve vertical separation. INTA recommends that in almost all cases ICANN maintain the vertical separation of registries and registrars and equal access requirements. The hybrid model where registrars affiliated with the registry may only register names in other registries (or in this case have caps on the number of names registered) is deeply flawed and would require additional levels of infrastructure for ICANN to monitor and enforce. Strict vertical separation and equal access requirements preserve competition, allow easy enforcement and prevent particular registrants from having privileged access to domains in particular registries. Only in very specific circumstances should the Registry Operator be permitted to act as an authorized registrar for the TLD through the same entity that provides registry services—where the number of domain names registered in the TLD is 100 or fewer and where the TLD corresponds to a trademark owned by the Registry Operator which declares intent to use the TLD as a source identifier. Where the TLD corresponds to a trademark owned by the Registry Operator, the number of domains registered is greater than 100, and highly restrictive registration requirements apply (e.g., all registrants are licensees of the trademark, etc.), it may be appropriate to allow the registry to control the registrar or (perhaps preferably) allow the registry to designate an exclusive, nonaffiliated, accredited registrar to administer the registration restrictions. *INTA (8 April 2009)*. ICANN should continue adhering to vertical separation and enforcing equal access, with any exceptions limited to a narrow category of single organization gTLDs. *ICA (13 April 2009)*.

Strengthen Vertical Separation and Nondiscrimination provisions by amending section 2.8. We support the proposal allowing an affiliate of a gTLD registry to be a registrar for such TLD up to 100,000 domains, but clarification is needed. Loopholes in the new gTLD agreement may lead parties to circumvent the intent of the vertical separation and nondiscrimination clauses (examples provided in text). To close these loopholes, language should be added to section 2.8: "Registry Operator shall not enter into any commercial relationship with any ICANN accredited registrar or any Affiliate thereof or take any other action that would have the effect of providing any ICANN accredited registrar or any Affiliate thereof with any commercial benefit arising out of domain name registrations in the TLD that are not available and reasonably accessible to all ICANN accredited registrars." *Register.com (12 April 2009)*. To support enforcement, section 2.8 should also add: "Registry Operator shall notify ICANN of any commercial relationship between itself and any of its Affiliates and any ICANN accredited

registrar and any of its Affiliates, other than pursuant to the registry-registrar agreement for the TLD.” *Register.com (12 April 2009)*.

Proposal on Registrar-Registry Separation. The approach to the registry/registrar issue is inconsistent with the CRAI Report and has numerous loopholes that will result in gaming of the system. The Registries Constituency proposal is consistent with the exceptions in the CRAI Report, and reduces the loopholes in current gTLD Registry Agreements and the proposed Section 2.8 of the new gTLD Agreement in version 2 of the guidebook. See proposed new contractual provisions (definitions and section 2.8) in the comments. *RyC (Registry-Registrar Separation, 13 April 2009)*. Also, why would ICANN allow any and all registries to use an “affiliated” registrar, rather than restricting this privilege to those registries operating under highly registration policies, including but not limited to the single owner TLDs described in the CRAI report). *eBay (13 April 2009)*.

Obligation to Use ICANN accredited registrars only limits competition. This guidebook requirement that successful applicants market domain names only using ICANN-accredited registrars strongly limits competition among registrars for many types of TLDs such as small community and single owner (.brand), since few ICANN accredited registrars will be interested in small but useful TLDs. Among SIDN’s 2,200 registrars, for instance, a very small number is ICANN accredited although .nl is the world’s 4th largest ccTLD and is also one of the safest and most stable. Competition of new products and services is strongly limited if clients are forced to use the same narrow distribution channel. Different categories of TLDs should be created, for which the obligation to use ICANN accredited registrars would be valid in some but not all cases. *SIDN (14 April 2009)*.

Allow cross ownership of registry and registrar (section 2.8). There is a lack of rationale why registries should not be able to sell their “product” directly to the public. Arguments that new TLDs are monopolies and therefore must be regulated in this manner do not stand up to common sense scrutiny and are refuted by the Professor Carlton report. Mandating registry/registrar limits seems to be more of a fallback to the decade old .com settlement than an effective mechanism for protecting consumers and promoting competition. *Demand Media (DAG, 13 April 2009)*.

Affiliate Definition. Add this definition of affiliate to the Agreement: “An ‘Affiliate’ of a party means any person, partnership, joint venture, corporation or other entity that: (1) controls, is controlled by, or is under common control with such party; (ii) has a financial interest in such party or, in which such party has a financial interest as a result of ownership, by contract or otherwise. For the purpose of this definition, ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.” *Register.com (12 April 2009)*. Affiliate should be defined in the common, traditional sense of an ownership percentage (greater than 50% would be consistent with the objectives of section 2.8). *Demand Media (DAG, 13 April 2009)*. It is difficult to address section 2.8 of the agreement without understanding what is meant by an “affiliated” registrar. Further consultation with the

community as previously committed by ICANN staff is necessary, and this issue is “NOT” something to be resolved through online public comment. It is also unclear how the 100,000 limit in section 2.8 will be audited and enforced. *Go Daddy (13 April 2009)*. In section 2.8 of the new draft registry agreement, what is the definition of “affiliate”? *K. Rosette, GNSO Transcript at 79 (28 Feb. 2009)*. The definition of affiliate in U.S. securities law could be a source for this. *J. Neuman, GNSO Transcript at 80 (28 Feb. 2009)*. ICANN should define “affiliates” for clarity and certainty. *INTA (8 April 2009)*. An “affiliate” definition is needed for section 2.8, the impact of which is uncertain without this definition. Also, why would ICANN allow any and all registries to use an “affiliated” registrar, rather than restricting this privilege to those registries operating under highly registration policies, including but not limited to the single owner TLDs described in the CRAI report). *eBay (13 April 2009)*.

Remove “double taxation provisions” imposed on corporate/single registrant TLDs. ICANN should remove “double taxation provisions” in the registry and registrar agreements that penalize corporate branded/single registrant TLDs that would have to pay individual per name registry and registrar surcharges/taxes. *M. Palage (14 April 2009)*.

III. Analysis and Proposed Position

ICANN recognizes that there are still significant community concerns and a variance of views regarding the proposed registry-registrar separation model. ICANN intends to seek additional opinions on these issues and foster further discussion in order to refine the model and its parameters for the next version of the Applicant Guidebook.

The proposed model, developed through economic analysis and community discussion seeks to address many issues in the new gTLD process. The cross-ownership study was undertaken with the understanding that individuals and entities associated with registrars were going to participate in the new gTLD process and they wished to know the rules by which they would participate. The CRAI report indicated benefits of integration such as integrated product offerings and also identified some of the risks such as the difficulty in enforcing an even playing field.

The community discussion suggested that the number of names mentioned above, should be set at a number that would help small registries grow. It was preliminarily set at 100,000 names in the first version. As a side benefit, a number of names that could be registered by an affiliated registrar would also address the requests of brand or single-user registrants.

A statement from a majority of the existing gTLD registry operators recently has argued that registry-registrar separation requirements should not be relaxed in a letter posted to the ICANN Board and the ICANN correspondence page <<http://www.icann.org/correspondence/raad-to-dengate-thrush-08may09-en.pdf>>. The points made in this paper will be the topic for future discussion.

Price Controls

I. Key points

- Absent strict price controls, there are certain price protections for registrants in the proposed agreement: six-month notice of price increases and a requirement to offer 10-year registrations.
- Given that new TLDs are expected to be distributed across the globe, effective price controls would be difficult to implement and enforce across many different economies.
- ICANN will ensure measures are taken to clearly and effectively inform registrants regarding lack of price controls and protections, e.g., perhaps having registrars providing registry pricing rules to registrants.
- Discussion will continue as to whether there should be some type of control on renewal pricing or prohibition on renewal price gouging.

II. Summary of Comments

Effect on Incumbent Agreements. If there are no price controls, will that permit registry operators of dominant, incumbent top level domains to make a case that they should be freed from price controls? Whatever the new contract rules are for new gTLDs, will incumbent operators be allowed to approach ICANN and request the same rules for pricing, dispute resolution, whatever, and will those discussions be revealed to the community or simply the results of those discussions? *P. Corwin, Internet Commerce Association, GNSO Transcript at 92 (28 Feb. 2009)*. Until the effect on incumbent registries of usage based or differential pricing by new gTLD registries is adequately addressed, then at a minimum the new registry contract for new gTLDs must specifically prohibit differential pricing based on usage or any other factor. *ICA (13 April 2009)*.

Differential pricing prohibition. We are concerned that whatever rules are adopted for new gTLDs will become the rules for incumbent gTLDs as well. ICANN staff has provided squishy answers to the question of whether lack of price controls in new gTLDs will permit differential pricing at the incumbents. At a minimum, even if there are not going to be price controls, there should be a prohibition on differential pricing—that whatever the price is for a domain at a gTLD, it should be the same price for everyone. If registry operators can differentially price, they become tax collectors and are taxing the success of domains. *P. Corwin, Internet Commerce Association, Public Forum Transcript at 43 (5 Mar. 2009)*. Please prohibit variable pricing for all gTLDs; consistent and equal pricing is fair. *M. Housman (8 April 2008)*. The new gTLD process must not be used to resurrect much less validate differential pricing by registries; any exceptions to this policy must only be for a carefully circumscribed group of “closed” registries subject to strict numerical registration limits. A registry fee is compensation for a ministerial service and this fee should be the same for all domains at a particular registry. If

differential or usage based pricing is allowed, registries will be able to “tax” the success of domains. *ICA (13 April 2009)*.

Failure to address price caps will harm trademark owners (para. 2.9). Without price caps, new TLD operators could use price discrimination to harm trademark owners and consumers. It may affect existing TLDs operators’ ability to invoke the “equal treatment” clause in their registry agreements. Registries should not be able to increase dramatically or incrementally over time the costs for renewing domain names, particularly those of trademark owners some of whom have thousands of domain names in their portfolios. Registries should not be allowed to speculate in new domains by charging costs based on the fame of the trademark or on discriminatory determinations of what they believe the market could bear. *INTA (8 April 2009)*. ICANN should require price caps in all new registry agreements to avoid the potential harm to consumers and brand owners from discriminatory pricing, and the risk that existing gTLD registry operators will demand removal of price caps in their agreements by invoking the equal treatment clause. *MarkMonitor (10 April 2009); See also Verizon (13 April 2009)*.

No price controls; backdoor for incumbent pricing power. It is clearly unacceptable that there continue to be no price caps in place to protect registrants in the revised draft base agreement (section 2.9). This is a backdoor way for existing registry operators to get unlimited pricing power of existing domain names through .tv-style tiered pricing. ICANN is only listening to registry operators and prospective registry operators, given they’ve even LOWERED fees for registry operators (section 6.1). Note that price controls were a major source of comments by the public; note also that NeuStar is on public record that it wants elimination of price caps for .biz under the “equitable treatment” clause of existing registry agreements if other registries get it. Even the smaller TLDs have market power over existing registrants (e.g., if you operated abc.biz for 5 years, and NeuStar suddenly decides to raise the renewal price to \$1 million/year, that will definitely affect you, and is not something where “competitive forces” are at play. *G. Kirikos (19 Feb. 2009)*. Due to the “equal treatment” clauses in all existing gTLDs, bad policy choices in new gTLDs (including but not limited to the elimination of pricing caps) will propagate back into current gTLDs. *G. Kirikos (7 April 2009)*.

Notice periods – renewal and initial registration prices (section 2.9). Section 2.9 should be amended so the 6 month period only applies to renewals and transfers. The need for notice periods on renewals is not clear cut, but Demand Media is prepared to accept a mandated notice period for renewals because this is how the market will work in practice — registries will give their customers adequate warning about renewal price increases. A mandated warning period for initial registrations is unnecessary and there is no consumer interest rationale in it. There was little or no public comment advocating a warning period for initial registrations, and the logic of the “captive customer” does not apply to them. A registry that raises prices for an initial registration is not harming anyone (e.g. if .cool will go from \$5.00 to \$10.00 no one is harmed; a future buyer who does not like the price increase will simply choose not to purchase a .cool name or will go to a cheaper product). With mandated warning on initial registrations, a registry that underprices its product will face a long period of unprofitability before it can

correct its mistake. It could also result in some registries starting their prices higher to avoid the risk of underpricing. *Demand Media (DAG, 13 April 2009)*.

Registrants' Reasonable Renewal Expectations from gTLD Registries with "market power."

ICANN needs to ensure that the baseline registry agreement has adequate provisions to protect the reasonable renewal expectations of registrants within those gTLD registries with "market power." *M. Palage (14 April 2009)*.

Section 2.9 still raises concern—should cap renewal prices. In addition to the 10 year renewal option and 6 months' notice of price increases, there should be a cap on renewal price increases. Allowing for registrations up to 10 years to lock in prices should prevent registries from jacking up prices "because would have 10 years to negotiate settlement." *A. Allemann, DomainNameWire.com (6 April 2009)*.

Impose price caps. As the U.S. Dept. of Justice pointed out there should be price capson new TLDs to protect domain registrants and prevent older new TLDs from pricing as they wish (tiered or otherwise) possibly leading to tiered pricing with .com domains. The U.S. DOJ and DOC should remain involved to ensure that ICANN follows through with the many consumer and economically friendly recommendations made. *Tom (8 April 2009; 13 April 2009)*). ICANN should not allow tier level pricing similar to that of .tv. All domain names should be priced at the same level and created equal no matter how valuable the name or brand is on the open market. *Visa Inc. (11 April 2009)*. ICANN should eliminate any possibility now and forever of unregulated pricing for all existing TLDs and any future gTLDs. This issue should be put to rest. *Worldwide Media, Inc. (13 April 2009); J. Seitz (11 April 2009)*. See also *M. Neylon, Blacknight Solutions (13 April 2009); Tee (13 April 2009)*. Absent market based controls for defensive registrations, ICANN should impose price caps for registration fees all new gTLDs and maintain existing price caps for legacy registries. *AT&T (13 April 2009)*.

Registrant control over rate increases through 60% registry ownership. Please require all gTLD registries to give 60% ownership to the registrant thereof; this would allow registrants some control over future rate increases. *M. Housman (8 April 2009)*.

III. Analysis and Proposed Position

Additional analysis needs to be done regarding the concerns expressed by members of the community. ICANN has commissioned Professor Carlton to undertake an expanded and comprehensive review of pricing policy and all community commentary related thereto.

One aspect of the price control discussion is ICANN's role and its ability to set prices effectively. This requires an understanding of markets, economics, and the legal environment in every country. These factors make it difficult for ICANN to set prices.

One area within ICANN's ambit is communication. In the case of price controls, or the lack of price controls, ICANN could seek to ensure all consumers are well informed. ICANN could

communicate through many channels on many facets of the new gTLD program, including letting consumers know whether a registry has or doesn't have price controls and what the effects of that situation are upon consumers. Through the registry agreement and the registry-registrar agreement, ICANN might have registrars post on their web site and in their communication with registrants the fact that registries do not have price controls.

Finally, there might be some restrictions on increasing price of renewals in order to avoid a situation where an opportunistic registry would markedly increase prices when the name is renewed. Again, it is difficult to develop a formulaic approach given the expected diversity of business models and economies involved. However, the agreement could have a prohibition on these opportunistic practices, with possible wording to be determined for future public consideration.

Representations and Warranties

I. Key points

- Basic contracting representations on authority and execution should be incorporated into the new gTLD agreement.

II. Summary of Comments

Organization, Due Authorization and Execution (article 1). The representations and warranties regarding these matters should be re-instituted into version 2 of the Registry Agreement. The provisions should be mutual and not just an applicant only requirement in the application form. Mutual clauses from the 05-07 Registry Agreement should be added back to version 2 of the Registry Agreement (see text for contract provision language). The representations and warranties of Section 1.3 (replacement language suggested) are overly broad, and the limitation on remedies from version 1 of the Registry Agreement should be reinstated. *RyC (Modules 5-6, 13 April 2009)*.

III. Analysis and Proposed Position

Representations and warranties of the parties in the proposed new draft gTLD agreement were removed to simplify the agreement and focus on business terms. In light of the comment, representations and warranties of the parties as to due organization, valid existence and authority to enter into the registry agreement and obtainment of requisite corporate approvals will be included in v.3 of the proposed new gTLD agreement.

Registry Operator Covenants

I. Key points

- The list of exclusions from consensus policy development incorporated into the proposed new gTLD agreement is are different from those contained in existing registry agreements.
- There should be additional parameters around ICANN's ability to audit compliance with registry agreement terms and related enforcement.
- Zone file access should have additional parameters regarding access and use.

II. Summary of Comments

Different Definitions of Consensus Policies. "Consensus policies are defined in the ICANN contracts with the registries and registrars, and actually currently there is a different definition of what a consensus policy is in the current registry agreements and even the proposed new TLD registry agreements that are different than what is in the RAA, the registrar accreditation agreement...on a personal level, I don't understand why the definitions are different...It just seems like...an avenue that's open for dispute, and I think that's maybe something that at some point the council might want to address." *J. Neuman, GNSO Transcript at 6 (28 Feb. 2009)*

Audits. Contrary to self-certification and possible audit in Section 5.2.1, audits by ICANN should be mandatory and transparent. One alternative to self-certification is a third-party technical audit. ICANN should establish terms and conditions of all audits before the first application round opens. *INTA (8 April 2009)*. ICANN should have full authority to audit registries for material misrepresentations made in the application, as well as statements that are no longer true. *Coalition for Online Accountability (13 April 2009)*. ICANN should make its audit requests narrowly focused in order to make the process faster and more efficient for registries and to promote a collaborative relationship (section 2.10 language suggested). *RyC (Modules 5-6, 13 April 2009)*.

Zone file access for all gTLDs. The inclusion of this requirement is positive. *MarkMonitor Inc. (10 April 2009)*. Registry operators should be able to refuse access to abusers (put a reference to 3.4 in 3.1). In 3.3 Grant of Access, it would make more sense not to specify the exact protocols and the details of how the transfer was enabled. *M. Neylon, Blacknight Solutions (13 April 2009)*. There is a potential for unreasonable, illegitimate, abusive or excessive requests which could be very costly and time consuming for registries (section 2.4); therefore, a limitation should be applied to allow all reasonable or legitimate requests for zone file access agreements and/or access. *RyC (Modules 5-6, 13 April 2009)*.

III. Analysis and Proposed Position

The list of exclusions from consensus policy development contained in specification 1 of the proposed new gTLD agreement has been refined from the list of exclusions incorporated into older registry agreements. The winnowing was intended to remove protections that are no longer relevant. These refinements are due to evolving policy development (e.g. the exclusion of changes to a contractual definition of registry services has been deleted as registry services are now defined in a relevant consensus policy).

ICANN's audit rights are intended to be flexible. These provisions have been both narrowly tailored to provide reasonable reassurance to registry operators that audits will not be overly burdensome, and also broadly written to allow ICANN to serve its enforcement obligations with respect to new TLDs.

ICANN will attempt to address the zone file access comments in the preparation of the next draft of the Applicant Guidebook and proposed registry agreement. It is currently contemplated that there will be a continuation of the current requirement for registries to use a standard template zone file access agreement, e.g.

<<http://www.icann.org/en/tlds/agreements/org/appendix-03-08dec06.htm>> instead of the recently proposed approach in order to create a standard format across all registries.

Compliance

I. Key points

- For new gTLDs that have passed the evaluation criteria and are ready to be delegated, ICANN should do a final review, and require re-certification of information before entering into a registry agreement with applicants.
- ICANN will grow its compliance function to continue a robust process for new gTLDs.
- There should be a standardization of required policies for new gTLDs, particularly with respect to rights protections.

II. Summary of Comments

Pre-contract review; information re-certification. Given the potential delay between initial application and Transition to Delegation, ICANN should conduct a pre-contract review of each applicant to confirm that all eligibility criteria continue to be met. If material changes are uncovered, then ICANN should have ability to refuse to enter into the Registry Agreement. ICANN should also require that applicants re-certify the information they have provided in their initial application, in particular what is required in Section 1.2.3 of Module 1. ICANN should also state for all stages what person(s) are responsible for conducting the pre-contract review and the pre-delegation technical check (Module 5 is silent). *INTA (8 April 2009).*

Contract improvements. The Registry and Registrar Agreements both need improvements to strengthen terms and conditions, particularly regarding: (1) Enforceable contract obligations; and (2) Accurate and transparent registrant or applicant identification and contact details. *IHG (Module 5, 9 April 2009).*

ICANN Enforcement. It is essential that ICANN show sufficient capacity to enforce contract compliance of both existing and new registries. *J.A. Andersen, Director General, Ministry of Science Technology and Innovation, National IT and Telecom Agency, Denmark (2 Mar. 2009).* There is a need for stricter enforcement of contractual obligations of new gTLD operators, with particular emphasis on a new gTLD operator carrying out verification of a domain name applicant's eligibility to sanction any failure to act accordingly. *Lovells (14 April 2009).*

Removing Registry Enforcement Role re: Registrars. Regarding Section 2.9 of the agreement, will the provision be taken out requiring the registry to ensure that the registrar has a link up to the ICANN policies page? This issue was raised by NeuStar in the first round but not addressed by ICANN. *J. Neuman, GNSO Transcript at 89 (28 Feb. 2009).*

III. Analysis and Proposed Position

The Applicant Guidebook will require a re-certification of representations and warranties, as well as statements made during the application process, prior to execution of a registry agreement.

ICANN recognizes that the expansion of the gTLD name space and delegation of new top-level domains will require enhanced enforcement oversight, and ICANN will continue to refine and revise its compliance framework for gTLD registries. ICANN is in the midst of establishing and securing resources necessary for operational readiness for administering new gTLDs including: contractual compliance, registry liaison, IANA services, and other functions that devote resources to TLD registry support.

The requirement for registrars to post a link to an ICANN page concerning registrant rights and responsibilities was recently incorporated into the amended form of the Registrar Accreditation Agreement and accordingly will be removed from section 2.9 of the proposed registry agreement.

Registry Technical Requirements

I. Key points

- The Applicant Guidebook indicates that DNSSEC implementation is not mandatory for new gTLDs.
- The Applicant Guidebook indicates that provision for IPv6 is mandatory for new gTLD registries.
- New gTLDs are not required to offer IDNs.

II. Summary of Comments

DNSSEC clarification. ICANN should clarify very specifically before applications are filed if signing up for DNSSEC will be a requirement of the Registration Agreement if the applicant wins and has no interest in offering DNSSEC. Other countries are still reviewing their position on DNSSEC in light of perceived U.S. control and after winning applicants from these countries should not be caught between their national law and evolving ICANN positions on DNSSEC requirements. *NCUC (13 April 2009)*. *A. Sozonov (Module 5, 9 April 2009)*. *Association Uninet (Module 5, 11 April 2009)*. *S. Soboutipour (Module 5, 11 April 2009)*. *Y. Keren (Module 5, 12 April 2009)*. *L. Andreff (Module 5, 13 April 2009)*. *S. Maniam (Module 5, 13 April 2009)*. *DotAfrica (Module 5, 13 April 2009)*. *S. Subbiah (Module 5, 13 April 2009)*. DNSSEC should be required for any new gTLD serving the financial services industry. *Regions (13 April 2009)*; *BITS (13 April 2009)*. For technical and business reasons, new gTLDs need to factor into their plans the cost and technical resources necessary to fully implement DNSSEC within the next two years. Failure to prepare applicants for this will give them the “defense” that they were not “informed” of the requirement to support DNSSEC. (See text of comments for proposed language change to Item 50.) *R. Hutchinson (Module 2, 13 April 2009)*. Applicants must demonstrate familiarity with DNSSEC and provide an implementation plan when it becomes widespread in line with ICANN policy. *ALAC (19 April 2009)*. DNSSEC falls into category of post-start changes to operating procedure to be sought by consent of the operator. *E. Brunner-Williams (Module 5, 13 April 2009)*.

Do not require IPv6 for now. ICANN should provide clarity that IPv6 will not be required for now. It is difficult to find ISPs providing it, and this could be an especial burden for IDN applicants trying to find IPv6 ready ISPs or data hosting centers in other countries. *NCUC (13 April 2009)*. *A. Sozonov (Module 5, 8 April 2009)*. *Association Uninet (Module 5, 11 April 2009)*. *S. Soboutipour (Module 5, 11 April 2009)*. *Y. Keren (Module 5, 12 April 2009)*. *L. Andreff (Module 5, 13 April 2009)*. *S. Maniam (Module 5, 13 April 2009)*. *DotAfrica (Module 5, 13 April 2009)*. *S. Subbiah (Module 5, 13 April 2009)*. *A. Mykhaylov (Module 5, 13 April 2009)*. *E. Brunner-Williams (Module 5, 13 April 2009)*.

IPv6—impact on existing TLDs. Any registry operator for a new TLD should be able to offer a full suite over IPv6, either native or tunneled. If IPv6 is a technical requirement for new gTLDs, will the same criteria be applied to existing registry operators? Any changes that affect new TLDs need to be viewed against arrangements for existing TLD registry operators. *M. Neylon, Blacknight Solutions (13 April 2009).*

Knowledge of IDNs. Applicants must have knowledge of IDNs; however, applicants for non-IDN TLDs should not be required to implement IDN technology. *ALAC (19 April 2009).*

Escrow deposit-clarification. ICANN should make it clear that it will accept escrow companies that are not subject to the U.S. Patriot Act and are outside of U.S. jurisdiction. *NCUC (13 April 2009). A. Sozonov (Module 5, 9 April 2009). Association Uninet (Module 5, 11 April 2009). S. Soboutipour (Module 5, 11 April 2009). Y. Keren (Module 5, 12 April 2009). L. Andreff (Module 5, 13 April 2009). S. Maniam (Module 5, 13 April 2009). (DotAfrica (Module 5, 13 April 2009). S. Subbiah (Module 5, 13 April 2009).*

III. Analysis and Proposed Position

The ramifications of DNSSEC implementation, and IPv6 use by new gTLD registries will be discussed further with the technical community. Requirements regarding provisioning for IPv6, availability of IDNs, and readiness for DNSSEC can be found in the applicant questions found in Module 2. There it is indicated that IDN availability and DNSSEC readiness are not mandatory and that provisioning for IPv6 is mandatory. With the imminent depletion of IPv4 numbers, it was provisionally decided to make IPv6 mandatory. It is also thought that market forces will drive registries toward or away from IDN and DNSSEC as they become valuable and important to consumers.

While not required, points are awarded for implementation of the two optional registry services in the evaluation scoring, so their provisioning / implementation, if undertaken before launch, can be helpful in passing the technical evaluation criteria. As requested by the commentary, ICANN will provide additional clarification in the Applicant Guidebook as to which services are optional and which are mandatory.

The use of non-U.S. resident escrow agents by registry operators has always been permitted by ICANN, and this will also be made clear in the Applicant Guidebook.

Term and Termination

I. Key points

- Renewal provisions in the new gTLD agreement should have the same parameters as ICANN's 2005-2006 registry agreements.
- Additional protections against termination are needed for registry operators in the new gTLD agreement.
- There should be further clarity in the registry agreement regarding termination by registry operators with no successor registry operator.
- Presumptive renewal should be stricken from the new registry agreement in favor of competitive rebidding, and shorter agreement terms.
- Termination of the agreement for specified bad actor events (e.g. failure to enforce rights protections) should be included.

II. Summary of Comments

Renewal and Termination by ICANN (sections 4.2 and 4.3). While version 2 added back some limitations on ICANN's termination rights, edits (suggested in comments text) are needed to preserve the important protections in previous versions of the registry agreement. Version 2 would have the effect of allowing non-renewal or termination for uncured breach of many more categories (e.g., data escrow, monthly reporting, publication of registration data, protection of legal rights of third parties, use of registrars, and compliance audits). Changes need to be made to several of these provisions. If for consistency ICANN requires that material breach of all Article 2 covenants are terminable offenses (even the relatively minor offense of filing monthly reports), then the edits RyC suggests for the provision are a reasonable and appropriate protection. Material breach determinations should be limited to those breaches that materially affect Security and Stability. *RyC (Modules 5-6, 13 April 2009).*

Termination by registry operator. There is no provision for termination of the agreement by the registry operator under any circumstances. At a minimum this right should be recognized in 3 situations: at the end of the 10-year term; after an uncured material and fundamental breach by ICANN of its Article 3 obligations; and after a material change to the agreement which the registry operator has sought unsuccessfully to disapprove per Section 7.2. There is a particularly compelling need to enable the operator to free itself from requirements it never agreed to because there is no obligation in the agreement for ICANN to indemnify the registry operator against any liability it may incur to third parties as a result of a new requirement (or indeed under any circumstances). Whenever the registry operator is allowed to terminate the agreement this right should be subject to transitional measures to protect legitimate interests of existing third party registrants in the TLD. *eBay (13 April 2009).* If the Registry Operator operates a closed, branded gTLD or a gTLD with fewer than a set number of registrants, the Registry Operator should have the right to terminate the Agreement and cease operating the

registry. This right to terminate should be added to Section 4, with appropriate revision to Section 4.4. *Microsoft (Guidebook, 13 April 2009).*

Non-renewal limitation. The revisions in Article 4—which appear to eliminate the possibility that a breach of Article 1 (or some of the other sections of the Agreement) could provide a basis for non-renewal or termination—do not seem prudent. *INTA (8 April 2009).*

Strike Presumptive Renewal. Regarding Article 4, 4.2., presumptive renewal should be struck in favor of RFP, competitive bidding including agreements to provide better services and/or lower prices. *A. Allemann, DomainNameWire.com (6 April 2009).*

Competition and registry contracts. When contracts come up for renewal, Registry Operators should be able to be replaced; the contract should be opened to bid by any capable company and awarded to the lowest bidder. The U.S. Dept. of Justice should investigate the no-bid monopoly nature of all existing gTLD registry operator contracts. *Worldwide Media, Inc. (13 April 2009); J. Seitz (11 April 2009).*

Contract term. All contracts should have a reasonable term of 4 years at which time it goes to a competitive bid where the contract is awarded to the company willing to provide the service for the least cost to the public, on the company willing to pay the most to ICANN. *Worldwide Media, Inc. (13 April 2009); J. Seitz (11 April 2009).*

Termination of Accreditation. ICANN should add language requiring all registry operators to comply with the rights protection mechanisms in the Base Agreement. A registry operator failing to comply should have its accreditation with ICANN terminated (so long as ICANN has provided written warnings and a reasonable time to cure). *MarkMonitor (10 April 2009).*

III. Analysis and Proposed Position

After considering the recommendations of the GNSO and other community input, ICANN determined to propose a longer initial contract term in the proposed new gTLD agreement as a measure to facilitate business planning by prospective new registry operators and encourage investment in new TLDs. Provided that there is sufficient flexibility to allow changes during the life of the agreement, ICANN expects to continue to offer a long initial term for the agreement, with clear parameters around renewal of the agreement.

ICANN recognizes that in certain circumstances an appropriate successor registry operator may not be identifiable for a registry. ICANN intends to consider how best to address these circumstances and clarify further in v.3 of the Applicant Guidebook.

There is comment that there is not sufficient opportunity for the agreement to be terminated and also comment that there is too much opportunity. In light of community comments, ICANN is evaluating including more detail regarding “bad actor” events that could result in non-

renewal of a registry agreement. This will be considered in the overall context of the specified initial term of the agreement and termination rights.

ICANN will also consider conditions under which the registry may terminate the agreement. Termination by a registry would necessarily involve steps described in ICANN's registry continuity program that seek to protect registrants through finding successor operators or providing a "soft landing" for registrants when the registry will be shut down.

Process for Future Amendments to the Agreement

I. Key points

- The process for amending the registry agreement (Article 7) will be modified somewhat to provide clarification, but subject to further community and Board discussion the substance of the amendment process will remain intact in order to be able to address the needs of the DNS marketplace.

II. Summary of Comments

Opposition to ICANN unilateral right to change terms and conditions (article 7). Despite strenuous objections by the RyC and the community, ICANN continues to assert a unilateral right to change the terms and conditions of the registry agreement with the Board able to uphold those changes. RyC repeats its version 1 comments opposing this (sections 7.1 and 7.2). This will create uncertainty and the proposed “safeguards” are not a suitable check on this abuse of power; no check and balance really exists. ICANN has the Consensus Policy mechanism to use for critical changes and it ensures that implementation is balanced across multiple constituencies and stakeholder groups. ICANN should explain the specific things it seeks to amend outside the current Consensus Policy scheme, as it has offered no compelling justification to date. *RyC (Modules 5-6, 13 April 2009).*

III. Analysis and Proposed Position

The proposed process for effecting amendments to the agreement during the life of the contract continues to be the focus of concern by certain sectors of the community. ICANN will propose including in v.3 of the proposed new registry agreement clarifying modifications to Article 7 of the agreement. Specifically, to clarify that amendments and modifications to the agreement may not be retroactive in nature; that the dispute resolution article may not be modified through the Article 7 process; and that changes to limitations on liabilities may not be implemented through the Article 7 process. Any additional changes to the agreement would have to be discussed further by the Board and community, attempting to balance future registries' desire for certainty and predictability with the needs of ICANN and the community to retain flexibility to modify registry agreements in the future in response to marketplace and technological changes.

Registry Operator Fees

I. Key points

- The pass-through of registrar fees to registries remains the same as it is in existing agreements.
- RSTEP fee will be paid directly by operators who use the service: to do otherwise would hobble the ICANN budgeting process and result in some registries paying for use of the service by others.

II. Summary of Comments

Registry level fees (section 6.1) and variable registry-level fee (section 6.4). RyC repeats its version 1 comments to section 6.1 and section 6.4. There should be a cap on the per-registrar component (and further edits are suggested). There is no clear reasoning or justification in the Analysis for the proposed arrangements set out in section 6.4. *RyC (Modules 5-6, 13 April 2009).*

Variable accreditation fees (section 6.4); registry fees in general. ICANN should spell out clearly the circumstances under which registries will be obligated to collect variable accreditation fees from registrars and remit them to ICANN, and should more clearly explain the fees to be charged to new registry operators. *eBay (13 April 2009).* See also *RyC (Modules 5-6, 13 April 2009).*

Registrar Fees Collected by Registries. Section 6.4 of the agreement may require clarification with respect to registrar fees and apparently new language ICANN added regarding a “per-registrar fee.” *J. Neuman, GNSO Transcript at 89-90 (28 Feb. 2009).*

Cost recovery for RSTEP (section 6.2). RyC repeats its request in its version 1 comments that ICANN reconsider this provision because it could negatively impact innovation in the TLD space. *RyC (Modules 5-6, 13 April 2009).*

III. Analysis and Proposed Position

The variable registry-level fee (pass through of the registrar fee) is necessary in the event ICANN is unable to collect fees at the registrar level. This fee is intended to be recoverable by the registry operator pursuant to a provision included in the registry-registrar agreement. This pass-through is intended to be consistent with the one found in present registry agreements. Comments are accurate that the conditions under which the pass-through is triggered and how it operates could be clarified and improved. ICANN will work with registries and registrars to develop a clear procedure for this process.

The fees for the RSTEP have been borne to date by ICANN. These fees are expected to continue to grow apace with expansion of the name space, and these fees are not included as part of ICANN's budget process. Each exercise of the RSTEP costs \$100,000 to \$125,000 US. If the number of registries increases by an order of magnitude or more, ICANN might be forced to set aside an amount in the 10's of millions US in the budget each year. This is a significant amount of the total ICANN budget. That money comes to ICANN from registrants, through registries and registrars. Therefore, in order for ICANN to fund the RSSTEP, it would have to set aside a significant portion of its budget, either delaying other work or increasing the budget. In the end, much of that money comes from registries in some form anyway where registries that don't use the process fund the ones that do.

Regarding the use of the process: the RSTEP is utilized in a small fraction of the number of registry service requests. The vast majority of requests do not require the RSTEP as there are no stability / security concerns with the proposed new service. Even in cases where there is a concern, a similar request that comes after the examined request often does not need RSTEP review. So a second request for DNSSEC implementation and a second request for release of certain reserved words did not have an RSTEP review where the initial inquiry did. It is ICANN's goal to make the registry service request process as inexpensive and timely as possible in order to encourage innovation. In order to continue to provide this service, ICANN must consider a "pay as you go" process for new registry agreements.

Dispute Resolution

I. Key points

- An arbitration panel can be established to resolve disagreements under the registry agreement as opposed to use of a single arbitrator.

II. Summary of Comments

Arbitration (section 5.2). As noted in the version 1 comments, Registry operators object to having a single arbitrator; it is contrary to normal commercial dealings for determining important disputes. At a minimum, the provision should be changed so that a normal, 3 person arbitral panel is used for important disputes (e.g., those involving renewal or termination) or in which ICANN seeks punitive damages, or where claims exceed a certain dollar threshold (e.g. \$1 million). *RyC (Modules 5-6, 13 April 2009).*

III. Analysis and Proposed Position

ICANN will consider modifying the arbitration provision in v.3 of the proposed new registry agreement to allow either party to request a three-person arbitration panel instead of a sole arbitrator.

Limitation on Liability and Indemnification

I. Key points

- Punitive damages under the registry agreement were requested by certain community members as part of a sanctions program. Based on this public comment, the warranty disclaimer language will be reinstated.
- The indemnification obligations under the new registry agreement should not be capped as it is merely a cost recovery device.

II. Summary of Comments

Reinstate punitive damages protection (article 5). The clause “Failure to Perform in Good Faith” should be reinstated in the registry agreement. RyC disagrees with ICANN’s view that this provision is unnecessary. Punitive damages are an extraordinary measure that are virtually always excluded from commercial contracts; therefore if allowed in registry agreements there must be protective limitations. *RyC (Modules 5-6, 13 April 2009).*

Warranties (section 5.3). Warranty disclaimer language (suggested in comments) should be added as they may be otherwise implied by law. *RyC (Modules 5-6, 13 April 2009).*

Limitation of liability (section 5.3). The broad indemnification obligations proposed in version 2 of the registry agreement must be capped under the limitation of liability (language suggested). The guidebook Analysis suggests that ICANN intended the indemnity to be subject to the cap, so the edit will merely clarify that objective. *RyC (Modules 5-6, 13 April 2009).*

Indemnification. The Clause 5 indemnification provision is extremely broad and is absent in past Registry Agreements (at an extreme, it would allow criminal conduct to go unchallenged). *NCUC (13 April 2009). A. Sozonov (Module 6, 9 April 2009). Association Uninet (Module 6, 11 April 2009). DotAfrica (Module 6, 12 April 2009). L. Andreff (Module 6, 13 April 2009). S. Subbiah (Module 6, 13 April 2009).* The section 8.1 provision is uncapped and overbroad; RyC has offered language to clarify that the indemnity obligation is under the Limitation of Liability, as well as additional edits to limit breadth. RyC also repeats its version 1 comments regarding indemnification and inclusion of protections (e.g. those in the .biz agreement). *RyC (Modules 5-6, 13 April 2009).*

III. Analysis and Proposed Position

The ICANN community has been strongly in favor of providing for sanctions under the new registry agreement to combat bad actor behavior, which is why the proposed new registry agreement does allow ICANN to *ask* for a levy of punitive damages under certain circumstances.

Per the request and in light of the concern of the RyC, ICANN will reinsert the disclaimer language regarding warranties for performance by registry operators

ICANN's right to be indemnified is solely a cost recovery provision for ICANN. The right to seek indemnification for out of pocket costs and damages paid to a third party due to registry operator behavior should not be subject to a cap.

Change of Control; Successor Registry Operators

I. Key points

- ICANN should take measures to prevent new registry operators from “flipping” newly delegated TLDs.
- ICANN has developed procedures for how ICANN will handle termination of registry agreements for which there may be no appropriate successor registry operator.
- The registry agreement does require written approval by ICANN in advance of an assignment of the registry agreement.

II. Summary of Comments

Curbing Secondary Markets. Ways to curb the creation of secondary markets should be discussed more thoroughly – re other possible enforceable and implementable ways to avoid this. *K. Rosette, GNSO Transcript at 81 (28 Feb. 2009)*. The draft base agreement with new registries requires notice to ICANN of changes of ownership or control but does not otherwise restrict the ability of a successful applicant to “flip” the registry to a buyer unvetted by ICANN, even immediately after delegation. The risks of a speculative marketplace need to be anticipated. The second draft guidebook does not address this. *IPC (13 April 2009)*. This issue was not addressed in version 2; therefore Microsoft restates its version 1 comments on this issue (see text of comments for specific recommendations, e.g. assignment restrictions and guidelines, prior written approval by ICANN, etc.) *Microsoft (Guidebook, 13 April 2009)*.

Successor registry (section 4.4). In the case of a TLD dedicated to a single company or its employees, it would not be appropriate for ICANN to designate a successor registry whenever termination occurs, especially if the TLD represents the company’s name or brand. It should be clarified that in this circumstance, no successor registry may be designated without the consent of the terminating operator. *eBay (13 April 2009)*.

Registry Failures with no successor. The guidebook assumes that all registries will succeed and if they fail, they will be acquired. This will not be the case with the crowded space that could result. Registries will fail and there will not be a buyer at any value. This is totally against ICANN’s mission statement to promote a stable, secure and interoperable Internet; it is amazing that no consideration has been given to this. The end user will be the loser and total disarray will result if a registry fails and no one will take it on. *M. Mansell, Mesh Digital Ltd. (2 Mar. 2009)*.

Written approval for change in control. ICANN must reconsider its proposal not to require written approval for change of control of a Registry Operator. Allowing a third party to take over control without undergoing proper due diligence may raise concerns such as the ability to fully enforce the originally agreed upon conditions under which the registry was awarded. A

suggested change would be to require review and written approval in the event of a change. If all conditions of operation as originally committed are verified then written approval should not be unreasonably withheld. Extensive review and pre-approval of a transfer agreement would be required in there is a modification in the terms and conditions. *MarkMonitor (10 April 2009)*.

Revision needed re: Notice to ICANN (section 8.4). Section 8.4 continues to provide that ICANN gets nothing more than 10 days' notice whenever a change of ownership or control of a registry operator occurs. ICANN staff should reconsider their rejection of the suggestion that this provision be modified. The entire vetting process for registry operators will be rendered worthless if an operator found to be qualified can, as soon as the TLD is delegated to it, flip the franchise to a buyer that would not have qualified on its own. Since amendments to the RAA now before the ICANN Board require new owners of registrars to certify regarding their qualifications, ICANN should explain why the public should not enjoy at least the same protections, if not more, in the case of change of control of ownership of a registry operator. *eBay (13 April 2009)*.

III. Analysis and Proposed Position

The proposed new registry agreement requires ICANN's consent for assignment. In the context of an assignment of the agreement, the actual company acting as registry operator would change. Conversely, a change of control (ownership) may result in no change in operations of the registry operator. The sale of a business by a registry operator is not a transaction ICANN should be in the position to approve or disapprove. A notice requirement for a change of control has, however, been included in the registry agreement to ensure ICANN has sufficient opportunity to ask questions regarding a proposed transaction in the event there are any concerns. In addition, Section 4.3 of the agreement provides protections for ICANN and the community in the event the registry operator fails to perform its material obligations following any change of control of the registry operator.

The termination of registry agreements with a registry operator who holds a relevant trademark or brand name will need to be evaluated on a case-by-case basis, in conformance with ICANN's registry continuity plans <<http://www.icann.org/en/registries/continuity/>> .

It has always been thought that some of the new registries could fail. It is that risk taking that encourages innovation and ultimate benefit for consumers. Knowing this ICANN has taken several important steps to protect registrants to the fullest extent possible:

- Technical, operations and financial criteria have been written to provide a complete guide to potential registry operators for registry operation.
- In Sydney, ICANN will facilitate a registry best practices workshop to provide information to potential registry operators.
- ICANN has developed over years a registry continuity program to facilitate transfer of registry operations to a successor registry and where that is not possible, provide a "soft

landing” for registrants of a failing registry. That program was developed with the help of registry operators and includes detailed procedures to abet timely transfers.

Miscellaneous Comments

I. Key points

- Use of defined terms in the new gTLD registry agreement should be clear.

II. Summary of Comments

Terminology Clarifications Needed—e.g. “Registry” and “Registry Operator”. These terms seem to sometimes be interchangeable in the agreements and in the entire guidebook, but more clarity and care when they are used is needed – i.e. “registry operator” can mean an entity ICANN enters a contract with, but also can mean the “registry operator” that is a third party back-end provider. The terminology has implications when talking about whether that registry operator is also a registrar in the TLD. *A. Kinderis, GNSO Transcript at 80 (28 Feb. 2009).*

Certain Prohibitions. ICANN could implement an anti-warehousing requirement as well as prohibitions against self-dealing in all registrar and registry agreements, including secondary dealings by accredited registries and registrars with agents holding a financial interest. In addition, ICANN should prohibit registries and registrars from engaging in the mass registration of domain names for financial gain of the accredited party and adopt a mechanism to cancel, after appropriate warning, accreditation of a registrar when violations of safeguards are validated. *AT&T (13 April 2009).*

III. Analysis and Proposed Position

Use of defined terms will be clarified in v.3 of the Applicant Guidebook. In all cases where these terms are used in the agreement the entity intended to be covered is the entity entering the agreement with ICANN (even though that entity might subcontract substantial aspects of the operation of the registry to a third-party "back-end operator").

ICANN's registry and registrar agreements permit ICANN to impose a prohibition on domain speculation or warehousing by registries and registrars, but the details of such a rule would require significant study and discussion and should be addressed through ICANN's bottom-up policy development process. Any such policy would also have the benefit of applying equally to new and existing registries.

Terms and Conditions (Module 6)

I. Key points

- It is unfair to applicants to allow ICANN to deny an application for any or no reason.

II. Summary of Comments

Fairness to applicants. ICANN has the option to unilaterally deny an application at any time, but it appears that if ICANN offers an applicant a Registry Agreement of ICANN's choice, the applicant must sign it and has no right to walk away for whatever reason. This seems unenforceable. *NCUC (13 April 2009)*. *S. Soboutipour (Module 6, 12 April 2009)*. *DotAfrica (Module 6, 13 April 2009)*. *L.Andreff (Module 6, 13 April 2009)*. *S. Subbiah (Module 6, 13 April 2009)*.

Specific comments on application terms and conditions. None of the matters INTA raised in Module 6 of version 1 were acted upon in version 2. INTA incorporates by reference its comments on Module 6, version 1 in their entirety and requests consideration of them by ICANN. Para. 1: oral statement must be confirmed in writing, and there should be a clear process for recording or documenting discussions outside the written application process; the phrase "reflect negatively" needs clarification/definition; Para 2: applicant must make full disclosure of all corporate relationships and any other gTLD applications, and a corporate entity should not be allowed to submit more than one application at a time for a particular gTLD; Para. 3: ICANN should be able to reject an application where the applicant intentionally submitted or provided fraudulent information, and no application refund should be issued. Para. 4: There should be notice and cure in the case where an applicant's fees are not received in a timely manner; a late fee should not be grounds for cancelling the application; Para. 6: ICANN has not justified the requirement that an applicant release ICANN from all claims and waive any rights to judicial action and review; this paragraph should be deleted and rewritten with appropriate limits on the release of ICANN from liability. Para. 7: Applicants should be notified before ICANN treats as "nonconfidential" information that the applicant submits as "confidential"; Para. 8: ICANN should require the applicant to keep its personal identifying information current and up to date, with updates required within a reasonable period of time after information has changed. Para. 9: ICANN should not have perpetual, unlimited rights to use an applicant's name and/or logo in ICANN public announcements; the right to use should be limited to announcements relating exclusively to the applicant's application. *INTA (8 April 2009)*.

Application terms and conditions suggestions. In provision 1 add the qualifier "to the best of applicant's knowledge"; and amend phrase to read "or willful omission of material information"; provision 6, release of claims against ICANN, is overreaching and inappropriate unless it is amended to include some exceptions for acts of negligence and misconduct on the

part of ICANN or its affiliated parties.; provision 11b should be amended to exclude any part of the application designated by the applicant as “confidential” without the express written permission of the applicant. *Go Daddy (13 April 2009)*.

Application procedure—limited rights. Applicants are strongly limited in their rights by agreeing with the application procedure. This is in conflict with the goal to create a clear, uncontested procedure for gTLD applications, since the final outcome of the procedure is at ICANN's sole discretion. *SIDN (14 April 2009)*.

Applicant's permission to ICANN (paragraph 9). This should be limited to use of the Applicant's name in ICANN public announcements relating solely to that Applicant. ICANN must obtain specific permission from an Applicant to use its logo. *Microsoft (Guidebook, 13 April 2009)*.

Confidential information. Will ICANN treat as confidential applicant material that is clearly and separately marked as confidential (please answer Yes or No)? *NCUC (13 April 2009)*. *A. Sozonov (Module 6, 9 April 2009)*. *Association Uninet (Module 6, 11 April 2009)*. *S. Soboutipour (Module 6, 12 April 2009)*. *DotAfrica (Module 6, 12 April 2009)*. *L. Andreff (Module 6, 13 April 2009)*. *S. Subbiah (Module 6, 13 April 2009)*. Microsoft supports the version 2 position that applicant response to security and financial questions will be considered confidential and will not be posted. *Microsoft (Guidebook, 13 April 2009)*.

ICANN exclusion of liability. The exclusion of ICANN liability in clause 6 of the Terms and Conditions provides no leverage to applicants to challenge ICANN's determinations to a recognized legal authority. If ICANN or the applicant engaged in questionable behavior then legal recourse and investigation should remain open. *NCUC (13 April 2009)*. *A. Sozonov (Module 6, 9 April 2009)*. *S. Soboutipour (Module 6, 12 April 2009)*. *Association Uninet (Module 6, 11 April 2009)*. *DotAfrica (Module 6, 12 April 2009)*. *L. Andreff (Module 6, 13 April 2009)*. *S. Subbiah (Module 6, 13 April 2009)*. *D. Allen (Module 6, 13 April 2009)*. The covenant not to challenge and waiver in Paragraph 6 is overly broad, unreasonable, and should be revised in its entirety. *Microsoft (Guidebook, 13 April 2009)*.

III. Analysis and Proposed Position

Prospective applicants cannot appropriately be offered any reassurances that ICANN will enter into a registry agreement with them, otherwise this undermines the purpose and intent of a rigorous application review. Further, ICANN must retain this right to evaluate applicants up to the point of entry into a registry agreement. Under its Bylaws ICANN's actions are subject to numerous transparency, accountability and review safeguards, and are guided by core values including "Making decisions by applying documented policies neutrally and objectively, with integrity and fairness", but it would not be feasible for ICANN to subject itself to unlimited exposure to lawsuits from potential unsuccessful applicants. The other specific comments and suggestions on the application terms and conditions will be considered by ICANN in the preparation of version 3 of the Applicant Guidebook.

Registrar Affiliate—100,000 Limit is Arbitrary. ICANN should explain the basis of the 100,000 names figure. A percentage of the name space would make more sense. E.g., if the namespace only had 200,000 names then that would make the registry's subsidiary the largest registrar in that namespace, probably not a good idea. *M. Neylon, Blacknight Solutions (13 April 2009).*

STRING CONTENTION

General/Contention Set

I. Key Points

- Some comments request clarifications of the string contention concept and its handling. Section III below provides some clarifications and the posted companion document “Resolving String Contention” provides additional details.
- Many comments discuss the relationship between string similarity assessment in Initial Evaluation and String Similarity Objections, request clarifications and offer suggestions for consideration. Section III below provides some explanations. Additional clarifications will be made in the next version of the AG (excerpts published coincident with this document). The proposed position is not to change the current approach to keep the string similarity assessment in Initial Evaluation focused on visual similarity alone.
- The comments suggested that a subsequent round should not be launched until all contention situations have been resolved. The proposed position is to adopt this suggestion and make this a clear requirement.

II. Summary of Comments

General

Self resolution. The revised draft is not clear on whether other options besides application withdrawal would be acceptable to ICANN for resolving string contention. If two or more parties come to an agreement to work together despite being classified in string contention by the panel, and they clearly do not mind the presence of the other gTLD string, this should be considered as a possible way of resolving string contention. *Zodiac Holdings (13 April 2009)*. There should be some incentive (financial or other consideration) offered to pursue self resolution (section 4.1.3) –e.g. a portion of the application fee(s) could be refunded to the new Joint Application. *Go Daddy (13 April 2009)*. The restriction against an applicant changing the string upon detection of contention is excessive. A single change of string or a fee for string change or a bump to the next round, voluntary or forced, seem better outcomes than forcing elimination and the total or partial loss of all fees. *E. Brunner-Williams (Module 4, 14 April 2009)*.

Notice of Joint Venture-Resolution. If applicants resolve string contention by forming a joint venture, ICANN should post the fact of that joint venture as it may influence decisions by potential objectors whether to object. *Microsoft (Guidebook, 13 April 2009)*.

Clarify joint ventures. ICANN states applicants may not resolve string contentions by replacing a formal applicant with a joint venture, yet it also says it “is understood that joint ventures may result from self-resolution of string contention by applicants.” It is not clear why ICANN would not allow two qualified applicants to form a joint venture to remove the contention and this point needs to be clarified. *IPC (13 April 2009)*. ICANN should replace the confusing formulations with a clear statement favoring resolution of string contention through the formation of joint ventures or similar vehicles by contending applications. *eBay (13 April 2009)*. The continuing rejection of the formation of joint ventures seems unreasonable, especially in cases where there are no material changes in applications or need for re-evaluation. *RyC (Modules 1-4, 13 April 2009)*.

Voluntary agreements. Does this mean co-existence agreements will remove any string contention? *IPC (13 April 2009)*.

Fair process concerns. It seems unfair that a company which established its financial and technical capability to run a gTLD should be forced to start the application process all over again based on a conflict with another applicant. *IPC (13 April 2009)*.

Contention sets and objections-clarification. A statement on page 2-5 of the guidebook (objection process will not result in removal of application from a contention set) seems at odds with statement on page 3-3 (in case of unsuccessful objection by one gTLD applicant to another gTLD applicant, both applicants may move forward without being deemed in contention with one another); ICANN should clarify. *Microsoft (Guidebook, 13 April 2009)*.

DRSP and contention sets (4.1.2.). Use of a string confusion objection to create a contention set seems a means for a 3rd party to perform the contention set detection. If such an objection is made and prevails, cost should not be borne by either party but by the party tasked with correctly forming contention sets. This seems an edge case where an error by the contention set evaluator could be caught by an affected other applicant or other party and corrected at the affected other applicant’s or other party’s cost. *E. Brunner-Williams (Module 4, 14 April 2009)*.

Content (same purpose) Contention and Semantic (variations of same term) Contention. Will ICANN develop policies to prevent these clashes which could undermine the commercial future of registry operators? *MARQUES (13 April 2009)*

Contention set examples. ICANN should provide simple examples of whether 2 strings would be classified as contentious based on meaning (e.g., would ICANN view .car as colliding with .auto). *Dot Eco (13 April 2009)*. Current string contention policies based on meaning as opposed to string similarity may discourage valid applications (e.g. .VIN v. .WINE—these refer to the same commodity but could serve entirely different needs and communities (the French and U.S. wine communities, respectively). If two or more applications serve and are backed by two different communities ICANN should find a way to allow both. *Minds and Machines (13 April 2009)*.

Broaden string contention consideration. ICANN should not just consider issues that are semantic in nature (appear similar) but should also consider contention to include cases where names use differing characters but that the public could deem synonymous in their meaning (e.g., .bank and .fin). Conceptually similar strings could be a “public order” questions, so perhaps this issue can be considered in finalizing section 3.1.2.3 (morality and public order objection). *BITS (13 April 2009)*.

Contention Set

Process clarification. The fundamental, key aspects of how string contentions will work still need to be documented and explained. *SIIA (13 April 2009)*.

Process manipulation. While applications for identical strings should automatically be joined into a contention set, those strings determined by ICANN to be “confusingly similar” raise numerous issues unaddressed in the guidebook. E.g., has the overall approach been thoroughly studied so as to eliminate possibility of manipulation or collusion by one or more applicants; even if unlikely due to high application fees, this scenario could be viable for the most “premium” strings expecting numerous applications. *Go Daddy (13 April 2009)*.

Challenge. Can the applicant whose application is identified as belonging to a contention set challenge this inclusion? This is of particular concern in cases involving “indirect” contention. *Go Daddy (13 April 2009)*.

Timeframe for resolution. The guidebook mentions no timeframe for resolution of contention sets. Time to market will be essential for new gTLDs, and contending applications should be “held” or “reserved” if they are unresolved at the end of the application round. Alternatively, ICANN can refrain from launching any subsequent rounds of new gTLD applications until all outstanding contention sets are resolved. *Go Daddy (13 April 2009)*.

III. Analysis and Proposed Position

String contention—concept explanation. Several of the comments seek explanations and clarifications of the concept of string contention and its handling. An earlier posted explanatory memorandum posted in conjunction with the AG, “Resolving String Contention” (<http://www.icann.org/en/topics/new-gtlds/string-contention-18feb09-en.pdf>) describes the details of establishing contention sets and the distinctions between direct contention (two strings that are identical or confusingly similar) and indirect contention (two strings that both are in direct contention with a third string, but not with each other). It could be added for clarity that “identical” and “confusingly similar” are wholly equivalent qualifiers in this context; both lead to “direct contention” without any further distinction being made between them.

Challenge to findings. Opportunities for challenging a finding of confusing similarity would introduce considerable complexities and delays in the process. The proposed position is not to

change the current approach by adding challenge opportunities. This reasoning is in line with the approach taken for most of the sub-processes, with a view to maximizing the overall efficiency of the New gTLD process. However, a String Similarity Objection can be lodged in cases where no confusing similarity has been identified by the String Similarity Panel during Initial Evaluation. One comment suggests that in the case of successful String Similarity Objection cases, the cost for the objection process should be paid by the Panel, not by any of the parties involved. Admittedly, there is a certain logic to that idea if the finding would reveal a "false negative" that was due to an oversight by the Panel, but not if the finding relates to confusing similarity beyond the remit of the Panel's inspection, which is limited to visual similarity as further explained in the section Evaluation: String Similarity. The proposed position is to maintain the current approach that the losing party pays the objection processing costs in cases of String Similarity Objections.

No subsequent round until all contention situations resolved. In view of the risk of complications with lingering unresolved contention situations when a subsequent round starts, a comment proposes as one option that a subsequent round cannot be launched until all contention situations are resolved. The proposed position is to agree with that view and require that a round be fully concluded regarding contention resolution before a subsequent round can be launched. This requirement also emphasizes the need for timely resolution of contention situations.

Self-resolution. Multiple comments relate to self-resolution of contention situations through agreements between the concerned applicants. It should be noted in this context that an agreement to "let the strings coexist in the DNS" is not acceptable since it would not resolve the fundamentals of the contention - i.e., that the strings have been found to be so similar that they would create confusion and thus cannot be allowed to coexist as TLDs. To resolve the contention through voluntary agreement(s) between the parties is a preferred solution from most perspectives, but does clearly require the withdrawal of one or more applications (while also implying relevant refunds, stated as a desirable incentive in one comment; it should be noted that provisions for refunds have been introduced in the second version of the AG). It is indeed expected that these agreements may lead to the forming of joint ventures, but this must be established without changing the formal applicant of the remaining application in order to avoid the necessity of a renewed Initial Evaluation and other repeated ensuing steps. To keep the formal applicant unchanged is thus required to avoid undue delays for the process and, by consequence, for the conclusion of the round. A comment suggests that such agreements be put up for public comments in order to inform potential objectors. However, the four recognized grounds for objections all relate to the string. Since the string must have survived any objections already to come this far in the overall process and as the string does not change as a result of the agreement, the stated rationale for such a posting would logically not be at hand.

Suggestions for resolving contention. Other solutions suggested in the comments for resolving contention situations, like allowing applicants to suggest alternative strings or change strings if found in contention, were discussed during the development of the adopted policy upon which

the AG is built and rejected already at that stage, as addressed in relation to similar previous comments to the first version of the AG. The proposed position is not to make any such changes.

Clarification. A comment identifies two statements in AG module 2 and 3 as potentially inconsistent. ICANN staff appreciates this observation and will clarify the statements in the next version. The statements may be somewhat unclear (and therefore require improvement) but are in fact consistent: a finding of contention in the Initial Evaluation cannot be revoked through any subsequent objection; a later String Similarity Objection, if upheld, can add another finding of contention, not identified during Initial Evaluation. Conversely, if the objection is not upheld there is no additional finding of contention.

Similarity of purpose and meaning. Several comments raise the issues of similarity of purpose and meaning for consideration in relation to the assessment of confusing similarity. Although the assessment of similarity during Initial Evaluation will be limited to visual similarity, String Similarity Objections can be introduced at a subsequent step and assessed by a Dispute Resolution Service Provider with true expertise regarding the concept of confusing similarity in its full extent. It would not be appropriate for ICANN staff to predict the findings of this provider in hypothetical future cases.

Fair process concerns. A comment questions whether it is fair that otherwise qualified applicants may be declined because of string contention. The process requires and makes clear that the applicant can apply for any string of the applicant's choice. The applicant selects the string fully aware of the potential need for resolution of contention with other applications for the same or similar strings and that there are also other specific application processing steps involving the string (for example checks against existing TLD strings and objection processes) that must be cleared before any string can be awarded. Accordingly, the choice of string is a strategic business decision, made in view of potential outcomes and their consequences - no different from most business decisions and with practical outcomes that are just as fair.

Community

I. Key Points

- Multiple comments have requested clarifications of the distinctions of community-based applications and where in the process they are assessed. Section III below provides clarifications, which will also be mirrored in the next version of the AG.
- Some of the comments relate to the process for Comparative Evaluation. The changes envisaged in that process are described under the subcategory "Comparative Evaluation" (see that section).

II. Summary of Comments

Resolution of Community contention. Section 4.2, the Comparative Evaluation process for community-based applications, may be effective to resolve contention issues between multiple Community applications, but it is unclear if/how it may address contention between one or more Community applications and one or more Open applications. *Go Daddy (13 April 2009)*. The approach (section 2.1.1.4.3, 2-15 to 2-16) for geographical identifiers should apply to community identifiers also. *E. Brunner-Williams (Module 2 & 4, 14 April 2009)*.

Clarify string contention process—open and community-based. ICANN should publish further types of organizations that would fit in both the open and community-based categories and then explain the selection process if there is string contention between open and community-based applicants and how the “good of the internet community” will be taken into account. *IPC (13 April 2009)*.

Community-based priority. AIPLA supports priority rights of “community-based” over “open” applicants. *AIPLA (13 April 2009)*. It is concerning that a Community application might expect a low rating in comparative evaluation but still be granted a priority over Open applications. Other factors should be considered before giving priority over open contenders: (1) the community based application must be a not for profit endeavor; (2) the claimed Community cannot be globally distributed; and (3) the Community must be of a sufficiently limited size. ICANN staff should provide further detail on contention scenarios between Community and Open applications. *Go Daddy (13 April 2009)*.

Comparative evaluation eligibility: Community-based dispositive (4.2.1). Per the GNSO Council determination, if an application is community-based, that is dispositive in the determination of the award of the string over all other applications in the same contention set that are not community-based. *E. Brunner-Williams (Module 4, 14 April 2009)*.

Religious/other moral groups—censorship concern. Religious and other moral groups should not be given more weight than any other group’s considerations regarding available choice of

strings and potential reserve lists; otherwise ICANN is effectively hampering freedom of speech and could be seen as censoring. *M. Neylon, Blacknight Solutions (13 April 2009).*

Community and .brand applications. “.Brand” applicants do not need Community to apply restrictive rules to the SLDs in their TLDs. If applicants want to place restrictive rules they are free to do so. Community is not a required or appropriate vehicle to achieve this goal. ICANN should not override GNSO intent and include brand TLDs or TLDs with low string nexus within Community. If the nexus bar remains low, applicants will be encouraged to game the process by “community-shopping” to improve their chances of winning a generic string. As a best case scenario, ICANN will experience a large number of Community applications that fail Comparative Evaluation, and in the worst case generic words that are attractive to a very broad range of Internet users will be captured for use by one limited group. *Demand Media (DAG, 13 April 2009).*

Community definition (1.2.2.1). In section 1.2.2.1 the phrase “consisting of a restricted population” should be removed; a community may or may not have a restricted population and communities generally have “soft” boundaries (e.g. the Paris community is not just those who are living inside the borders of the city). It may be good to add that a community TLD has a restricted purpose. It is also inappropriate to use the word “open” in the sense of “non-community based”; alternatives include the term “unrestricted” (as in the terminology of the 2000 round). *W. Staub (13 April 2009).*

Proposed Community-based TLD Definition. The community-based TLD definition should be clear, measurable and concise and not subjected to considerable subjective evaluation. Criteria should ensure (1) a mere customer or subscriber base is not deemed to be a community; and (2) to qualify, an applicant must show that community members would likely self-identify themselves as a member of the community. The term community-based TLD “shall mean a TLD that is operated for the benefit of a defined existing community consisting of a restricted population which self-identify as members of the community. The following shall not be deemed to be a community: (i) a subscriber or customer base; (ii) a business and its affiliated entities; (iii) a country or other region that is represented by a ccTLD; or (iv) a language except in cases where the TLD directly relates to a UNESCO recognized language.” *RyC (Modules 1-4, 13 April 2009).*

Proposed Definitions: Community-based and Commercially Sponsored gTLD. As currently written the definition of community-based could be interpreted very broadly. The following proposed definition is preferable: “a TLD that is operated for the benefit of a defined existing community consisting of a restricted population which self-identify as members of the community and the string ‘applied for’ is a full or abbreviated representation of the term used for self-identity, and the community is neither defined as; a subscriber or customer base; a business or a country or other region that is represented by a ccTLD...Commercially sponsored TLDs should be identified as a separate class of TLD; where the string being ‘applied for’ is a full or abbreviated representation of a commercial trademark owned by the applicant.” E.g. with “.apple” Apple Computer would be prevented from improving their application by using their

customer base as a justification for a “community gTLD.” A level playing field would exist, as it should, between Apple Computer and Apple Records when both are applying for the same .apple gTLD. R. Hutchinson (Module 1, 13 April 2009).

Better Community-based Definition Needed. ICANN should provide better definitions than what is currently provided in the guidebook for community-based gTLDs; it is very difficult to understand whether commercial interests that have communities associated with them would be legitimate under this current selection process. *B. Hutchison, Dynamic Ventures, Public Forum Transcript at 25 (5 Mar. 2009)*. ICANN should state clearly that an economic or creative sector could qualify as a community for new gTLD purposes. *COA (13 April 2009)*. For determining standing to be able to apply for a community-based gTLD, ICANN should use the definition in section 3.1.2.4 for determining community standing to file an objection. *BITS (13 April 2009)*. Version 2 did not clarify and explain by way of further examples the types of organizations that would fit in the categories of open and community-based, despite comments seeking further guidance (e.g., has ICANN decided not to allow the community-based designation to apply to corporate brand owners). The definitions of open and community-based remain unchanged in version 2. There are many issues around the community provisions that all constituencies and stakeholders need to understand better. *SIIA (13 April 2009)*.

Eliminate community-based designations from the process. Community-based designations and the rights therein should be eliminated. Bickering has already occurred from groups about religious domains, which begs the question “who within a community can provide authority on behalf of that community?” Bias should not be given to official government or bureaucracy compared to the private sector. In the case of a private party working with the government, this scenario is open to bribery, lobbying, etc. TLDs should be allocated based on ability to perform functions (or auction), not political influence (re: Module 1, 1.2.2). *A. Allemann, DomainNameWire.com (6 April 2009)*.

Community based/sponsored TLDs applications-“vetting” concerns. There is significant concern that TLDs proposed to represent limited geographic areas (cities or regions) and commercial communities (e.g. industry sectors such as health care and financial services where reliability and security are paramount concerns) will create difficult vetting issues about whether sufficient public safety concerns will be addressed and consumer safeguards will be in place. ICANN should hold off on accepting applications for these TLDs and focus on the much greater need for both generic IDN TLD and cc IDN TLDs. *COTP (13 April 2009)*.

Community and endorsement by established institution. Regarding point 4 under section 1.2.2.1, the description of the kind of “institution” needs to be more precise, such as the following suggested text: “4. Have its application endorsed in writing by an established representative institution having the authority to act on behalf of the community the applicant has named.” It is prudent to have a more restrictive definition for an institution with standing to endorse an application compared to an institution with standing to file an objection. *W. Staub (13 April 2009)*. The threshold for a community based gTLD endorsement should be higher than one institution representing the community (e.g., this would suggest that one bank

out of 8,000 in the U.S. is enough for an applicant to suggest it deserves a banking community gTLD). To strengthen this area, ICANN could use the section 3.1.2.4 definition on who has community standing to object. *BITS (13 April 2009)*.

Section 1.2.2.1—Potential community and geographic names confusion. Section 1.2.2.1 may give rise to inconsistencies and can overlap with geographical names strings (2.1.1.4.1). ICANN should add a separate section in the eligibility for the community-based objection section that “the applicant needs to demonstrate that the community is not opposing and does not contravene accepted principles of international law.” *NCUC (13 April 2009)*.

Classification of “.Brand”: open or community based. Does ICANN consider a “.brand” application to be an “open” gTLD or a “community-based?” gTLD? *F. Hammersley, SAIC (Module 2, 24 Mar. 2009)*. With respect to .brands, meaning gTLDs owned by a brand owner and only used for this brand owner’s specific purpose, is such a gTLD (e.g., .LEGO) considered a community based gTLD or an open gTLD? How is an open gTLD defined? Brand owners should be able to have “closed” gTLDs where access to second level domains are only given to, e.g., registrants from the brand owner’s own group of companies or to partners. *LEGO et al. (6 April 2009)*. ICANN should clarify if a community-based gTLD may include a “branded” gTLD applied for by the brand owner. Brand-owner applicants should be able to designate their applications as community-based, particularly where there will be only one second-level registration or where second-level domains would be registered to the brand owner’s customers, licensees, distributors, or suppliers. If ICANN does not intend to consider such a “branded” gTLD within the scope of community-based gTLDs, it should specifically state that conclusion and its reasoning. *INTA (8 April 2009)*. See also *Lovells (13 April 2009)*. Companies who file their application for .brand or .company should be open to decide if they apply for an open or community-based namespace. *DOTZON GmbH (13 April 2009)*. ICANN should consider whether to have a category of application for brand or trademark owners, or at the very least should clarify the open v. community-based argument and explain how “the good of the internet community” will be taken into account. *MARQUES (13 April 2009)*.

Single-purpose or sponsored gTLDs. Numerous rights holders have potential gTLDs that share substantially the same or similar attributes of a community gTLD (e.g., service and broadband providers; industry-wide professional associations, and social networking sites). These rights owners should be recognized for the communities they represent and as such should receive the protections of a sponsored application. *MarkMonitor (10 April 2009)*.

III. Analysis and Proposed Position

In light of the comments above, there is a clear need to clarify certain aspects of the process. Such clarifications are provided below and will also be mirrored in the next version of the AG. Suggestions brought up in the comments are also discussed below.

Application category designation. To lodge an application as “community-based” is a choice open to the applicant. Whether the application satisfies any criteria for this distinction is not

assessed unless a community objection is lodged against it or contention resolution through comparative evaluation takes place.

When comparative evaluation takes place. Comparative evaluation is an assessment of whether an application meets certain standards for being a bona fide community-based application and does not involve comparisons between applications. Comparative evaluation only occurs if a community-based application in a contention set has elected comparative evaluation as the preferred method for contention resolution. Comparative evaluation is never performed on "open" applications in such a contention set.

Priority. A community-based application that meets the standards by getting a total score from the four overall criteria above a given threshold is awarded priority for its string above other applications in the given contention set, in line with the adopted GNSO policy (which is the reason for the notion of "community-based", so it cannot be eliminated as one comment requests). It is not sufficient to base such priority on just a self-declared label as "community-based" without testing against standards as expressed in the Comparative Evaluation criteria.

“.Brand” applications. Since the applicants can self-select to lodge their applications as "community-based", it follows that this could be done by the applicant of a "brand" application as well. As a comment states, there is indeed no need to do so for the sake of introducing restrictions, as that is equally possible in an "open" application. Such a "brand" application could also have a community approach and a string that identifies that community. It is also possible that a "brand" application will be able to assert Intellectual Property Rights to the envisaged string, making it less likely that such an application would end up in a comparative evaluation situation.

No limitations on community. In view of the wide definitions of "community" that exist, community-based applications have not been limited to not-for-profit activities; nor have upper geographical or member number limits been set. For example, a top-level domain could be particularly useful, and particularly justified, for a globally spread community of considerable size. Multiple comments suggest detailed phrasing of a definition of "community". It should be noted that community-based applications are not vetted in that regard in Initial Evaluation, so there is no definition needed at that stage. The significance of "community-based" occurs at the Objection and Comparative Evaluation steps, where the corresponding criteria serve as decisive factors, rather than any definition per se. The definition suggestions brought up have been considered in the reworking of these criteria.

Community identifiers and geographical identifiers. As noted in the comments, there is a certain overlap between geographical identifiers and community identifiers as many of the former can also be regarded as and used as community identifiers. To apply the same approach as currently foreseen for certain geographical identifiers to all community identifiers, as suggested in the comments, would imply documented community endorsement as a gating factor for lodging a community-based application. This approach could prevent conflicts but would also raise challenging issues of identifying and verifying authoritative community bodies

at the initial stage of the application. Therefore the proposed position is to maintain the current approach, thus not to assess the community-specific aspects unless such an application enters Comparative Evaluation. Community endorsement is, however, an important criterion for applications that do become subject to Comparative Evaluation.

Definition and criteria. Many comments suggested “sharpening” the community definition to make it more objective. As stated under v) above, the scoring criteria embody the requirements, rather than a definition per se, and the definition suggestions have been considered in the significant work undertaken to arrive at the most objective criteria possible. The goal of the GNSO in creating the community-based TLD was to afford them a preference in contention situations. The result though requires the creation of labels, objection processes, compliance mechanisms and evaluations where a latitude for judgments cannot be avoided. The goal of the policy recommendation has been achieved, but with significant difficulty. ICANN is of course willing to discuss ideas for making the criteria and other aspects more objective while still meeting the goal set out by the GNSO and also facilitating a timely, predictable process.

Some of the comments in this subsection relate to the Comparative Evaluation process. See that subsection for details on analysis and refinement of that process.

Comparative Evaluation

I. Key Points

- Multiple comments request refinement and testing of scoring standards and thresholds in order to strike a suitable balance between conflicting objectives. Such tests and refinements have been undertaken by ICANN staff and as a result, a new scoring template with de-aggregated criteria is being prepared for inclusion in the next version of the Guidebook.
- A comment requests a process for appealing a scoring outcome. The proposed position is not to establish an appeal process in view of the ensuing delays and complexities for the process. This reasoning is in line with the approach taken for most of the sub-processes, with a view to maximizing the overall efficiency of the New gTLD process.
- A number of comments request clarifications and corrections of the phrasing in the AG on certain points. These points are being reviewed by ICANN staff and corresponding clarifications and corrections are foreseen for the next version of the Guidebook.

II. Summary of Comments

Comparative Evaluation Procedure. ICANN appears to be conceding the comparative evaluation procedure to each distinct evaluation provider. *IPC (13 April 2009).*

Process manipulation concern. ICANN should further refine the comparative evaluation process to avoid manipulation of the process. The current process may have the unintentional result of inviting applicants to manipulate submissions to garner points with no bona fide intention to abide by representations and criteria once entered into the root (e.g., an applicant could change its business plan after being delegated the applied-for string). ICANN should therefore consider requiring community-based applicants that elect comparative evaluation to demonstrate not only how they currently meet the criteria, but also how they intend to comply with the criteria post-delegation. *INTA (8 April 2009).*

Criteria revision re: community bids: tighten string nexus (section 4.2.3). A community bid, by achieving a score of 4 on all other criteria, can succeed with a score of 2 on string nexus. This means, for example, that the Boy Scouts, as a community, could defeat any open bids for .camping. This loophole is not consistent with the GNSO's intent for Community, would harm competition and restrict or damage the rights other Internet users who might want access to a SLD in a generic TLD. It may hurt communities because by making the string nexus low it will place a high threshold on other criteria, such as Dedicated Registration Policies. Therefore, the nexus criteria should be tightened and the other criteria loosened. (See text of comments for specific language proposal.) A clear and high bar should be set for String Nexus to signal to all applicants that the "Community" path is for true communities only, not for opportunistic

applicants using it as a way to grab generic words and bypass the normal process. *Demand Media (DAG, 13 April 2009)*.

Testing the community-based model—apply comparative evaluation to .cat. As a test, the comparative evaluation criteria should be applied to .cat to see if what is thought to be the model for a community-based application actually meets the proposed test. *E. Brunner-Williams (Module 4, 14 April 2009)*.

String contention-Clarification (1.1.2.7). The second sentence of the second paragraph should be modified like: “ICANN will resolve cases of string contention either through comparative evaluation if a community-based applicant has requested it or through an auction.” Similar changes are recommended for Sections 4.1 and 4.1.1. *RyC (Modules 1-4, 13 April 2009)*.

Mandate comparative evaluation. Comparative evaluation on string contention should be mandatory, not optional. The second draft may permit parties to circumvent it by agreement, which could result in launch of confusingly similar top level domains. *AIPLA (13 April 2009)*.

Scoring Standard. Comparative evaluation scoring standard probably is “a little bit wrong.” *A. Abril i Abril, Public Forum Transcript at 14 (5 Mar. 2009)*

Scoring Proposal. 14 to 16 points to prove community nexus is better, but subjectivity is always there. To assure applicants have a fair chance, ICANN should consider a threshold of 12 to 16 points, which would allow for the margin of error of human fallibility. *R. Andruff, Public Forum Transcript at 22 (5 Mar. 2009)*. *R. Andruff (Module 2, 13 April 2009)*. To achieve community status a score of 12 should be sufficient. *Minds and Machines (13 April 2009)*; *Dot Eco (13 April 2009)*.

Scoring may need more refinement. Despite revisions (wider range of score 0-4 and that minimum criteria seems to be lower, the minimum criteria may still be too high for a typical applicant. The scoring system/criteria may need further refinement. The litmus test should be whether the sTLDs granted in 2003 can meet this new set of criteria. It would be safe to say that almost all of the sTLDs would be unable to meet the minimum criteria necessary to be a winner. *Zodiac Holdings (13 April 2009)*. Even as revised the criteria may end up funneling community applicants to auctions. The requirement to score 14 out of 16 to avoid auction should be relaxed when there is only one community-based applications undergoing comparative evaluation for a particular gTLD string. Additional refinements and clarifications will be necessary if comparative evaluation is to serve its stated purpose. See text and footnotes of comments. *COA (13 April 2009)*. See also *CADNA (13 April 2009)*.

Priority Determination. Representing a majority of a community for purposes of getting priority may not be easily achieved by any applicant. The word “majority” should be removed from Section 4.2.2. As long as one applicant can demonstrate that it has a significantly larger share of the community than the other applicants, it should be deemed the winner. *Zodiac Holdings (13 April 2009)*.

Appeal. Applicants may wish to appeal the comparative evaluation scoring. There should be a system in place for such an appeal to ensure fairness and transparency. *Zodiac Holdings (13 April 2009)*.

Possible inconsistency. Section 5.2 (p. 21) of the string contention explanatory memoranda seems in conflict with Section 4.2.2 of the guidebook comparative evaluation procedures. Section 5.2 of the memorandum should be refined to add: “The comparative evaluation process will include all the applications in the relevant contention set. However, open applicants, if any, will not participate in the comparative evaluation.” *Zodiac Holdings (13 April 2009)*.

III. Analysis and Proposed Position

Multiple comments highlight the need to balance the rights of bona fide communities to get priority for appropriate strings against the risks that the process is used by an applicant seeking undue advantage in a sought-after string. Achieving this balance is a clear objective of developing the Comparative Evaluation process. Many of the comments have proposed modifications of the individual criteria as well as of the threshold for winning in order to improve the balance. Although these comments occasionally conflict, with some in favor of keeping the threshold and some in favor of lowering it, there is recurrent emphasis in these comments on the need for testing against actual cases in order to verify the balance. Regarding the future operational compliance with details in a community-based application, any community-based gTLD will be contractually obligated regarding the community orientation. This will be the case regardless of whether the application has gone straight through the process unchallenged or passed a Comparative Evaluation.

Based on that recurrent emphasis in the comments, ICANN staff has undertaken a series of tests and refinements of the criteria, redrafting in the light of the test outcomes in order to improve balance as well as clarity, logic and objectivity of the criteria. This process has led to rebalancing, rephrasing and de-aggregation of the four criteria (i.e. community establishment, nexus between string and community, registration policies and community endorsement) into constituent parts. These changes are intended to provide more clarity and to produce reasonable outcomes with a proposed lowering of the overall threshold for winning from 14 to 13 out of 16. Other aspects, like the need for research and verifications by the evaluators, have been noted in the testing exercise and will be part of the briefing for the panel performing the evaluations. These changes will be explained in the next version of the AG which will also be posted for public comments.

With respect to a request made in the comments for the opportunity to appeal a scoring outcome, the proposed position is not to accept that suggestion. An appeal could be on the substance, in which case, the appeal process would take longer than the original process. At the end of that, there might be a situation where there is effectively one vote a piece – a situation begging for a tie-breaker. Alternatively, there could be an appeal based on the process, where the appeal is there to ensure the process is followed. ICANN will work with the dispute

resolution provider to ensure that there is a review of each case to ensure the process is followed to obviate the need for this sort of review. Therefore, adding an appeal opportunity to the scoring process would add complexities to the process and impose substantial delays for the process and for all applicants involved. This reasoning is in line with the approach taken for most of the sub-processes, with a view to maximizing the overall efficiency of the New gTLD process.

Regarding the request in the comments that Comparative Evaluation should be mandatory, this request is based on an assumption that applicants with strings in contention could agree to coexist. However, this assumption is false, as voluntary agreements among applicants to resolve contention are only acceptable insofar as they actually resolve the contention, by withdrawing one or more applications. Contention implies that the strings are so similar that they will be confused by end users. This is a fundamental reason to prohibit their coexistence in the DNS and to dismiss as invalid any agreements between applicants to mutually accept such coexistence. This aspect will be further clarified in the next version of the AG.

Multiple comments request clarifications and corrections of the phrasing in the AG on certain points, a number of which are very detailed and which highlight inconsistencies in the AG. ICANN staff appreciates these suggestions and is reviewing those specific points. Corresponding clarifications and corrections are foreseen for the next version of the AG.

Much of the material described above will be reflected in excerpts of the next version of the Guidebook. Those excerpts will be published coincidentally with this document.

Auction

I. Key Points

- Comments expressed concern or opposition to the use of auctions for resolving contention among community-based applicants, and the use of funds. Work is being done to make changes to address those concerns while retaining the auction as a last-resort mechanism.
- ICANN has made changes to the process so that only community-based applications will participate in the auction if more than one of them pass the comparative evaluation criteria.
- ICANN has received advice regarding the establishment of a foundation in a manner to retain its present organizational status but has not yet published a position on the use of funds. That work product is forthcoming.

II. Summary of Comments

Community contention/complex scenarios. Auction applied to community situations still raises concerns—i.e., “worst possible” solution. *A. Abril i Abril, GNSO Transcript at 75-76 (28 Feb. 2009).*

Do not use auction—community-based applications. Auction should not be used a tie-breaker in case of two community-based applications applying for the same TLD string. Technically, it could be contention between 2 representative institutions of the same community or between 2 communities. In both case the appropriate solution is not to delegate the TLD as long as there is contention between community-based applications of comparable validity and weight. *W. Staub (13 April 2009). E. Brunner-Williams (Module 4, 14 April 2009).* Also, regarding 4.2.2, using an auction for open and community-based applications if none of the community-based applications meet the minimum score on the comparative evaluation criteria is contrary to the GNSO Council policy which was not modified by the Board. *E. Brunner-Williams (Module 4, 14 April 2009).*

Foundation to Distribute Proceeds. There would be significant complexities setting up the foundation, so the idea needs further development. *J. Prendergast, Public Forum Transcript at 19 (5 Mar. 2009).*

Auction mechanism questioned. INTA questions if auctions are the most efficient and equitable way to resolve string contention—even as a last resort, since such a process inherently will favor the most financially capable applicant, which will not necessarily support ICANN’s mission to foster competition and ensure Internet security. Also, the possible collection of significant excess funds via the auction process raises concerns. More thought and definition should be given to acquisition and proposed use of these funds consistent with ICANN’s mission. Relying on auctions between community-based applicants, many of whom are non-profit or charitable

groups, and general applicants seems contrary to the general preference for community-based applications. While changes to the criteria and new point system are a slight improvement, inherent subjectivity problems remain. *INTA (8 April 2009)*. Using auction as last resort for resolving string contention raises concerns. *AIPLA (13 April 2009)*; *IPC (13 April 2009)*; *COTP (13 April 2009)*. It seems that staff could have used any number of low-tech solutions to the problem of auctioning off items which may involve bids in the six, seven and eight figures. *E. Brunner-Williams (Module 4, 14 April 2009)*.

Auction—further clarification. INTA commends ICANN for specifying in the revised Section 4.2.2 that any auction between more than one “winner” of the Comparative Evaluation process will exclude all other applicants. One possible ambiguity in the revised Section 4.2.2 should be corrected—the language in the second bullet point relating to community applicants naming the same community should be revised to mimic the language of the third bullet point relating to community applicants naming a different community. *INTA (8 April 2009)*.

Resources for auctions; implementation complexity. The auction procedure seems destined to be used heavily, so ICANN should allocate resources sufficient to ensure robust auction systems. Aspects of the auction may be difficult to implement, and the short duration of rounds and auctions themselves do not seem to account for time needed for deliberations about next bids and different time zones. At the other extreme, allowing 4 business days for winning bids to be paid seems overly long. *INTA (8 April 2009)*.

Default issues. Further definition is needed on issue of default penalties for failure to timely pay the winning bid on an awarded string. The rationale for using the alternative penalty amount of 10% of the bid as the default penalty is unclear. A middle approach would be a maximum threshold penalty that could not be exceeded under either alternative (e.g., penalty would be greater of difference between the bids, or 10% of the defaulting bid, but not to exceed a specific “sum” which could be the projected average transaction cost to ICANN for conducting the auction. ICANN should also make clear that the default penalties apply to both the initial “winner” and also the next ones in line that confirm they want the TLD and also themselves default. *INTA (8 April 2009)*.

Auctions problematic and may cause registry failure. There is still a fundamental contradiction in using auction as last resort for community-based applications. By definition, community-based applications will target smaller communities and use a cost-recovery model, rather than a purely commercial one. For the auction winner, this means recovering its costs through increasing the gross price of registrations. As a consequence, the number of domain names sold may be reduced and the newly launched registry may not meet its business plan. Ultimately auctions may also be a cause of registry failure. *P. Vande Walle (23 Mar. 2009)*.

Fairness/favoritism. Auctioning off a community application is not in the spirit of the Internet. It will favor financially stronger community organizations over those that maybe should take that preferential position on the Internet for their cause. *M. Mansell, Mesh Digital Ltd. (2 Mar. 2009)*.

Tie breaker—lowest cost to the consumer. Competitive contracts should be awarded to the qualified company willing to run the registry for the lowest cost to the consumer, not the one willing to pay ICANN the most. *Worldwide Media, Inc. (13 April 2009); J. Seitz (11 April 2009).*

Caution against lowest price as determining factor; use comparative evaluation. While auctioning to highest bidder is highly problematic, it is necessary to caution against using price as the determinant criterion; a lower price will attract more speculative domain registrations and makes it more difficult for the registry to operate reasonable validation mechanisms to protect brands, names of public importance and the chartered purpose of the TLD. It is better to use comparative evaluation even for contention between non-community based TLDs. Modes of measurement need not be identical for all TLD applications in the same round, they need only be the same for all applications in a given contention set. Evaluators must be required to document their measurements and objectively explain their conclusion. *W. Staub (13 April 2009).*

The gTLD proposal opposes the Territoriality principle; auction concern. The new gTLD proposal opposes both the Paris Convention and trademark law principle of “territoriality.” The DNS is international and assigns automatically international rights over the uniqueness of the domain name. No such automatic registration system exists for trademarks. If two valid and legitimate trademark owners apply for the same string, the suggested “string contention” procedures do not answer this problem, and therefore the proposed auction mechanism will take place more often than not. Given the nature of the auction mechanism, trademark owners with a stronger financial basis will prevail over other legitimate mark owners. *NCUC (13 April 2009).*

Mechanisms to ensure legitimacy and avoid auction gaming, including escrow payments. ICANN should require proof of ability to pay; that 20% of each bid increment should be non-refundable to prevent non-serious bidding; and parties should be contractually obligated to pay in case they win. *Minds and Machines (13 April 2009).* There should be a requirement that funds be escrowed in advance of an auction. Per the Minds and Machines proposal, each party in an auction should pay a small percentage (20%) of each bid increment to ICANN (e.g. of every \$10,000 more the bid is raised, the winner and loser must pay \$2,000). The objective would be to discourage artificially driving up the price and to encourage parties to resolve matters. *Dot Eco (13 April 2009).* See also *COTP (13 April 2009).*

III. Analysis and Proposed Position

A number of commenters are concerned about the use of auctions to resolve contention in cases where there are two community-based applications for the same string, or cases in which a community-based applicant is in contention with an open applicant (and did not meet the minimum score on the comparative evaluation).

The use of funds from auctions and the potential establishment of a foundation to administer the use of funds also raised concerns. Several commenters questioned whether an auction is the most efficient and equitable way to resolve string contention.

Comments were also raised about details of the proposed auction process, including the handling of defaults, gaming of the bidding process and refunds for withdrawal. In the development of the draft Applicant Guidebook, the concerns about the efficiency and equity of auctions as a contention resolution mechanism were considered. Community input was considered on the proposed auction model as part of version 1 of the Applicant Guidebook, and discussed during the ICANN meetings in Cairo. Four ways to resolve contention were examined (comparative evaluation, selection by chance, selection by best terms, and auctions), and determined that objective criteria is preferable to subjective decision-making, and auctions are preferable to selection by chance as a last resort contention resolution mechanism.

It was submitted that the use of auctions for open and community-based applications (if none of the community-based applications met the minimum score for comparative evaluation) is contrary to the GNSO policy recommendations. The GNSO Recommendations note that contention may be resolved by an “efficient mechanism”, and that there will be cases where two or more identical or nearly identical strings will meet the qualifying criteria and successfully complete all evaluations. Applicants should first be provided an opportunity to resolve contention themselves. In cases where one or more contenders is community-based, comparative evaluation may be used. If comparative evaluation is not used or does not result in a clear winner, the recommendations state that contention may be resolved by an efficient mechanism and Version 2 of the Applicant Guidebook has proposed that this mechanism be auctions. The use of auctions in this manner would be consistent with the GNSO Recommendations.

Some questioned the use of auctions in contention among community-based applicants. It is ICANN’s expectation that contending community-based applicants will have an opportunity to resolve contention without auction

A comment suggested that ICANN should allocate resources sufficient to ensure that the auction systems are robust. ICANN intends to follow that advice and utilize a provider with robust auction systems and international credibility in conducting high-stakes auctions.

A comment noted that the short duration of the rounds and the auctions themselves do not seem to take into account that bidders and their representatives will be in different time zones around the world. The process will schedule any auctions as much as possible at convenient times and for sufficient duration for bidders taking into consideration their locations around the world. Also, the services of a provider that regularly schedules world-wide auctions will be retained so that the sensitivity developed in prior situations can be applied to the new gTLD process.

Another comment noted that short auction rounds do not allow for sufficient time for internal discussions among bidders regarding the next appropriate bid or for obtaining internal approval.

There is considerable, favorable experience in using the same auction formats as proposed in the Applicant Guidebook—and with short bidding rounds—in other sectors, especially electricity and natural gas. In those instances, the short length of rounds has not seemed to pose any problem for bidders, large enterprises or small organizations, or created problems across time zones and locations. There is substantial time provided for parties to resolve contention on their own before the auction commences.

A comment noted that allowing four business days for the winning bid to be paid seemed overly long. (There have been previous comments that the period is too short.) It is understood that winning bids should be paid quickly; however, experience with the transmission of significant international bank wires into the international banking system suggests that the process often requires several days for receipt of the funds. Four business days was selected as a reasonable time frame because that appears to be the shortest feasible time required for such transaction processing.

Another comment questioned how ICANN anticipates collecting the default penalties (at least the amount that exceeds the deposit), and urged ICANN to provide more definition in this section. ICANN will study this comment further; one possibility would be to cap the default penalty at the amount of the deposit, if the conclusion is that there may be difficulty in collecting any penalties exceeding the deposit.

INTA noted “the rationale for using the alternative penalty amount of 10% of the bid as the default penalty is unclear. This alternative amount could be quite significant in some cases and may result in a disproportionate penalty for some bidders. Moreover, collecting an unduly large penalty seems unnecessary given that the monetary loss to ICANN by the default should be relatively small.” The basic rationale applied in this approach to default penalties (based on the experience of the auction provider that designed the present process) is that there is no good reason why a bidder should ever submit a bid and then need to default. A bidder should only submit a bid if it intends to carry through with the transaction if it wins. Defaulting behavior has no good justification and should be discouraged. The monetary loss is not the only harm caused by bidding without the intention of carrying through. Defaults also harm the interests of other bidders. This behavior has the general effect of pushing bidding prices higher than they would be absent this behavior. Moreover, it harms the integrity of the overall process. While it is difficult to quantify exactly the total harm imposed on all parties when entities engage in bidding without the intention to pay, advice received indicates that the harm to all parties likely exceeds 10% of the bid amount in the typical situation.

The concern that ICANN should make clear that the default penalties apply to both the initial “winner” and the second, third in line will be reviewed and clarifying language on this matter will be furnished.

It is ICANN's intention that fees and costs of the new gTLD program will offset each other. However, it is understood that the possible use of auctions in the new gTLD process requires a full examination of how auction funds may be used. ICANN intends to release for community discussion information drawn from its research into a possible foundation to administer use of auction funds, and on other options that may have been identified.

In summary, ICANN intends to retain auctions as the mechanism of last resort for resolving contention among competing applications. Additional work is being conducted on uses of auction funds and the establishment of a potential foundation to administer use of auction funds.

Issues addressing contention for community-based applicants continue to be open for discussion.

Detail on the auction process (including defaults, bidding deposits, and refunds) will be provided in the next version of the Draft Applicant Guidebook.

IDN

I. Key Points

- The main comments that were received relating to IDNs were focused around the topic of management of variant strings **and** the number of characters allowed in a string. Both topics are under discussion and review and ICANN continues to reach for additional community feedback.

II. Summary of Comments

String Requirements for IDN TLDs. It is surprising and disappointing that the second version is still saying that for IDN gTLDs it has to be 3 characters or longer; the justification for this is weak. For example, regarding the possible confusion with ccTLDs, doesn't the string confusion test for gTLDs already address that issue? E. Chung, *GNSO Transcript at 84 (28 Feb. 2009)*.

ICANN is still too Anglo-centric. The revised guidebook rule to go from three ASCII characters to three Unicode characters does not work for all languages. Also, the new gTLD RFP is totally silent on the JET guideline on IDN variants. These issues need further consideration. J. Seng, *Public Forum Transcript at 3-4 (5 Mar. 2009)*; D. Allen (*Module 2, 13 April 2009*); E. Brunner-Williams (*Module 2, 14 April 2009*).

The requirement for a minimum of three characters in the script does not work for Korean scripts because one or two Korean syllables can represent a meaningful word; similar concerns exist for China and Japan. A string computing algorithm is effective for assessing the degree of visual similarity. It is a big mistake if ICANN treats the ASCII TLD and IDN TLD with the same measuring stick. ICANN needs to take this issue very seriously; without single and two character URLs on the top level, introduction of IDN gTLD will be meaningless for Korean Internet users. Possible way forward is a consistent exception for some scripts such as Korean, Chinese, and Japanese. J. Kim, *Public Forum Transcript at 5-6 (5 Mar. 2009)*.

ICANN needs to consider and pay more attention to the problems about the "three character limitation" in relation to the Chinese language for the next version of guidebook. CONAC (*13 April 2009*). ICANN should follow the GNSO principle recommendations and lift the restriction on the length of an IDN TLD (i.e. more than two characters) or modify the clause to make it become script specific. Without change the restriction would be a significant deterrent for Chinese TLDs because most meaningful Chinese words are composed only by 2 Chinese characters. CNNIC (*13 April 2009*); R. Chen (*Module 2, 13 April 2009*).

Recommendation: If a majority of the Unicode characters of the writing system for a particular language possess a meaning on their own, then the restriction of 3 or more characters should not be applied. The applicant should specify the classification of the writing systems of the

string they are applying for, namely Logographic, Syllabic, Alphabetic, Abugida, Abjad and Featural. The rule should apply on a per-string basis and not based on the language (e.g., Japanese hiragana string may still be restricted to 3 or more characters whereas a Japanese kanji string may be allowed on its own). *J. Seng (13 April 2009)*.

Recommendation: The 3 character requirement should be lifted from strings whose writing system employ basic building blocks that have generally accepted semantic associations, where single and two-character sequences represent concepts in their own right without the need for abbreviation. These systems do not remotely resemble Latin so visual confusability will not be an issue (there's string review for that). The character repertoire for these scripts is orders of magnitude larger than that of alphabetic or syllabic scripts (e.g., 71,442 Han characters in Unicode version 3.2 versus 26 English alphabets). *W. Tan (13 April 2009)*.

The current guidebook should categorically state that in general one or more character IDN TLDs will be allowed "with some possible restrictions that are being discussed". *NCUC (13 April 2009)*; *DotAfrica (Module 2, 12 April 2009)*; *S. Subbiah (Module 2, 13 April 2009)*.

An exception should be allowed for Chinese, Japanese and Korean scripts to the 3 or more characters string requirement (2.1.1.3.2). *RyC (Modules 1-4, 13 April 2009)*.

III. Analysis and Proposed Position

Minimum characters in gTLD string. The latest version of the Guidebook stated that the required minimum number of characters in a gTLD string must be at least 3 characters. In addition, ICANN posted at the same time an overall analysis around the difficulty in implementing gTLD string with 1 or 2 characters in the string, and in that way additional community feedback was sought.

ICANN appreciates all the comment received on this topic as well as meetings and collaborations since the ICANN meeting in Mexico City. ICANN understands that certain communities (in particular those in which the languages used are Chinese, Japanese and Korean), have expressed a need for gTLD strings shorter than 3 characters due to the fact that a single or two characters in these languages represent a word or a meaning (and in some cases also geographic identifiers). The same argument has been made less well from the European region, where several characters alone or in combination of 2, also represent a word or a meaning.

Some individuals have further suggested that performing a form of trial implementation of a certain number of gTLDs that have less than 3 characters. This would then be used to inform the development of the process for allocating such strings more widely.

In relation to translation of existing TLDs, there has never been a model for "translating" TLDs. They are not standardized abbreviations and abbreviations are not a useful concept in some languages and cultures, no matter what their length. The ccTLDs in particular are a standardized

coding system, chosen as codes for a number of reasons including recognizability and distinctiveness of undecorated Latin character. Currently the IANA delegation function relies on the scarce availability of 2-character combinations, and all of these (when entered in the ISO3166-1 list) are treated as ccTLDs.

ICANN continues to work with the community on suggested solutions.

While the minimum requirement for characters in a gTLD string remains to be 3 characters at this stage, ICANN invites the community to continue the dialogue and explore whether any so far unknown potential solutions could be found to solve this problem.

Variant Strings Management. Comments have been received stating that the Guidebook is not specific enough about how variant strings should be managed.

ICANN has been in the process of analyzing the possibility of allocation of variant strings. ICANN understands the need for implementation of such strings, due to the cultural, linguistic and sometimes software/hardware nature of the way identifiers are entered into various applications. Making sure that the identifier entered into an application is exactly the identifier (for example a web address) that the users intended to enter or access is an increasingly difficult task with the introduction of IDNs. The reason being that several characters in Unicode, although considered the same, will have different codepoints and also can be entered in various ways.

In order to ensure that user confusion is limited as much as possible there is only one reasonable way of introducing variant TLDs in the root zone, and that is by ensuring an aliasing functionality.

Initially there was a belief that the DNAME resource record would enable such aliasing functionality in the root zone, however due to extensive testing, this has been determined not to be possible.

All variant TLDs (as identified by the language tables furnished by the gTLD registry) will be blocked for registration. ICANN encourages the community to initiate review of DNAME and/or development of a technical stable solution that would make aliasing functionality in the root zone possible. When such a solution is in place, the development of an allocation process can be revisited.

RESPONDENTS

Andrew Alleman (A. Alleman)
David Allen (D. Allen)
Amadeu Abril i Abril (A. Abril i Abril)
Adobe Systems Incorporated (Adobe)
Andrew Allemann (A. Allemann)
American Bankers Association (ABA)
American Intellectual Property Law Association (AIPLA)
Lana Andreff (L. Andreff)
Ron Andruff (R. Andruff)
I.E. Arribillaga, dot EUS
Asia Pacific Top Level Domain Association (APTLD)
Asociacion PuntoGal (PuntoGal)
Association Uninet
Association of National Advertisers (ANA)
At-Large Advisory Committee (ALAC)
AT&T Inc. (AT&T)
auDA
Karl Auerbach (K. Auerbach)
Vittorio Bertola (V. Bertola)
BITS/Financial Roundtable (BITS)
M. Neylon, Blacknight Solutions
Eric Brunner-Williams (E. Brunner-Williams)
John Burden (J. Burden)
Marilyn Cade (M. Cade)
ccNSO Working Group on Geographic Names (ccNSO WGGN)
Ronald Chen (R. Chen)
China Internet Network Information Center (CNNIC)
Chinese Organizational Name Administration Center (CONAC)
Edmon Chung (E. Chung)
City of New York (NYC)
City Top-Level Domain Interest Group
Connecting.nyc, Inc. (Connecting.nyc)
Coalition Against Domain Name Abuse (CADNA)
Coalition for Online Accountability (COA)
Coalition for Online Trademark Protection (COTP)
Michael Collins (M. Collins)
Phil Corwin (P. Corwin)
Matthieu Credou (M. Credou)
M. Pochyla, Ministry of Industry and Trade, Czech Republic
Roy DeFee (R. DeFee)
Bertrand de la Chapelle (B. de la Chapelle)

Steve DelBianco (S. DelBianco)
Demand Media Inc. (Demand Media)
J.A. Andersen, National IT and Telecom Agency, Denmark
C. Disspain, ccNSO Council
DotAfrica
dot berlin
dot BZH
Dot Eco LLC (Dot Eco)
dot EUS
dot koln
DOTZON GmbH
eBay Inc. (eBay)
eco
eCOM-LAC
Jaser Elmorsy, Bluebridge Technologies (J. Elmorsy)
Kevin Erdman (K. Erdman)
European-American Business Council
J. Scott Evans
Go Daddy
Fred Felman (F. Felman)
Paul Foody (P. Foody)
Jothan Frakes (J. Frakes)
Claude Gelinas (C. Gelinas)
Chuck Gomes (C. Gomes)
Jean Guillon (J. Guillon)
Faye Hammersley (F. Hammersley)
Derick Harris (D. Harris)
Tony Harris (T. Harris)
Hearst Communications Inc.
Mike Housman (M. Housman)
HP.com
Robert Hutchinson (R. Hutchinson)
INDOM.com
Intellectual Property Constituency (IPC)
Intercontinental Hotels Group PLC (IHG)
International Anti-Counterfeiting Coalition (IACC)
International Olympic Committee (IOC)
International Trademark Association (INTA)
Internet Commerce Association (ICA)
Internet Society of China
Ron Jackson (R. Jackson)
Yoav Keren (Y. Keren)
Khamma Group LLC
Jaeyoun Kim (J. Kim)

Adrian Kinderis (A. Kinderis)
Stacey King (S. King)
George Kirikos (G. Kirikos)
Dirk Kirschenowski (D. Kirschenowski)
LEGO et al. (Lego)
Michael Leibrandt (M. Leibrandt)
Lovells LLP (Lovells)
Andrew Mack (A. Mack)
S. Maniam
MarkMonitor Inc. (MarkMonitor)
MarkMonitor Inc. et al. (MarkMonitor et al.)
MARQUES
Max Menius (M. Menius)
M. Mansell, Mesh Digital Ltd.
Steven Metalitz (S. Metalitz)
Microsoft Corporation (Microsoft)
Minds and Machines
Alexei Mykhaylov (A. Mykhaylov)
National Business Coalition on E-Commerce and Privacy (NBCEP)
NetChoice
Jeff Neuman (J. Neuman)
NIC Mexico
Noncommercial Users Constituency (NCUC)
Mike O'Connor (M. O'Connor)
Michael Palage (M. Palage)
Pat
Mons. Carlo Maria Polvani, Holy See's Representative
Jim Prendergast (J. Prendergast)
A. Ptashniy
Regions Financial Corporation (Regions)
Register.com
Registries Constituency (RyC)
Susan Reynolds (S. Reynolds)
Mike Rodenbaugh (M. Rodenbaugh)
Kristina Rosette (K. Rosette)
Constantine Roussos (C. Roussos)
Tim Ruiz (T. Ruiz)
Ken Ryan (K. Ryan)
Jarrod Seitz (J. Seitz)
James Seng (J. Seng)
Philip Sheppard (P. Sheppard)
SIDN-Netherlands (SIDN)
Shahram Soboutipour (S. Soboutipour)
Smartcall

Shahram Soboutipour (S. Soboutipour)
Sophia B. (Ethiopia)
Software & Information Industry Association (SIIA)
Alexei Sozonov (A. Sozonov)
Paul Stahura (P. Stahura)
Werner Staub (W. Staub)
S. Subbiah
Wil Tan (W. Tan)
P. Taylor, Bradford & Bingley
3M Company
Time Warner Inc. (Time Warner)
Tom
Marc Trachtenberg (M. Trachtenberg)
Patrick Vande Walle (P. Vande Walle)
Verizon Communications Inc. (Verizon)
Visa, Inc. (Visa)
Mary Wong (M. Wong)
Worldwide Media, Inc.
Yahoo! Inc. (Yahoo!)
Satoru Yanagishima (S. Yanagishima)
Zodiac Holdings

Reference Material 15.

ICANN CALL FOR EXPRESSIONS OF INTEREST (EOIs)

For New gTLD String Similarity Examiners

31 July, 2009

1 Introduction

Generic top-level domains (gTLDs) are an important part of the structure of the DNS. Examples of existing gTLDs include .BIZ, .COM, .INFO and .JOBS. A complete listing of all gTLDs is available at <http://www.iana.org/gtld/gtld.htm>. The responsibility for operating each gTLD (including maintaining the authoritative registry of all domain names registered within that gTLD) is delegated to a particular organization. These organizations are referred to as "registry operators" or "sponsors," depending upon the type of agreement they have with ICANN.

Following years of community-driven policy development that recommended the introduction of new gTLDs, ICANN is preparing a process to receive applications to operate new generic top-level domain (gTLD) registries. This new program is described in detail at <http://www.icann.org/en/topics/new-gtld-program.htm>. ICANN has published a draft Applicant Guidebook at <http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm> that provides detailed information about the process for applying to operate a new gTLD. The Applicant Guidebook will constitute the request for proposals (RFP) for new gTLDs.

The Applicant Guidebook is still in development and ICANN is seeking public comment on draft versions. Although ICANN has prepared a revised Applicant Guidebook, the information in the Guidebook is not yet settled. While that work goes forward, steps are being taken to assure there will be a robust, effective and timely evaluation process in place to review applications once the round is launched. Retaining competent evaluation panels with sufficient expertise, resources and geographic diversity is key to an effective launch. Therefore, steps such as the publication of this call for expressions of interest are being taken now, even as final decisions regarding the application and evaluation process are still being considered.

ICANN is now seeking expertise to enable the formation of panels to evaluate applications against the criteria published in the Applicant Guidebook. Expressions of Interest (EOIs) in providing management and evaluation services are sought in the following five areas of assessment:

1. Has the applicant demonstrated their technical capability to run a registry for the purpose specified in the application as defined by the criteria in the Applicant Guidebook?
2. Has the applicant demonstrated their financial and organizational capability as defined by the criteria in the Applicant Guidebook?
3. In the context of the criteria specified in the Applicant Guidebook, does the gTLD represent a geographical name, and if so, have authenticated support from the relevant government?
4. Will the introduction of the proposed gTLD string likely result in user confusion with (i.e., due to similarity with) (i) a reserved name; (ii) an existing TLD; or (iii) other proposed gTLDs?

5. In the context of resolving contention among two or more applicants for the same or similar gTLD string, does an applicant claim to represent a community and if so, satisfy the criteria for prevailing in a comparative evaluation?

ICANN also seeks information from potential providers regarding estimation of reasonable timeframes for each type of evaluation (e.g., per string or per application) and anticipated costs associated with conducting the evaluation. The cost and time to process an application are critical factors that must be carefully considered in the information provided by the interested parties.

This EOI describes the criteria and requirements for providers that seeking to perform the inquiry of question 4, the string similarity examination role. Providers should respond by 15 September, 2009 23:59 UTC with the required information that is described below. From the information provided, ICANN will invite respondents to exchange additional information.

Contracts will not be awarded from this EOI, but ICANN expects to use the responses to identify entities capable of providing the various evaluation roles and better refine the costs and time frames for conducting evaluation as part of the new gTLD process.

2 Background

The [Internet Corporation for Assigned Names and Numbers](#) (ICANN) is a not-for-profit, multi-stakeholder, international organization that has responsibility for Internet Protocol (IP) address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) top-level domain name system management, and root server system management functions. ICANN's mission 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 these systems. It coordinates policy development reasonably and appropriately related to these technical functions, consistent with ICANN's core values. Among these values are:

- Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet;
- Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment;
- Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest; and
- 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.

New gTLDs have previously been established based on proposals that were submitted to ICANN during two specific application periods. Materials from the 2000 application round, which led to the delegation of .AERO, .BIZ, .COOP, .INFO, .MUSEUM, .NAME and .PRO, are available at <http://www.icann.org/tlds/app-index.htm>. Materials from the 2003 round, which led to the delegation of .ASIA, .CAT, .JOBS, .MOBI, .TEL and .TRAVEL, are available at

<http://www.icann.org/tlds/stld-apps-19mar04>. Applications received during both of these rounds were evaluated on the basis of instructions and criteria contained in the respective RFPs published by ICANN. Applicants that were successful went on to negotiate and enter gTLD agreements with ICANN.

ICANN is seeking to establish String Similarity Examiners to assess each application for a new gTLD to determine:

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

The standard will be applied in three sets of circumstances, when comparing:

- Applied-for gTLD strings against existing TLDs and reserved names;
- Applied-for gTLD strings against other applied-for gTLD strings; or
- Applied-for gTLD strings against strings requested as IDN ccTLDs.

Policy discussions indicate such a degree of similarity would increase the risk to Internet users of fraud or other harms based on confusion between the applied-for string and existing TLDs, reserved words, or other applied-for strings, in the context of the criteria specified in the Applicant Guidebook. It is recommended that potential providers review all drafts of the Applicant Guidebook and other resources on the new gTLD program available at <http://www.icann.org/en/topics/new-gtld-program.htm>.

The number of applications that will be received for new gTLDs is unknown; however, it is estimated to be several hundred or more. It is therefore vital that the provider be able to convene—or have the capacity to convene—as many evaluators as is necessary to evaluate all the applications, in a timely and complete manner. For example, the provider may wish to consider the process it will use to evaluate applications, and how that process will scale if 100, 250, 500, 700 or 900 applications are received. There should be a statement describing how 2000 applications would be processed (even though this is thought to be highly unlikely). The provider should also consider how the number of applications may impact evaluation timeframes and costs of evaluations.

It is expected that there will be more than one application round. Therefore, there may be an opportunity for cyclical work in evaluating applications. In the longer term, the work may become continuous with new gTLD applications being submitted and evaluated at any time.

In addition, given the international nature of the ICANN community and the likelihood that applications will be received for both ASCII and non-ASCII new gTLDs, it will be important that the provider can convene—or have the capacity to convene—globally diverse panels familiar with internationalized domain names (IDNs). A non-ASCII domain name, i.e., an IDN, is one that utilizes characters from the full Unicode set rather than just the “letter-digit-hyphen” characters specified in the original DNS standards. Using IDNs, for example, make it possible to add TLDs in Arabic, Hebrew, Cyrillic, and other scripts. For more information on IDNs, please visit <http://www.icann.org/en/topics/idn/>.

3 String similarity

The strings proposed by applicants for new gTLDs could be either identical or similar within the meaning of the standard in the previous section to (a) existing TLDs, (b) reserved words, or (c) strings proposed by other applicants in the same round. Strings that are identical to existing TLDs or reserved words are easily identified, and will be rejected during the application process. Strings that are identical to other applied-for strings during the same round are also easily identified, and are automatically placed into contention sets to be handled by the contention resolution process. The design of the DNS makes it impossible to insert more than one instance of the same string into the root, so the importance of detecting and rejecting identical strings is both obvious and uncontroversial.

Less easily identified, and potentially more controversial, are strings that are similar¹, but not identical, to (a), (b), or (c). Both the GNSO (Recommendation 2: “Strings must not be confusingly similar to an existing top-level domain or a Reserved Name”) and the GAC (Principle 2.4: “In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs”) have identified “confusing similarity” as a reason to reject an applied-for new gTLD string. Policy discussions indicate that the most important reason to disallow similar strings as top-level domain names is to protect Internet users from the increased exposure to fraud and other risks that could ensue from confusion of one string for another. This reasoning must be balanced against unreasonable exclusion of top-level labels and denial of applications where considerable investment has all ready been made. As the top-level grows in number of registrations, drawing too large a circle of “similarity protection” around each existing string will quickly result in the unnecessary depletion of available names. The unnecessary exclusion of names would also tend to stifle the opportunity of community representation at the top-level and innovation.

An algorithm will score visual similarities between strings for each pair of applications, as a partial guidance for determination of the likelihood of string confusion. The String Similarity Algorithm (“algorithm”) is available in several character sets. The algorithm is a tool the examiners use to provide one objective measure as part of the process of identifying strings likely to result in confusion. The algorithm is also available to applicants for testing and informational purposes. The algorithm, user guidelines, and additional background information are available at <http://icann.sword-group.com/icann-algorithm/>.

The algorithm calculates scores for visual similarity between any two strings, using factors such as letters in sequence, number of similar letters, number of dissimilar letters, common prefixes, common suffixes, hyphenation, and string length. The algorithm will provide rank ordered visual similarity scores for each combination (pair) of applied-for and existing TLDs. The algorithm will help the evaluators sort potential cases of similarity and provide some evidence of the degree of similarity between pairs of strings. It is not a determinative tool.

During the Evaluation of applications, String Similarity Examiners will review all applied-for strings and decide whether the strings proposed in any pair of applications are so similar to another applied-for string (based on the standard above) that they should be placed into direct string contention as part of a contention set. (Applied for strings that are found to be so similar to an existing TLD or Reserved Word that the standard is met will be rejected.) Such a determination, based on human judgment assisted by criteria and algorithm outcomes, is performed for each pair of applications. When all applications have been checked in this way, the outcome is a matrix of direct string contentions between pairs of applications. Applications

¹ Although two strings might be “similar” in appearance, sound, or meaning, for the purposes of this RFI, only *visual* similarity (appearance) is relevant.

without any string contention can proceed without further action, but contention must be resolved for all others.

4 Criteria

ICANN anticipates expressions of interest (i.e., answers to questions posed in section 5 below) from providers to conduct the string similarity examination of applications must meet the following criteria:

1. The provider must be an internationally recognized firm or organization with significant demonstrated expertise in the evaluation and assessment of this type of similarity. The provider must demonstrate experience in making decisions of this level of importance: balancing the potential for exposing Internet users to increased risks of fraud and other harms versus unnecessary exclusion of Internet labels and denial of applications where considerable investment has been made.
2. The provider must be competent to assess (or be able to call upon experts who are competent to assess) the way in which changes to the top level (root zone) of the DNS might increase the exposure of Internet users to fraud or other harms.
3. The provider must be able to convene (either in advance or rapidly on-demand) a linguistically and culturally diverse panel capable, in the aggregate, of evaluating Applications from a wide variety of different communities, which may:
 - be local or global in scope;
 - be based on geography, political affiliation, common interests, or other factors;
 - involve either commercial or non-commercial interests (or both); and
 - be either objectively defined or self-defining.²
4. The provider must propose a structure and plan for the string similarity panel that is viable for a varying number of Applications, and how that process will scale if 100, 250, 500, 700 or 900 applications are received. There should be a statement describing how 2000 applications would be processed (even though this is thought to be highly unlikely). The number of comparisons will increase exponentially with increase in the number of applications and, as the number of Applications increases, the number of those that will present string similarity issues may also increase but this number will not be known in advance.
5. Considering the string similarity criteria defined in Module 4 of the Applicant Guidebook and described in Section 3 of this document, the provider must propose a panel that is capable of:
 - exercising subjective judgment in making its evaluations,
 - reaching conclusions that are compelling and defensible, and
 - documenting the way in which it has done so in each case.

² An example of an objectively defined community is “the registered voters in the city of Perth, Australia”; an example of a self-defining community is “people who are interested in dogs.”

6. The provider must convene and operate the string similarity panel so as to prevent communication between the panel (or any of its members) and any party with an interest in the Applications being evaluated, except as may be explicitly permitted by the process as defined in the Applicant Guidebook and to avoid conflicts of interest. The provider selected and each of its evaluators (including any additional experts) will execute a confidentiality agreement with regard to material contained in the applications under review.
7. The provider should be comfortable that the Applicant Guidebook is comprehensive and satisfactorily expresses all selection criteria, but understand that it is not finalized. It is possible, that the provider will be selected before the Applicant Guidebook is finalized, it will have the opportunity to review the text to ensure that the basis for the evaluation is clear. The criteria must be objective, measurable, publicly available at the outset of the evaluation process, and described fully in the Applicant Guidebook. All applications will be evaluated against these criteria.
8. The evaluation process for selection of new gTLDs will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination.

5 Response to EOI Requirements

Interested parties should respond to each of the eight subject areas below. Responses will be gauged on the basis of the criteria defined in this document and Applicant Guidebook. Candidates desiring to express their interest to ICANN in the comparative evaluation role in the new gTLD program should provide the following:

1. A Statement of Suitability that includes a detailed description of the candidate's ability to perform the work described in the previous section which demonstrates knowledge, experience and expertise, including but not limited to projects, consulting work, research, publications and other relevant information.
2. Evidence of the candidate's knowledge of and familiarity with ICANN, its role, structure and processes, including the Internet's Domain Name System (DNS) and past gTLD application and evaluation rounds.
3. The *curriculum vitae* for each person proposed by the candidate to manage or lead work on this project, the candidate's selection process for persons being proposed to ICANN, and explanation of the role that each named person would play. Also indicate the experience and availability of proposed evaluators. ICANN will consider the professional background of available and proposed panelists prior to selecting a provider in order to assess their areas and level of expertise and to identify any conflicts that would prevent them from making an objective evaluation of any application.
4. A warrant that the candidate, if selected, will operate under ICANN's non-disclosure agreement and standard consulting agreement, and that neither the candidate nor any individual who might be engaged to work on this project (whether or not declared pursuant to (4) above) has a known conflict of interest.

5. A statement of the candidate's plan for ensuring fairness, nondiscrimination and transparency.
6. Considering the nature of the expertise necessary for evaluating strings for user confusion on a global scale, a statement of the candidate's plan for ensuring that the examiners will consist of qualified individuals and that the candidate will make every effort to ensure a consistently diverse and international panel.
7. Project and operational timelines.
 - a. A proposed work schedule for planning and starting panel operations including key milestone dates, consistent with but more detailed than those specified in this document.
 - b. Projected targets for the time frame necessary for it to complete a thorough and careful evaluation of all applications. Identification of volumes of applications that can be processed in those timeframes and at what volumes batch processing of applications might be necessary.
8. Costs. The candidate should provide a detailed statement of the proposed fee structure, including any variable provisions that may be based on the number of string similarity examinations conducted, the number of examinations that involve IDNs, or other factors. See attached, Exhibit A Cost Template.

6 Deadline

Interested providers must submit expressions of interest by email to string-sim-eoi@icann.org by 15 September, 2009 23:59 UTC. A confirmation email will be sent for each response received.

Also send queries regarding this request to string-sim-eoi@icann.org will be accepted until 24 August, 2009, 23:59 UTC. Queries and answers will be posted to a page on the ICANN web site dedicated to this purpose.

If selected, the successful candidate is expected to be ready to assist ICANN with finalization of the Applicant Guidebook, prepare for the evaluation phase, and be ready to start the evaluation within four months after release of the final Applicant Guidebook.

Thank you for your interest.

EXHIBIT A COST TEMPLATE

No of Applications to be Reviewed (A)	Cost per Evaluation Panel					Total Cost per Application (G = B+C+D+E+F)	Total Cost (A x G)
	Financial (B)	Technical (C)	Community Priority (D)	Geographic Names (E)	String Similarity (F)		

Start Up Costs*

- 100
- 300
- 500
- 1,000

Initial Evaluation

- 100
- 300
- 500
- 1,000

Other Costs

Details of Other Costs and how they might scale based on the number of applications to be reviewed must be included in your response.

Sample

* Estimated costs to integrate your resources and processes with ICANN's application processing program. Please provide detail of your Start Up costs within the cost section of your response.

Reference Material 16.

New gTLD Program Update

26 Oct 2011



Agenda

- Applicant Guidebook
- Evaluation process
- Operations
- Issues under discussion
- Communications

Applicant Guidebook



Updates per Singapore Board Resolution

- IOC and Red Cross names
- GAC Early Warning and Advice processes
- URS loser pays threshold

Additional Updates

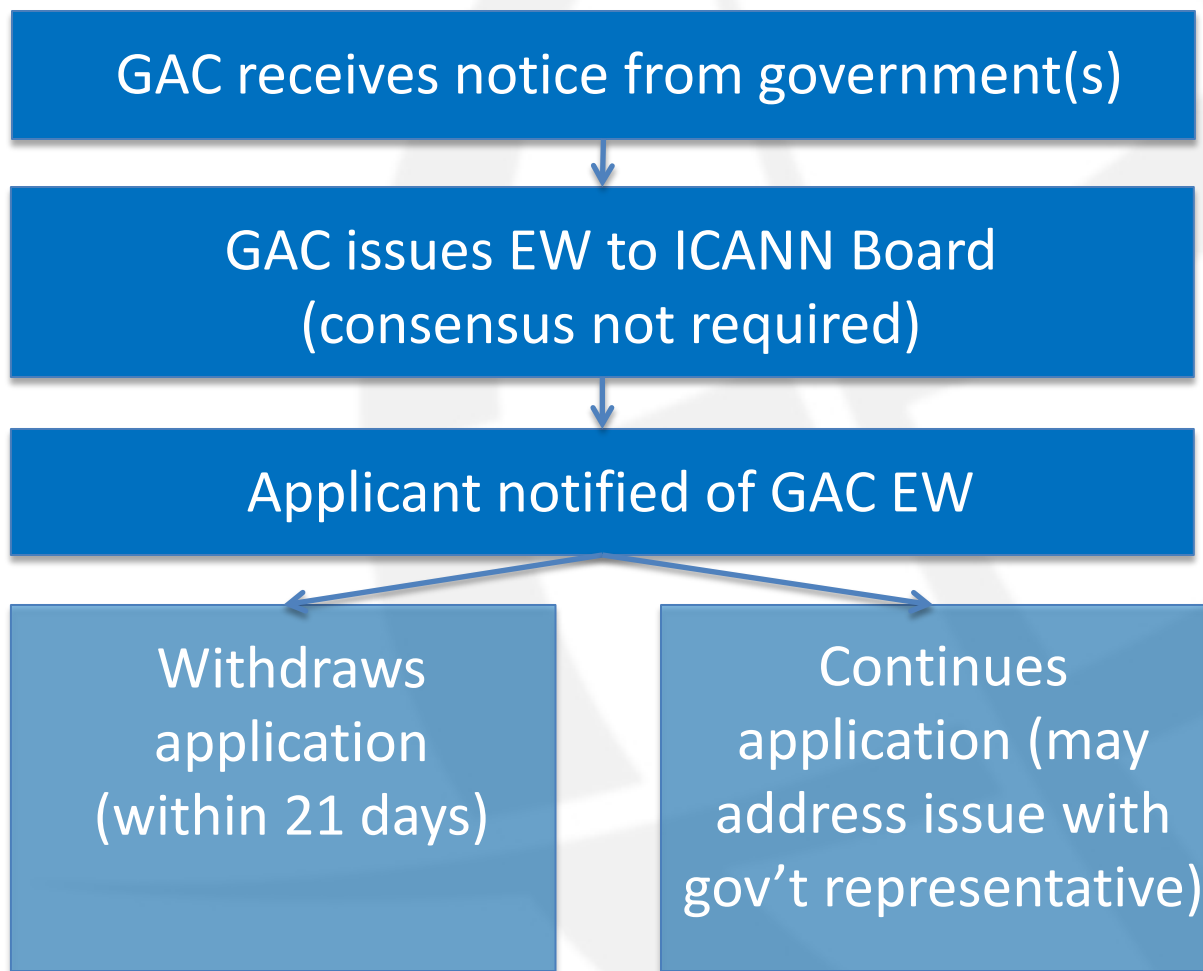
- Dates for Application Submission period
 - 12 Jan – 29 Mar 2012 user registration
 - 12 Jan – 12 Apr 2012 application submission
- Resources for Applicant Assistance

<http://newgtlds.icann.org/applicants/candidate-support>

GAC Early Warning

- WHEN: Concurrent with 60-day Application Comment period
- WHAT: Notice only, not a formal objection
- WHY: Notice to GAC by 1 or more governments that application might be problematic

GAC Early Warning Process



Recommendations

- Take GAC Early Warning seriously (likelihood that application could be the subject of GAC Advice)
- Identify potential sensitivities in advance of application submission, and work with relevant parties beforehand to mitigate concerns

GAC Advice on New gTLDs

- To address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities
 - GAC intention to develop standard vocabulary and set of rules for use in providing its advice
 - To be submitted by close of Objection Filing Period
- Applicant may submit a response before GAC Advice is considered by Board
- Board must provide reasons if it disagrees

Evaluation Process

When Can I Apply?

2012

January

Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7				1	2	3	4
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29			

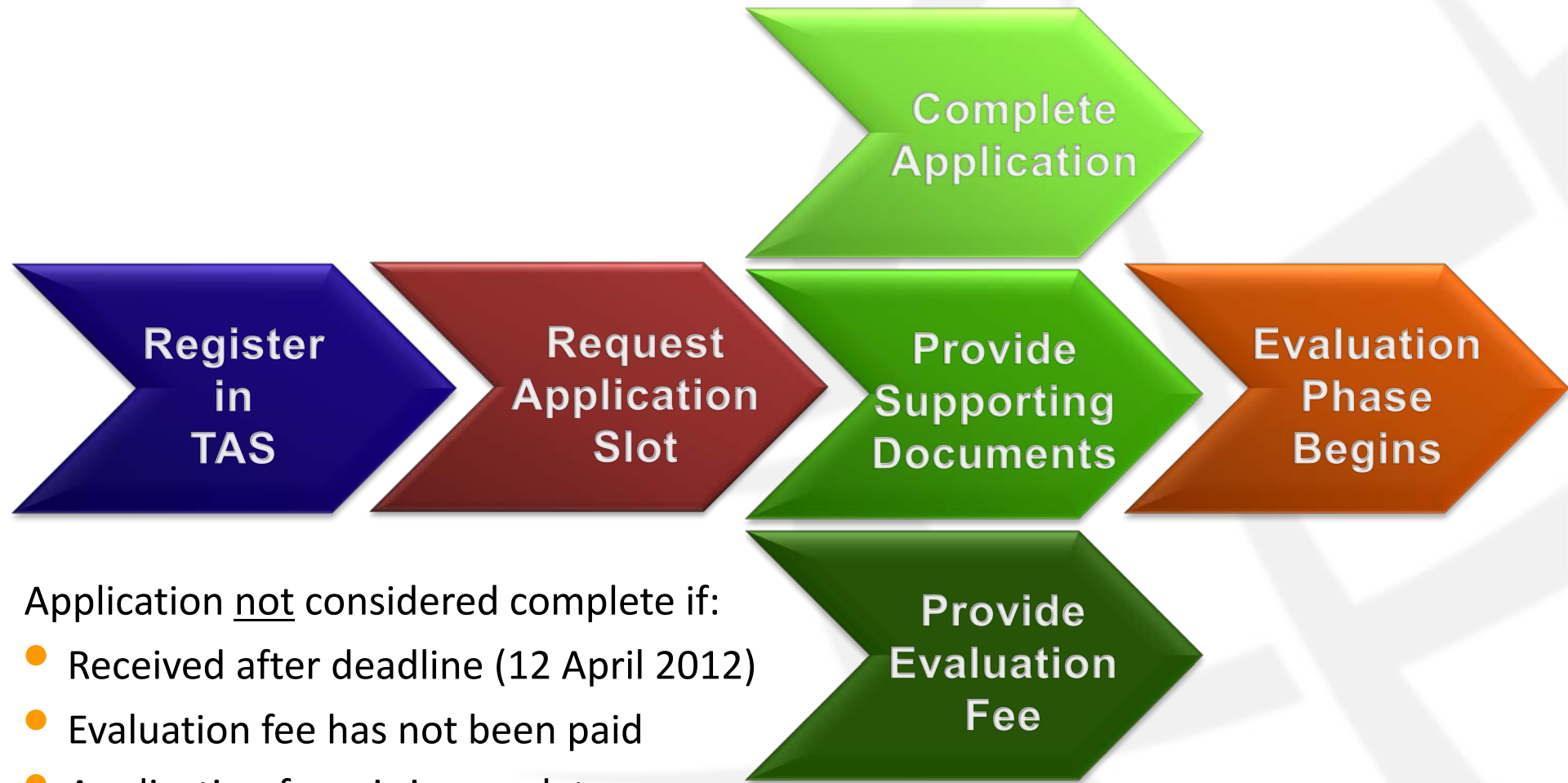
February

March

Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3	1	2	3	4	5	6	7
4	5	6	7	8	9	10	8	9	10	11	12	13	14
11	12	13	14	15	16	17	15	16	17	18	19	20	21
18	19	20	21	22	23	24	22	23	24	25	26	27	28
25	26	27	28	29	30	31	29	30					

April

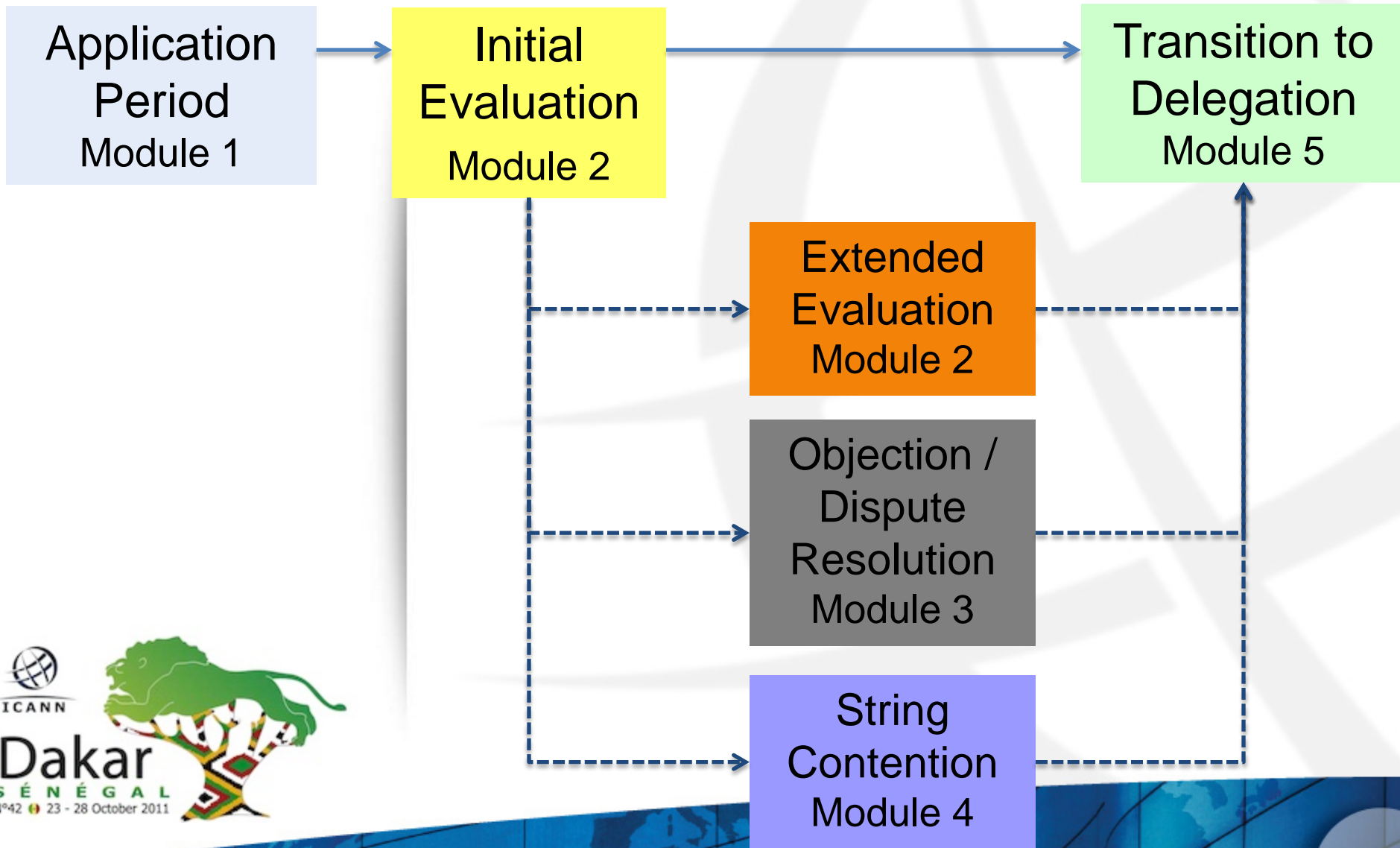
Application Process



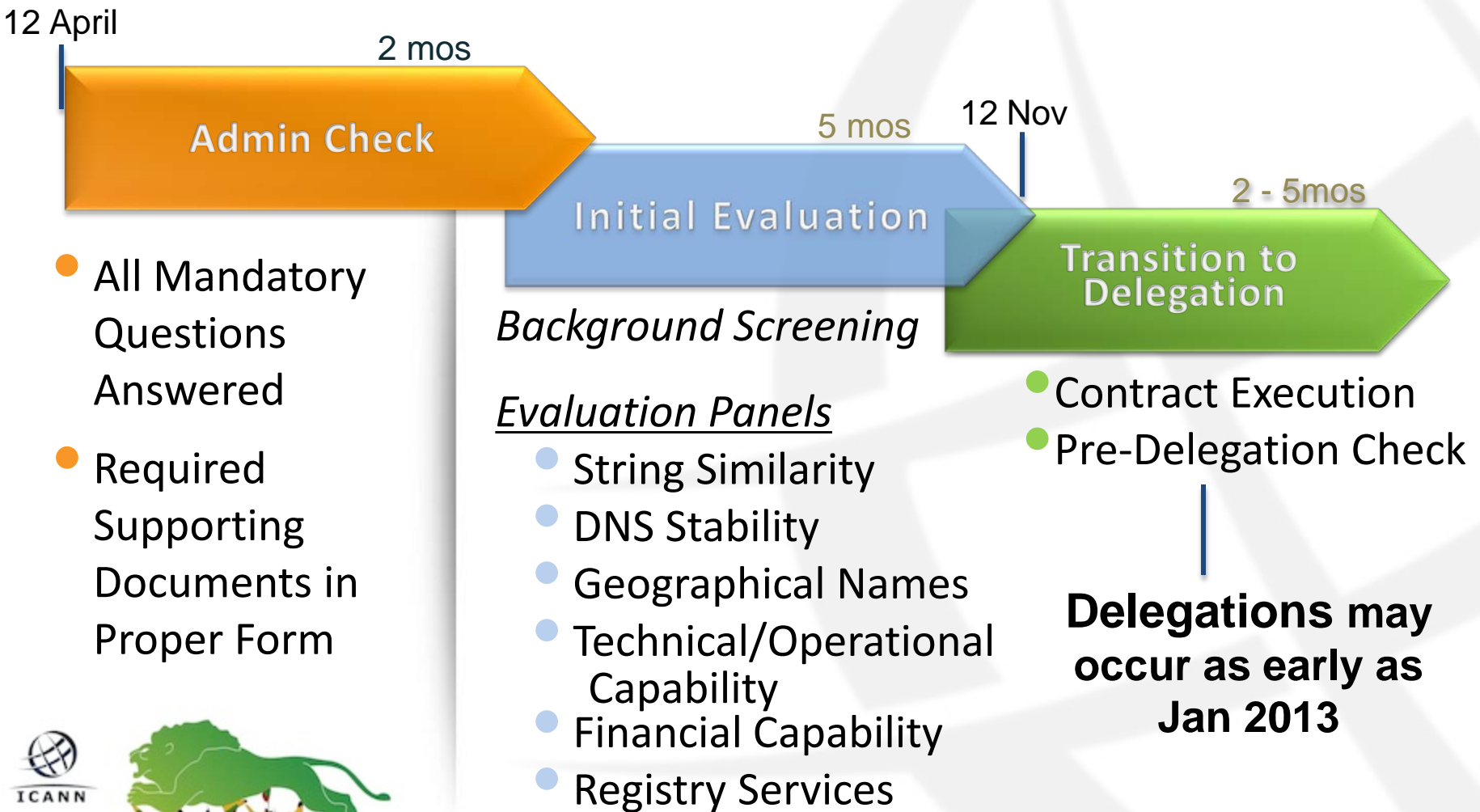
Application not considered complete if:

- Received after deadline (12 April 2012)
- Evaluation fee has not been paid
- Application form is incomplete

Application Process



Basic Evaluation Path



Key Dates

2011

12 January	Application Window Opens
29 March 12 April	Initial Registration Due Applications Complete / Window Closes
1 May	Strings Posted Opens: <ul style="list-style-type: none">✓ Application Comment Process✓ GAC Early Warning✓ GAC Advice Period✓ Objection Period
12 June	Initial Evaluation Begins
30 June	Application Comment Process Closes GAC Early Warning Closes
12 November	Initial Evaluation Closes → Results are Posted

Key Dates

2011

29 November

Last day to elect Extended Evaluation

1 December

Begins:

- ✓ Extended Evaluation
- ✓ Transition to Delegation (for Clean Applications)
- ✓ String Contention (for Applications not in Dispute Resolution or Extended Evaluation)

GAC Advice Period Closes

Last Day to file an Objection

2012

30 April

Extended Evaluation Closes

Dispute Resolution Closes

Results & Summaries Posted

15 May

String Contention Opens (for Applications with Variables)

30 May

String Contention Closes (for Clean Applications)

→ Results Posted



Service Providers

Background screening

- String Similarity
- DNS Stability
- Registry Services
- Geographic
- Technical/Ops
- Financial
- Community Priority

Quality Control

Evaluation Panels

- Currently negotiating Evaluation Panel services contracts with final candidates
- Working through simulation exercises on evaluation procedures

Evaluation Panels

Panel	Service Providers
String Similarity	<ul style="list-style-type: none">• InterConnect Communications
DNS Stability	<ul style="list-style-type: none">• Interisle Communications
Registry Services	<ul style="list-style-type: none">• Interisle Communications
Geographic Names	<ul style="list-style-type: none">• Economist Intelligence Unit• InterConnect Communications
Financial / Tech / Ops	<ul style="list-style-type: none">• Ernst & Young• JAS Advisors• KPMG
Community Priority	<ul style="list-style-type: none">• Economist Intelligence Unit• InterConnect Communications
Quality Control	<ul style="list-style-type: none">• JAS Advisors

Background Screening

- RFP issued 30 August 2011
- 11 global firms responded
- Vendor selection currently underway

Quality Control Objectives

- Consistency
- Accountability
- Improvement
- Transparency

Quality Control Components

- Performing simulation exercises
- Initial sampling
- Blind re-evaluation (~15%)
- Random procedural reviews
- Independent report will be published

Program Governance

Oversight and program management to ensure effective program administration

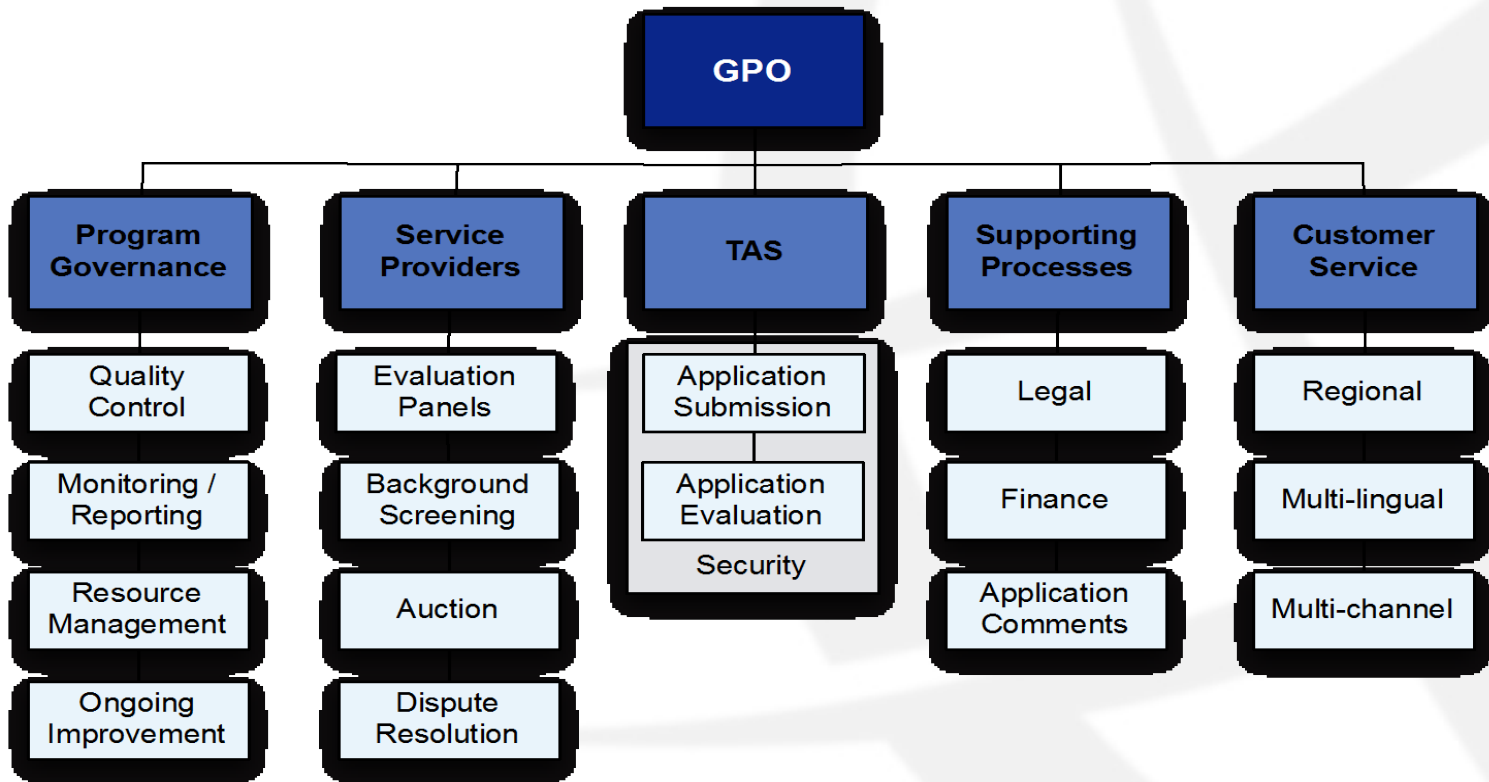


Operations

Operational Readiness

- Study completed to:
 - identify key functions
 - capture current processes
 - determine the potential impacts
 - enable operational readiness
- Goals:
 - Addressing the effects and risks to operations
 - Anticipating and addressing the impact to existing operating processes
 - gTLD Program Office Legal
 - Finance IANA
 - Registry Liaison Registrar Liaison
 - Contractual Compliance

Operational Readiness



Procurement for Post-Delegation Activities

Provider	Function	Status
Emergency Back-End Registry Operator (EBERO)	Emergency provider to sustain critical registry functions during temporary failures or transition process	RFI open through 30 November 11
Trademark Clearinghouse	Data repository offering authentication and validation services for trademark data	RFI open through 25 November 11
Independent Objector (IO)	Objector to file and prosecute objections in public interest	RFP expected mid-November – combined with recruiting activity
Uniform Rapid Suspension (URS)	Provider(s) to administer URS complaints re: registered names	RFP expected mid-November

Issues under discussion

Registry-Registrar Cross-Ownership (Vertical Integration)

- For new gTLDs, registries will be able to compete as registrars, and registrars will be able to compete as registries
- For existing gTLDs, cross-ownership is deferred pending further discussions including with competition authorities

Batching: Considerations/Requirements

- Fair and objective for all potential applicants
- Comply with applicable laws
- Should be consistent with AGB
- Delegations must not exceed 1,000 per year
- Address potential abuses
- Makes sense: e.g., keep similar and identical strings in same batch

Possible approaches to:

- Reduce need for batching:
 - “Opt In/Opt Out”
 - Lengthen initial evaluation to accommodate more applications in one batch
- Batching:
 - Random selection
 - Secondary time stamp

Applicant Support

- Applicant Support Program can be found under the Applicants tab on: <http://newgtlds.icann.org>
 - Applicants seeking support and organizations offering support can find each other
- \$USD 2 million allocated as seed funding to assist applicants from developing economies
 - Criteria and process for grant allocation will be posted to the new gTLD site once the information is available

Communications

Customer Service

- Mission: Provide support in a transparent and objective manner
- How: FAQs and Knowledge Base
- Accessing customer service:
 - Online self-help tools
 - newgtld@icann.org
 - New gTLD website
 - Applicants get priority

Communications Campaign

- Launched the New gTLD website 19 September <http://newgtlds.icann.org>
- Resources available:
 - Factsheets in the 6 UN languages
 - Educational videos
 - Calendar of upcoming events and event reports

Communications Roadshow

- Over 35 events in over 20 different countries raising awareness at events
- More outreach events planned: Moscow, Beijing, Jakarta, Mexico, Argentina, Chile
- View upcoming events and reports from previous events: <http://newgtlds.icann.org/program-status/upcoming-events>

Communications - Social & Traditional Media

- Traditional media
 - 5,800+ news articles on new gTLDs since 18 June 2011
- Twitter
 - 1,300+ followers. Up from ~400 a year ago

Remaining New gTLD Sessions

Session	Date	Location
Trademark Clearinghouse Work Session	Wed, 26 October 12:00 - 13:30	Chapiteau Tent
Operations Instrument (COI) - Discussion on RySG proposal	Thu, 27 October 09:00 - 10:30	Big Amphitheater
New gTLD Application & Evaluation Process	Thu, 27 October 11:00 - 12:30	Chapiteau Tent

Thank You



Questions

One World

One Internet



Reference Material 17.

Trang Nguyen:

Good morning, afternoon, and evening, everyone. My name is Trang Nguyen. I lead the New gTLD Customer Service Center and I would like to welcome everyone to our first webinar for applicants. We're streaming to you live from our Los Angeles office. This is the first in a series of webinars that we're going to do to provide you with updates during the evaluation process.

Before we get started I'd like to go over a few housekeeping items. This webinar will run about 90 minutes. The first part will be a presentation followed by a Q&A session. We are recording this session. The recording will be available immediately following the conclusion of the webinar on this same webpage. The PowerPoint deck that's accompanying this presentation as well as the paper on New gTLD evaluation status are also posted on the same webpage.

For those of you who are unable to access the live streaming session online we have also arranged an audio phone bridge. The numbers for the audio phone bridge are, the toll free number is 1-800-9888-9718 and the USA toll number is 1-312-470-0032. And the passcode for this session is NewgTLD. Please keep in mind that you only need to use the audio bridge during the presentation part if you're not able to join us via the live streaming session. We ask that you not tie up the audio bridge if you are able to follow the presentation online.

When the Q&A session starts you can dial into the audio bridge if you would like to ask a question. To ask a question press *1 to be put into queue. When it is your turn the operator will unmute your line. If you are in the queue and you find that your question has been answered, please press *2 to exit the queue. ICANN staff will also be monitoring the chat room so if you have any questions you can also enter them in there, and we'll do our best to get to everyone's questions. In the event that we cannot get to your question you can always contact us at the customerservicecenter@newgtld.icann.org.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

So now I'd like to introduce our speaker for today's session, Mr. Kurt Pritz, Senior Vice President Stakeholder Relations. Kurt?

Kurt Pritz:

Thank you, Trang, and thank you everybody for joining us. At 5:00 in the morning here in California I'm joined by an able-bodied staff: Dennis Chang, Ann Yamashita, Michelle Cotton, Michele Jourdan, Trang Nguyen, Wendy Profit, [Jeffrey Simamora], Cory Schruth, Dan Halloran and Karen Lentz.

As Trang described, this is sort of an experiment. We're looking for the way to communicate with applicants. I'm looking now and we're up to 173 people that have joined us in the webinar. We sought to make it interactive. We think that some type of interactive communication is the best way to have these sessions that reports, we will continue to deliver reports but reports are just one-way communication, webinars are one-way communication. We're seeking to sort of capture the environment in an ICANN meeting where people can come up and ask questions; there can be some exchange or feedback to sort of close out issues or make sure questions were answered.

And so at the end of this session we'll have this system where you can call in and ask questions. It's sort of complex but this is a pretty savvy bunch I think and we'll be able to handle that. To the extent that it needs improvement we want to hear your ideas on how to improve communications and you know, we want to keep regular, frequent communications that improve all the time. As Trang mentioned, we'll be taking questions; but also she, Dan, Karen and others will be answering questions in the chat room the best we can. So we're going to take this multitask approach to this interactive session, and we'll look forward to your constructive feedback afterwards.

Can we go to Slide #3? So very briefly, an agenda: we'll review the status of the evaluation for the applications. I'll talk for a bit about communications. We'll describe how the evaluations are underway and especially some aspects of initial evaluation. We'll describe for you some of the early results and trends, and we're seeking to inform you as the process goes forward so you know what

to expect – and so we’re going to share with you some early results, and particularly talk about the clarifying questions that are part of the initial evaluation with some specificity. A topic of interest to us all is the issue of metering or batching applications – how evaluation results are released and we’re delegating names into the root zone, how that will occur. We’ll discuss some key dates and then go on to questions and answers.

So first, just a brief word about communications: as we’ve heard, and we recognize there’s not been too much change in the ICANN New gTLD webpage since Prague. We released a comment period on batching and that included an update with some information on how the evaluations are going. From this point forward we will ensure there’s regular communications to the applicants and to the general community. Both audiences have separate needs. They’ll include meetings such as this or improvements to this depending on how it works.

We intend to make weekly updates to the New gTLD page that describe evaluation and processing status as well as other news associated with the New gTLD Program. And we’ll provide written reports. So the first form of written report was posted along with the slides for this presentation. If you’ve been able to read some of that so far or read it after this meeting we would appreciate feedback on that and how that can be improved.

There’s other information that will be made available too, and one specific point I want to talk to you about and get your feedback is that some outside entities outside the ICANN staff and evaluators have asked to contact applicants, but we wanted to be very careful in how we did that. A very meaningful example is that the gTLD Registry Constituency wants to issue the applicants an invitation to an interest group they’ve formed that’s observer status in the gTLD Constituency for new gTLD applicants. And so we’d like to send you that invitation from the gTLD Constituency but we want to hear from you whether you want to get this sort of mail. Our presumption is that it would be a good thing, and if you feel to the contrary please let us know.

We'll also be issuing from time to time some application advisories, so news to get you ready for how the applications are going to be processed. And we'll talk about a couple examples of these as we go through this session so you know what to expect – what sorts of advisories you want to expect. So we commit to regular rigorous communications and we want to hear from you on what you think is effective.

So starting with some pretty old news, the application window you know closed on May 30th and applications were posted on June 13th. Since then, from the 1930 applications three have withdrawn. There's been no objections so far. One surprising aspect for us is that we've received after the closing 49 requests for change to application, and those changes vary widely from simple typos to change of personnel where say a primary contact has left the company. In some cases incorrect documents were attached or incorrect prose was inserted into the application.

And so I know to those of you that have submitted these change applications, resolution is very important. Having received 49 of these and with a wide variety of types, each of which has its own set of implications, we take the requests for change very seriously. And so we've developed a process and criteria by which to measure each of the change requests. And so that was a little agonizing to develop that but essentially that's going through final approvals. We expect to publish that process and criteria very shortly.

In the meantime, all the requests for changes have been discussed by the various levels of management that we've deemed appropriate to consider these things, and we are ready to go on and release the answers on most of them. But we want to release those answers along with the standards by which they're measured so that it's clear to all how these decisions were made and how the requests for changes were accommodated. And also the request for a change, if applications are changed the changes will be recorded. The applications will be updated and there will be a change log posted along with those. So that will all be happening very soon.

Then the final bullet here is that initial evaluation is done. We advertised that it would be done – started, rather, “started” is a much better word than done. Evaluations would be started on July 12th and in fact we started earlier. We started pilots with the evaluation panels almost immediately and worked with them through pilot rounds, and I’ll describe them more fully later.

So what does “underway” mean? Well, applications have been distributed to the panels. In the case of the geographic, string similarity and DNS stability review panels, all of the applications have already been allocated to those panels and they’re working on them. In the case of financial and technical evaluations – the most difficult to conduct and coordinate and ensure consistency and I’ll talk a bit more about that later – 342 of the applications have been allocated so far. Ann runs that for us.

We allocate applications on at least a weekly basis if not more frequently to ensure the pipeline stays full. And I’ll talk a little bit more about how those are allocated, but the fact that all the applications aren’t allocated yet is with the goal of quality and efficiency in mind. So applications are being allocated to those panels that perform the most efficiently so we can get through this with consistent results but also with the lowest cost and fastest speed.

So what’s most important for our evaluations, then, is ensuring consistency of results across different panels and across different applications; high quality; and efficiency, which means fast. So I’m going to talk a little bit about each one of these. Can you go back a slide, Wendy?

Consistency and quality we think are the most important aspects of this. Consistency means getting the same results for the same applications across different panels, and quality means that they follow the same process – the evaluators follow their published processes all the time. So this was accomplished through three steps, really; one is training. There was extensive training of panels during the application window, so that’s long over. We conducted two pilot rounds. The pilot rounds are to ensure a high level of

consistency in how the firms evaluate the application. And like I said, incentives are built into the contracts for both quality and efficiency.

The pilots occur. Each firm evaluated the same application and then we came and sat around the table and compared scores, compared the type of qualifying or clarifying questions that were asked; rationalized or normalized any differences and then fed back those results into the evaluators themselves that are sitting in different places around the globe. This cross-firm collaboration is meant to ensure consistency and knowledge sharing.

With regard to efficiency, we understand that it's very important to accomplish and finish the applications as soon as is practicable, so keeping quality and consistency in first place but speed not far behind. We've been working with the evaluation panels daily to understand their schedules, and in the case of the most lengthy evaluations – the financial and technical evaluations – work with the panel members on a daily basis to review schedules and look for opportunity in efficiencies.

So I'll tell you that the leaders of those panels and many of the staff members are essentially resident here in LA where we can work with them on a daily basis. And then they contact their evaluators wherever they are around the world, and so there's a very intensive effort – 12 hours a day, I would say – to evaluate results, work on consistency and work on schedules to try to move them forward.

So how do we achieve this efficiency? It's not rocket science, not that rocket science is hard. We group applications similar to responses, so you can imagine that applications from the same applicant might have similar business models; or if we slice it a different way, applications with the same backend provider or authoritative DNS provider would have similar technical responses. And so we seek to hand out the applications in a way that takes advantage of those similarities.

We elevate exceptions or escalate exceptions so that evaluators can keep working away on evaluations and what we call inter-firm review teams review

exceptions or difficult answers in order to determine their score. The contract with evaluators has built-in incentives to award high performers. So cost and quality are incented by increase in the number of applications allocated to each evaluator. That's why all the applications are not allocated yet, to ensure those incentives remain in place.

And I'll tell you that from my personal viewpoint, that the evaluators' firms from top to bottom are working very hard and their very passionate about getting this right, so intense conversations occur every day across teams to seek ways, to seek efficiencies but also ensure that we're doing this the right way. In every instance we've been pleased with the attitude and outlook of the evaluators and how they're pushing this forward. I don't think we could have partnered with better people.

So how do we achieve efficiencies? We group similar responses and make select operating valuation teams. We've identified areas where we can actually increase the evaluations staff so the trainings went very well, and we've identified areas where we can increase the staff without harming the quality. And we continue to look for opportunities to gain in efficiency.

The clarifying questions are an important part of this presentation. Now remember from the Guidebook that the purpose of the clarifying question is to provide applicants with an opportunity to clarify aspects of the application where the evaluator does not find sufficient information to render a decision or make a grade. So we've always known that, so we've come to two realizations now that we've evaluated many applications; and we think this is really important for you to know now and you know, when results are released you'll understand.

So one is that a large number of applications will receive clarifying questions, so very large. And some of the numbers are given on the next page. And the second realization is that some of the clarifying questions may take longer than two weeks to answer. And so we'll have to make an accommodation for that, and how that accommodation is made – we'll make an announcement with

specific instructions, but if you can't answer the clarifying question in the two weeks specified in the Guidebook you'll be able to inform ICANN and then you'll be able to answer the clarifying question later. So one example of this is a continuing operations instrument: so if changes have to be made to the continuing operations instrument you might have to go back to the bank, get a new instrument written – that might take longer than two weeks.

So the implications of this are that it's increasingly important and also difficult to ensure that all clarifying questions are consistent across all applications, so this is not going to work out perfectly but we seek to avoid having different clarifying questions for essentially the same prose in an application. And I'm sure you understand the implications of that. And so it's very important for us to take steps to ensure that those clarifying questions are consistent across all applications.

There's a couple ways to do that. The easiest way is to hold all the clarifying questions until all the applications are evaluated, spread them all out on a table and look at them all, make sure they're all worded the same. But we think that would take more time and possibly create delays, and we think it's in your interest and our interest, too, to move the applications along and deliver clarifying questions when they're ready. So quite a bit of thought has been put into this.

The goal is then to move down the learning curve of clarifying questions far enough so that we're very assured that our clarifying questions are going to be consistent. And we've decided to do this in two ways: one is we'll hold clarifying questions for a while until sufficient learning is in place. When is this? We think it's about 300 to 500 applications, so essentially the size, in the old batch days the size of the first batch. Then we can spread those lesser number out across the table, figure out that we're far down enough along the learning curve and go.

The second thing we want to ensure is that when we ask clarifying questions that they're very, very clear to applicants; that their responses the evaluators get back

are the responses that are anticipated. And so we've decided that we should conduct a pilot round of clarifying questions for a very limited number of applicants. That way we can ask questions, get the answers back and see that the questions were worded appropriately. I'm going to talk more about this pilot program in just a minute but I put this other slide in here first, so we're going to talk about specifics with regard to early evaluation observations.

So for financial evaluations, most of the applications will require at least one clarifying question, and you can see that the answer here is 90%. We're anticipating that conversely, 10% or so of the applications based on what we've done so far will require no clarifying questions. I want to say, though, and what's stated in the paper is that the other results that have been reported to us by the evaluators are the clarifying questions are of a nature that they expect that the applications will generally pass after the clarifying questions. So the clarifying questions are of a nature that there's been an omission or some sort of technical error in most cases that can be rectified through the clarifying question process and result in a pass.

So to recap this, which is very important I think: most applications will receive clarifying questions. We expect the clarifying questions to be of a nature that will enable most applicants to pass. So an example of a clarifying question and where most of them will occur – in the letters of credit or in the continuing operations instrument: we think many of these might have to be amended or reissued. We talked at great length with our evaluators on this issue. These are very important documents.

We think this Question #50 is the most important one in the whole Guidebook as far as providing protection for applicants going forward. And many, many of the applicants went to a great deal of effort to secure letters of credit. Because these are legal documents we think it's important to get them right. So some of the issues with the letters of credit have to do with who the beneficiary of the letter of credit is – so it's not in line with the Guidebook; or in certain cases where it's not in line that's allowed but something else has to be clarified.

We have to ensure that the release of funds is unconditional. There's even incorrect spellings of "ICANN" or other parts of it that need to be rectified. So as I said, we think the reissuing of these will clear up these problems. We recognize the effort that's been gone to in securing letters of credit, and so generally speaking, letters of credit that have to be reissued would still be eligible for three points under the Guidebook scoring in most cases.

Similarly, over 40% of the applications require clarifying questions in the technical area, and again, these are specifics having to do with certain questions. We think it's really important that the Guidebook questions are answered according to the criteria, so where in many cases an applicant has demonstrated a capability that's generally acceptable but hasn't met the criteria – so we're going to go back and ask them to do that.

So one example are security policies that are required. In some cases applicants have posted the security policies of the backend provider and it's clear that the applicant doesn't intend to implement all the aspects of the backend provider's security policies. It's just somebody else's security policy, so we'll want to know what aspects of the security policies that applicant intends to adopt and make their own. Similarly we seek assurances that independent security assessments required for two points in Question #30 are truly independent, so we might seek additional clarification for that.

Another example where there's a type of clarifying question required are in geographical names. Of the self-designated geographical name applications, almost half of the ones so far – and it's a pretty small sample – don't have the accompanying letters of governmental support. The Guidebook anticipates this and provides a 90-day period in initial evaluation for those letters to be secured. So we expect those to be cleared up, too.

Alright, now I want to talk a little bit about the pilot program of clarifying questions. This is our effort to ensure that we can release the clarifying questions earlier rather than later in a way that the questions are worded appropriately for applicants to understand. Like I said, we've got very sharp

people that are developing these questions and developing them in teams, but we think it's really important to release a set for somebody outside the evaluator environment to ensure that we're speaking in plain English in a way that can be understood by applicants no matter where their geographic location is.

So approximately 50 applications have been selected by the evaluators for this effort. The way they were selected is they were selected out of the early evaluations that are already done, and then they were selected in order to provide a broad cross-section of the type of applicant. So here's the aspect of this pilot program.

The clarifying questions will be pushed out to applicants through the Customer Service portal, not through TAS, to selected applicants. The applicants will have two weeks to respond, and so if your answer isn't ready in two weeks we'd seek some sort of response that indicates you understand the question and how you would go about answering it. We want to hold the time to two weeks because the goal is to get the clarifying question right; not for applicants to have all the right answers at this stage.

So let me restate that, that no formal actions are required from the applicants. So for these pilot CQs we'd ask you not to, you know, you don't need to reissue your continuing operations instrument or letter of credit at this stage if you don't want – that's not what we're seeking because these clarifying questions will be reissued through TAS when all the clarifying questions are normally asked – and the applicant will be asked to re-answer them. We expect that it would be the same but the whole purpose of this round is to see if we need to tone up the questions somehow.

The last point I want to make about the pilot program is that it's optional, so if you're selected to be part of this pilot program and you don't want to be that's fine. There's no negative or positive effects on any applicant for participating in this pilot program.

So I'll talk about metering and batching for a bit. As you know, batching – I'm going to assume that this group has read all of the batching stuff that's been

printed through the ages. The concept of batching has been part of the Applicant Guidebook since the first draft and it's there to accomplish three goals: to manage better the evaluation process, keeping spans of control correct; release evaluation results according to a predictable schedule; and then finally, delegating or moving into the delegation process TLDs that are rated acceptable to the technical community consistent with our root scaling obligations.

Now there's been some discussion whether batching is required at all because some natural smoothing will occur: some applications will be objected to, some will go into extended evaluation, many are in contention. Nonetheless, we would expect that essentially 1000 or more TLD applications would be ready for the pre-delegation phases at essentially the same time if all the evaluation results are processed at once. And so we still require some method to meter applications into the pre-delegation or delegation process.

I just want to say a word about the Board input. This is not new but I wanted to capture what the Board heard the community say in Prague. So for those who attended Prague and contributed to the discussion the Board heard you say these six things, that the batching solution has to be equitable; that evaluation results should be announced at the same time; that applications should proceed to delegation without undue delays – meaning that evaluations should occur as quickly as possible; delegations to the root must be at a smooth rate, must not exceed 1000 a year. And then that input from the GAC stated that early warnings are expected shortly after the Toronto ICANN meeting which is in early October, 2012.

And then regarding GAC advice, the GAC has said – and it's quoted in the paper that has been distributed and I think it's really important to stick to their exact words, that consideration of GAC issues concerning GAC advice on contentious applications is not expected before Beijing. So that's what the Board stated in Prague. Their direction to us and that they announced was to terminate the digital archery process, so maybe that's the last time you'll hear me say those words.

We want to evaluate and move all applications to the next phase as soon as is practicable. They voted to not make a decision in Prague but to take all the ideas and build a roadmap. So that comment period on batching is still open, and then set a New gTLD Committee to assess progress. The first progress report by the Board was posted I think last week.

So the solution to this problem is truly going to be generated by essentially the group sitting on this call and others that want to participate. It's an issue without current resolution. The comment period opened for this on July 29th. At the bottom of it were three specific questions and for those that contribute, it would be great to say "The answer to #1 is this, #2 is this, #3 is this." It will help us organize the thoughts.

The request for comment, to restate, really indicates the need for some sort of metering method to meet those process, capacity and root scaling obligations, so how can we do this? What are the choices in this discussion? How can we meter or smooth out the processing of applications? Well, if you think about the release of evaluations, that can either occur upstream by releasing some of the evaluation results early and we'd need an equitable method for doing that; or metering the applications somehow through the pre-delegation phases – that's through contract execution and pre-delegation testing. And so the questions at the end of the comment solicitation really go to those two things.

So we plan to release an updated timeline about metering/batching shortly and that roadmap will indicate how this batching discussion fits within the evaluation process and how our projected timing of the resolution of it fits into the evaluation process. Some of the first steps of it are indicated here. The comment period closes on August 20th and then we put in... Invention here is on the critical path so it's tough to make a timeline, but we put in a six-week period for solution development. That period will include discussion such as this except hopefully I won't be talking so much, but some sort of interactive session with the applicants and the other interested community members; and to solutions that were written, and a normalization of them and the plusses and

minuses of those so we can sort of drive towards a consensus on a batching solution. So expect to see a meeting notice rather early in that six-week period.

The week after that will be used to summarize the results of that, publish them; publish them to the Board in the form of an informational paper so they can see the status. And that paper will indicate whether there's community consensus around a decision, discuss the viability of the decision, risks associated with it, the implication for applicants. And then post that time we'll either at that stage have a solution we think is viable and implement it or that will trigger another round of community discussion. We think that one other round would be the end. And like I said, I understand this timetable is sort of open-ended and we're working hard. Over the next few days I am sure you're going to see a more detailed timetable and one that shows how this fits in with the application process.

So what are some of the key dates going forward? Well, the application comment period closes August 12th, so I want to say two things about this. One is the application comment period on each application never closes; it'll remain open for the whole time up until the delegation of TLDs. However, the Guidebook states that comments received during the first 60 days will be made available to the evaluators. So we have a mechanism by which we will forward the comments received in the first 60 days to evaluators. That's the first thing I want to say about that.

The second thing I want to say about that is that we've received requests to extend that 60-day window. So while the comment period always remains open and never closes, we've received requests that because of the large number of applications and the difficulty of some organizations developing consensus in their organization about consensus. They've asked for an extension of that 60-day window. So we're inclined at this point to grant that request but we're still talking about it.

We've met with our evaluation panels, looked at their timeframes and determined that an extension of that window would not affect the timing of

processing applications. And given the requests and no good reason then to not extend it, we've determined a timeframe that we shouldn't go past so that the schedule will not be impacted. So you'll probably see an announcement about that.

The metering/batching period comment closes August 20th, like I said, and that will trigger a period of intensive community ICANN work on solution generation. In October, 2012, around the time of the Toronto meeting, GAC early warnings are expected. Seven months after the application window opens the objection window will close, so that's independent of GAC advice but the seven-month period remains the time for objections to be lodged. In April around the time of the Beijing meeting we expect the GAC communication on considerations for GAC advice.

And then finally in the June/July timeframe we expect all initial evaluations to be completed, so I wanted to talk about that a little bit now and there's some detail about this in the paper. So the Guidebook states that we would process 500 applications every five months and so when we first realized there were 1930 applications that translates into 15 to 19 months. We've been working very diligently with the evaluators to reduce that time. That time's now expected to be 11 to 12 months. As I stated earlier, we reduced that time by promoting the best evaluators to lead positions so they can promulgate their efficiencies throughout the evaluation and by expanding the evaluation staff.

We're ramping up to a rate of 300 applications per month but that will take some time as we want to ensure the consistency of clarifying questions that are very important to applicants, and ensure consistency of results. So we're spending a lot of high-level partner time at all of these firms doing that work now. This does not mean we will not continue to look for additional efficiencies – in fact, we shall. We introduced all of these efficiencies with very little knowledge of how long evaluations will actually take, and so as we go through these next 250 applications that were just allocated last week we will continue to learn from the process and see if we can drive further efficiencies. I want you to know that we talk about this just about every single day with the leads of the

evaluation panels, and around the ICANN office the whiteboards are full of timelines as we continue to hone this schedule.

So I thought I would talk for about 45 minutes and I did which is pretty good for me. And I know I've been staring at the slides and my notes to get through the talk. I've been watching people around me type and I've seen text fly by but I'm unable to do a couple things at once so I don't know what questions have been asked and answered to far. We have a phone mechanism whereby we can take questions so we'll start to take those questions now, and we'll continue to monitor the chat room and answer questions.

Trang Nguyen:

If you're on the audio bridge and would like to ask a question you can press *1 to get into the queue.

Kurt Pritz:

So one question we have in the chat room is why don't we send clarifying questions as soon as possible? So "as soon as possible" has many connotations and we intend to send clarifying questions as soon as possible. The overriding concern is to make sure they're consistent, is to evaluate enough applications so we make sure that applications with the same prose – one evaluated five months apart from the other one by a different firm – gets exactly or nearly the same clarifying question.

In order to do that we're having this pilot round of CQs. We expect those CQs to be issued the week of August 27th, so in a couple weeks' time you'll see this pilot round of CQs that will indicate a flavor for that. And we are motivated to get the CQs done as soon as possible.

So we have some questions on the phone; there's another question in the chat room: "Is it okay if the bank loses it's A rating after issuing the LOC?" So the answer, I rarely get to do this but the answer to that is yes. This is about securing an A rated bank at the time you got the LOC. We understand a lot of banks were de-rated recently and applicants won't be penalized for that.

Operator: Roger Carney, your line is open.

Roger Carney: Yeah, I just wanted a clarification on the objection filing period. I know the Guidebook says approximately seven months but then the next paragraph says that it will go until two weeks after initial evaluation results. Can you clarify that?

Kurt Pritz: Yes, it's intended to leave the objection period open for seven months so it would close around January 12, 2013.

Roger Carney: So the next paragraph is incorrect, then?

Kurt Pritz: Right, so it's not incorrect. The Guidebook was written around a single batch and about 500 applications, and the genesis of this was that the objection period was going to be six months originally. Then when we did the timeframes and realized evaluation results would be ready in six-and-a-half months we decided to leave the objection window open for an extra month so that there'd be some visibility as to what objections passed or failed. When we realized the evaluation period might be longer than a year we weighed whether the objection period should be open for over a year. At the end of the day we decided not to do that, and that is due to our goals.

We weighed the decision against the goals of the program which are really about fairness, transparency, predictability and smooth operation and we're concerned that applicants would have operations running for over a year while an objector would determine to make an objection but keep the objection in their pocket for a long period of time to see if the application passed or failed. And we didn't

think that was fair to the applicant to not know that there is an objection out there and lack some transparency also.

Roger Carney: Okay, thanks for the clarification.

Kurt Pritz: I have a lot more to say about it, but that's good. We also think it's important to guarantee the smooth operation of the program and we have these objection dispute resolution panels that have been carefully put together at some major firms. And to ensure their smooth operation, keeping them together for a shorter period of time is conducive to that.

Roger Carney: Great, thank you.

Operator: Charles Gomes, your line is open. Please unmute your line.

Chuck Gomes: Thanks, Kurt, for the good presentation and for the team that contributed to this. I'm not sure why I can't get into the chat so I called in for this. Will responses for the request for public comment regarding metering be publicly posted, summarized and analyzed as is normally done for public comment periods?

Trang Nguyen: Hi Chuck, this is Trang. Yes, the comments are currently publicly posted and yes, we will be summarizing, analyzing and summarizing and posting those analyses as well.

Kurt Pritz: And Chuck, thanks for the question. I think that we'll kick off that community discussion we'll have on trying to drive to consensus on a solution that that summarization will be the document we'll use for that.

Chuck Gomes: Thanks. I have one more request if that's possible. Please, could you describe more specifically what incentives are given to award high-performing evaluators if that's possible?

Kurt Pritz: Every contract with evaluation panels is different because the evaluation panels are in competition with one another. The number of applications awarded to each of the application panels across I think all of the evaluation types – except string similarity, where one panel gets them all necessarily – the allocations are based on a formula. And a part of that formula is the ratio of the prices that the evaluation panels give us. And after tranches, because I want to use a word other than “batch,” of applications are allocated to panels they can regularly adjust their pricing so that as we move forward they can gain more applications.

Another ratio in the award formula is based on quality and the quality program is quite intensive. There's an in-process quality step that feeds back discrepancies to evaluators immediately, and then there's another quality process that reviews applications on a sample basis and ensures after the fact that all the processes and procedures have been complied with. And it's this latter quality measure that becomes part of the ratio for awarding additional applications to evaluators.

So they're essentially in competition for more business, but then other than that the pricing schemes are proprietary to the evaluators who have bid in competition with one another.

Chuck Gomes: Thanks, Kurt, that's helpful.

Operator: Werner Staub, your line is open. Please unmute your line.

Werner Staub: Sorry, I was confused with the system. Can you hear me?

Kurt Pritz: Yes, Werner, thank you.

Werner Staub: Okay. The question is about objections again. The [caller] said that the party against which the objection is raised will be informed, however I haven't seen this published and specifically I don't quite understand how quickly the objection can actually be processed. Do we still have to wait until the end of the evaluation period for the panel to actually look at the objection? It strikes me that if that is true it would actually mean that all the respondents would be [a great] objection to handle at once and that many objections that would have been able to be avoided would have to be done anyway and actually increase the amount of work. So would it be possible to get objections through immediately after they have been submitted early in the evaluation period?

Kurt Pritz: That's a really good question, and I think so. I think that if the parties agree that they want to resolve the objection that they could go do that even before initial evaluation results are announced in order to clear the objection. But so I started that sentence with "I think" and now that the initial evaluation period is longer we want to give thought to that and publish, augment our objection and dispute resolution procedures that are published to accommodate that and make sure that's clear. So thanks for that good comment. We've had the same discussion ourselves here; as recently as last night we were talking about it.

I have one example of such a question which as (inaudible) indicated the number of bands or (inaudible) the applicants. It is probably best for them to say who they consider to be their direct competitors that they would not like to go ahead if the TLD goes live after their competitor; so again, for additional questions and answers maybe for the applicants but not necessarily clarifying questions.

Kurt Pritz:

So let me try to capture your question, and I actually want you to work with us offline so we make sure we understand your issue completely. Are you saying that the questions we're issuing or the communications we're issuing through the Customer Service Center are difficult to understand so it would be better to put those out through TAS?

Werner Staub:

Yes, that's what I said. That was [my one] concern.

Trang Nguyen:

Thank you, we'll work on that. Thanks for your feedback. I don't mean to say that we're going to be issuing all communications out through TAS but that we will work on improving the templates and the way that we present the information back out to applicants when we're contacting them via the CSC.

Kurt Pritz:

Right, Trang, and if you would work with Werner somehow to understand where the confusion arises offline because this is kind of an awkward communications link, and then we'll use that feedback. Okay, thank you Werner.

So there's a question in the chat room about the 1000 delegations per year limit, and Patrik Fältström came to the microphone – he's the Chair of SSAC – and commented in Prague that, well I'll just read the question: "One thousand is a

made-up figure that sounds reasonable but any other amount that does not overload the root is fine.” So I think... So Patrik is undeniably correct. The 1000 delegations per year number was carefully negotiated in the formulation of the Guidebook. I think that we can’t at this time say that we would exceed that number, but if during the delegation process we measure how the provisioning process – which is the IANA process – and the delegation process, and the sending out in the root zone responds correctly we could have a discussion with the technical community at that time about ramping up.

So I don’t think we can commit to ramping up that number now, but we can commit to monitoring root zone performance as we have for the GAC and if we determine early on that that number can be increased that conclusion will be made with Patrik and other members of the technical community. So we’re all for working on that but I think it has to be worked in that order.

So there’s a question about the clarifying question pilot panel. So the participants in the pilot, some selection has to be made and the evaluators determined that 50 was a good number of applications because that would provide enough clarifying questions to get to the learnings we need to get to on the wording of the clarifying questions. Participation is voluntary, meaning that if you’re selected and you don’t want to participate that’s fine. And so it’s not voluntary from a “Hold up your hand, I’ll volunteer” standpoint but because that process would probably take too long and alacrity is an issue for us. So if you’re selected and do want to participate that’s fine. We think that participation neither advantages nor disadvantages any applications – the clarifying questions will be asked again.

Operator:

[Rashid Madran], your line is open. Please unmute your line.

[Rashid Madran]:

Thank you, good morning. Firstly thank you, Kurt, for the information you’ve provided so far. It’s been very helpful. I’ve got two questions here: first off

with regards to string similarity, when does ICANN expect the contention sets to be published? And the second question: what is the status regarding the requests for changes to applications and expected corrections, and when can an applicant expect to know whether a change request has been accepted or rejected?

Kurt Pritz:

Thank you for those. We think the string similarity, the publication of strings that are identical is evident on its face. The string similarity panel will publish its results, and it is scheduled to publish its results four-and-a-half months after they had the strings, and they had the strings the day after the reveal date; and so four-and-a-half months from June 13th. And then there'll be some processing time for ICANN to put that, to review those results and put it in publishable form. So it'll be sometime after that four-and-a-half month period – not too long, and now that we've worked with the evaluation panel on how they're going to word the results we will develop a process for reviewing those results and get back with a more specific date, but sometime after that four-and-a-half month period.

With regard to the requests for change, without repeating myself you'd know that we've developed a procedure and criteria for measuring those because we've got 49 requests for change after the application window closed and we want to make sure that we process them in a consistent way and in a fair way. And so you'll see that procedure published in the next several days. And then we've reviewed all of them in some way, shape or form so you'll see the results from over half of them days after that; and probably the results of the next half a week or two after that.

[Rashid Madran]:

Thank you.

Kurt Pritz:

So there's a question online about an announcement for the extension of the comment period. So if there's an announcement about that, our plan is to

announce that Friday. I just want to point out also that going around the room here, that with regard to the pilot program for clarifying questions, those questions will have to do with the financial and technical reviews only.

If you want to bear with me I'm just scanning down the list of questions that have come in the chat room – we've just printed them out. So there's one question about "Can you clarify if evaluators will see letters of support for community-based applications if they are submitted later in the process?" The answer to that is yes, that the community priority evaluation anticipates augmentation of the materials that support the community application. Because the community priority evaluation happens rarely we didn't see the need to have all the support documented in the initial application; and so there will be an opportunity to provide additional letters of support later.

We talked about the publication of contention sets – they will be published prior to the publication of full IE results.

There's a question that's asked: "Does 'proceed to delegation phase' mean the separate phase after contract execution?" And so what occurs is, after an application passes initial evaluation and any objections, there's no objections or objections are cleared, or community priority is cleared then it goes to the pre-delegation phase. So that's two steps: one is execution of an agreement with ICANN, and the second is completion of the pre-delegation testing. After those two steps applications go to delegation which is the IANA phase.

When I talked about publishing a timeline shortly and how the batching discussion will blend in with the rest of the process we'll make that clear in that timeline that there's the contract execution and pre-delegation testing steps that precede the delegation. But those steps are also in the Guidebook.

So there's a question that's kind of a hard one. It's from Brett and it says "When will the first applications be complete-complete-complete?" So the vague answer to that has to do with when we will feel comfortable releasing clarifying questions that we think we've normalized the process enough that they're consistent. Our timelines indicate that first applications will be

complete-complete-complete this calendar year in keeping with the original five-month window, but our primary goals are of course consistency and quality, and then we want to manage the applications in a way that gets them all done the soonest.

So there's a question about letters of credit: "Which criteria would ICANN use to determine which letters of credit are okay?" So each evaluation really goes right back to the Guidebook, and when evaluators have questions about specific answers and how they should be evaluated, the teams of evaluators get together and read the Guidebook carefully. So while they try to make standards that are straightforward for easy passes at the end the Guidebook is the standard for measuring applications. And so reading the requirements for the LOC in the Guidebook carefully is the ultimate criteria.

So for the LOC, for example, you'll see that the LOC, the answer to that question requires – and I'm doing this off the top of my head, so it's extremely dangerous, but it requires a calculation first of the amount required and then securing an LOC that covers that amount. So those are at least two of the steps that are required for an LOC question.

There's a question that asks "How many GAC votes does it take for an application to be cancelled?" So the GAC has published processes and standards for how it arrives at consensus and its method for arriving at consensus, and how it gives its advice to the Board. And so what the Guidebook describes is how the Board would consider GAC advice on specific applications.

So I don't want to speak for the GAC but it's not a voting mechanism or an ability to cancel; it's really a process by which the GAC gives advice to the Board and the process by which the Board considers that advice. And of course the Board takes the advice of the GAC very carefully, and recently ICANN published a GAC register where all GAC advice will be housed. And so we will be reporting to applicants any GAC early warnings or GAC advice received, but also there's an independent register for that.

There's a question: "Can the independent objector object to applications based on public comments received after the August 12th deadline?" The answer to that is yes, and the independent objector can rely on any public comment inside or outside the process I think in order to make his objections – Professor [Poley]. Is that it, then?

So I'm reading down the list of questions. I'm getting from this that the phone way of asking questions really didn't work well and so we will work on that for next time. I beg your indulgence while I scan down the list of questions, and I'm kind of making judgments as to what questions I've answered already and what not.

So there's a question on when will the completeness check be done, and the completeness check is done and all the applications, 1927 of them are in initial evaluation. Is there a question on the phone?

Operator: Edmon Chung.

Edmon Chung: Thank you, just a quick question. Kurt, you mentioned that an amendment process will be posted shortly. I wondered if you meant for it to be posted for public comments first and then implemented or posted and implemented immediately?

Kurt Pritz: It's intended to be posted and implemented. So we understand that it's very important to resolve these issues quickly for applicants and provide certainty, and so the executive function at ICANN undertook to arrive at a process that is equitable. And so it will be posted and used.

So there's a question about GAC advice and how the affected applicant will have a chance to defend themselves. I think the Guidebook provides for the

ability of the applicant to furnish materials to the Board in the face of GAC advice about a specific objection.

Regarding the process for asking clarifying questions, we will not send all the clarifying questions to all the applicants at the same time. We're striving toward making the process efficient. And so while we considered publishing all the clarifying questions at the same time as the sure way to make them perfectly consistent we decided instead that we could make them consistent by holding them for a while but then handing them out as they're developed so we could get an even workflow going – and in that way process the applications faster.

There's a question about background screening and the results announced. They'll certainly be announced. I don't know that schedule exactly. And so Price Waterhouse is performing those background checks and so we'll get a timeframe out.

“How would ICANN deal with an application for contended strings where two applicants have now partnered up to pursue the string together?” It was fully anticipated that contending applicants would work in a way to settle the contention between them. The key to that I think is that the resolution is done in a way that either does not affect the application itself – that the finances and such of the application remain the same – or that the resulting entity report changes in their application.

The Guidebook states that changes to an application might trigger reevaluation and changes at a late date where evaluation panels aren't in place anymore might require a delay to the second round. So I think that it's the applicant's duty to report changes and think it's better to report those changes sooner so that they can be most easily accommodated by the evaluation panel without delay and without additional cost.

So there's one question about “Please be prepared to better handle questions the next time,” so I don't know if that means logistically or knowledge-wise. But my knowledge is limited but our ability to change the logistics of this call and

how we do this webinar can be changed. So comments about improving the communications or how we do this would be great.

There's a statement that "Responses to questions posted in chat and by phone would be greatly appreciated." The call is being recorded and it will be embarrassing for me to have it transcribed but we can do that, too.

These are harder questions: "So if two strings that aren't an exact match are in a contention set, can both applicants provide evidence to ICANN to support their assertion that the strings can coexist?" The answer to that is no in the existing Guidebook, and I think it's a policy question for how those strings should be managed and coexist. And the fact that they have been determined to be similar means that one string won't be delegated. So that problem can be worked so in the future similar strings can coexist, but I think that there's some policy questions that should be settled by the community before confusingly similar strings be delegated.

"What if contention sets get resolved and a new business plan is done – would they resubmit the whole application?" So the answer to that I think is "It depends." It depends on who the applying entity is, how they're affected and how the applicant manages that.

Extended evaluation occurs for those applications that don't pass initial evaluation. And so after the initial evaluation results are announced the applicants will have a two-week time period to collect at no cost to undertake an extended evaluation. They will get to provide additional clarifying information in their application as part of that application to start the extended evaluation process.

So there's a question about "If there's no agreed method for batching or metering, what order are applications currently being assessed in?" So applications are currently being assessed in a way that facilitates the efficient processing of those applications. So at first we're evaluating different types of applications in order to get consistency across panels. Then we're quickly moving to allocating applications so that efficiencies can be gained from similar

answers or similar background providers. That’s how applications are being allocated.

I think the question about batching really goes to how the results will be announced, and I think the answer to that right now is that all the initial evaluation results will be announced at the same time and that’s currently projected for about June. If the batching discussion that we have coming up results in a way to release some of those results earlier based on an equitable method where there’s some consensus around it then we can release some of the results earlier and start that pre-delegation process earlier.

“How will objection fees be refunded if an objected-to application does not pass IE?” That will be done through the... All funds for objections go right to the dispute resolution provider, and the rules for the objection in dispute resolution include how fees are refunded.

“Kurt, there needs to be a mechanism for applicants of similar strings to communicate with ICANN and evaluators.” So we’ll take that under advisement.

We’re getting to the close of the time period allowed. I’m just going to scan through the rest of the questions. So there’s not an appeal mechanism for a decision regarding non-exact matches. There is a secondary review process so that all applications that are deemed to be so similar that it’s likely that user confusion would result will be referred to another evaluator for confirmation before such a finding is made. We were asked that question seven times.

I don’t know if Trang or anyone else has some closing statements. I really want to hear about how the mechanism and the logistics for this session went, how we can improve it next time; the forms of communication that you think are most effective. So we think that regular reports, we think regular updates to the webpage – the gTLD microsite – and sessions such as this are the path for this. We’ll certainly have face-to-face sessions in ICANN meetings, too. We plan to have a session to discuss the thing formerly known as “batching.”

And I really want to thank you for your participation this morning here, whatever time of day it is where you are. So again, thanks very much. It's really hard for somebody like me to talk to somebody but I hope I was comprehensible, and I'll be talking with you soon. Thanks very much.

[End of Transcript]

Reference Material 18.

INFORMATION PAPER FOR APPLICANTS: NEW gTLD PROGRAM UPDATE

Table of Contents

Executive Summary.....	1
Application Statistics.....	1
Application Change Requests	2
Application Comments.....	2
Evaluation Progress	2
Clarifying Question Pilot.....	3
101 Comments on Batching/Metering Received	4
New gTLD Sessions in Toronto	5
Key Dates – Subject to change	5

Executive Summary

This paper is for information only and describes the work done since the last New gTLD applicant webinar on 9 August 2012. It contains a summary of application statistics, information on the process for changes to applications, and a reminder that 26 September 2012 is the last date to submit Application Comments.

The clarifying question pilot program is underway with 41 applications participating.

The issue of batching/metering applications drew 101 comments from members of the community, and a consultation on the issue is planned for 12 September 2012.

ICANN’s meeting in Toronto this October will feature several sessions of interest to new gTLD applicants and others, including sessions on internationalized domain names, universal acceptance of top-level domains (TLDs), and more.

We’ve included a list of key program dates at the end for your convenience.

Application Statistics

As of 5 September 2012, applicants have notified us of their intent to withdraw seven applications from the New gTLD Program. Four applications have completed the withdrawal process:

.AND – Charleston Road Registry Inc.

.ARE – Charleston Road Registry Inc.

.EST – Charleston Road Registry Inc.

.KSB - KSB Aktiengesellschaft

No objections have been submitted.

Applicants have submitted a total of 57 application change requests.

Application Change Requests

We have received 57 application change requests. ICANN published a [process and criteria for evaluating application change requests](#) to ensure consistency, predictability and transparency.

Amended applications will be held for 30 days to allow for comments via the Application Comment Forum. Any approved changes will be publicly posted, unless those changes were made to the confidential portion of the application.

Application Comments

To ensure the public has the opportunity to comment on new gTLD application materials, the Application Comment Forum is open for contributions for program's duration. However, to be sure that comments are considered as the application is evaluated, it is important to submit them no later than Wednesday, 26 September 2012.

Comments are an important part of the evaluation process, and in cases where a comment has impacted scoring, evaluators will seek clarification from the applicant.

Evaluation Progress

At this time applications are being distributed to the evaluation panels (Financial, Technical, String Similarity, Domain Name System (DNS) Stability, and Geographic Names evaluation panels) in a way that keeps each panel fully tasked at a manageable and economical rate. Additionally, the applications are grouped to take advantage of similarities, such as those coming from the same applicant or having the same "back-end provider."

The following table indicates the work done to date. As posted previously, financial and technical evaluation panels (the most complex evaluations) are planning to reach a processing rate of 300 applications per month. We continue to look for efficiencies that will shorten the projected processing times.

Panel	Target Completion	Apps Assigned	Apps in Evaluation	Preliminary App Results ¹
Financial	Jun-13	602	461	141
Technical and Operations	Jun-13	602	475	127
Geographic Names	Nov-12 ²	all	476	65
String Similarity ³	Oct-12	all	824	585
Registry Services	Jan-13	all	all	0
DNS Stability	Oct-12	all	all	0

¹ These numbers represent completed applications or applications with queued clarifying questions. They are subject to change due to application comments and/or change requests.

² Geographic Name evaluation is targeted to be completed by Nov-12, but applicants will receive more time to supply the letters of support.

³ String Similarity statistics are based on unique string counts, not total applications.

Clarifying Question Pilot

ICANN's pilot program to test the effectiveness of "clarifying" questions rolled out on Friday, 31 August. Evaluations done to date indicate that most applicants will be required to respond to one or more clarifying questions. More than 40 applicants volunteered to participate in the pilot program, designed to ensure questions developed by the evaluators are clear, concise and consistent.

The volunteer participants have two weeks to review the sample clarifying questions and provide answers, and are asked to submit their answers no later than Monday, 17 September at 23:59 UTC. Clarifying questions sent through the pilot process are actual questions based on the review of applications. However, responses sent through the pilot process will not be treated as part of the application and will not be counted toward the evaluation scoring. Participants will be issued official clarifying questions through TAS, which may or may not be different from the pilot clarifying questions, at a later time. Pilot participants need not take formal actions to obtain documentation such as letters of credit, security policies or financial statements at this time. Those that did not volunteer for the pilot program will not have their application processing impacted.

Evaluators only issued clarifying questions when more information was needed in order to give the applicant a passing score. If an application needs additional points overall to pass evaluation, the evaluators are directed to issue clarifying questions on all responses that can earn a score of two points.

Areas generating the most common clarifying questions include:

- Technical evaluation requirements:
 - EPP extension documentation for IDNs (Question 25)
 - Complete security policy (Question 30)
 - Complete DNSSEC practice statement (Question 43)
- Financial evaluation requirements:
 - Sufficient evidence for conservative costs (Question 47)
 - Sufficient evidence of conservative funding/revenue, particularly segregation of funds (Question 48)
 - Financial instrument must be unconditional (Question 50)

101 Comments on Batching/Metering Received

Members of the community posted more than 100 comments on how ICANN should manage the evaluation process flow. Addressing possible solutions for batching or metering, the comments were posted for the 29 July – 19 August comment period. You can view the comments received at <http://mm.icann.org/pipermail/newgtld-input/2012/thread.html>.

Batching and/or metering are necessary for management of the application evaluation process and meeting root zone scaling requirements. These methods would also enable the release of evaluation results to applicants according to a predictable schedule.

Much of the input received suggests different ways for prioritizing evaluation or delegation by category, such as priority for internationalized domain names (IDNs), geographic names or community applications. Also suggested were prioritizing uncontested new gTLDs, those from developing countries, those promoting diversity, those in the public interest, closed registry, brands and those that are true generics. Other suggestions included offering applicants the opportunity to opt-out or to select their own timing; grouping like applications together; prioritizing by readiness to contract or launch; round robin selection by category or regions; or prioritizing by number of clarifying questions.

A consultation on batching/metering will be held on Wednesday, 12 September.

New gTLD Sessions in Toronto

The New gTLD Program will be the focus of several sessions during ICANN's meeting in Toronto, Canada, 14-19 October 2012. In addition to update sessions on batching/metering and the overall program, staff will host a workshop on the IDN label rule set process and an update on the IDN Variant project, which was created to build requirements for dealing with variant character issues in Arabic, Chinese, Cyrillic, Devanagari, Greek and Latin scripts. Other sessions include ones on the universal acceptance of all TLDs, Uniform Rapid Suspension and planning for the next round of new gTLDs. Two sessions will focus on different aspects of the Trademark Clearinghouse: one on sunrise and general registrations and the second about rules on word mark and matching rules implementation. For more information, go to the meeting web site at <http://toronto45.icann.org/>.

Key Dates – Subject to change

26 September 2012	Application Comment Period closes
October 2012 (or shortly thereafter)	Governmental Advisory Committee (GAC) Early Warning expected
12 January 2013	Objection Period closes
April 2013	GAC communicates considerations on GAC Advice
June/July 2013	All initial evaluations complete (seeking additional efficiencies).

Reference Material 19.

**Applicant Update Webinar: Application Evaluation Progress of 6 September 2012 (recording),
unofficial transcript of 00:48:10 to 00:48:57**

[Start of transcript: 00:48:13]

ICANN Staff: When will ICANN post the results of the string similarity evaluations?

Kurt Pritz¹: So we, (euhm) the string similarity evaluations were on an earlier slide. We expect to receive them middle or late October and we will take probably two to three weeks after that in order to get the results and do analyses, get the results in publishable form and, get them out. So I would say late October, early November as we are able to nail down the date with the panel. We've developed our process for taking evaluation results and getting them out to you. We'll give you a very specific date.

[End of transcript: 00:48:57]

¹ Kurt Pritz was Senior Vice-President at ICANN at the time of this recording

Reference Material 20.

INFORMATION PAPER: NEW GTLD UPDATE (TORONTO SESSION)

Table of Contents

Executive Summary	1
Application Statistics	2
Progress Report by Panel	3
Clarifying Question Pilot	6
Objections	8
Customer Service Update	8
Communications	9
Applicant Support Update	10
EBERO	10

Executive Summary

This paper is for information only and provides an update since the September 6 webinar.

A summary of application statistics (withdrawals, objections, change requests, application comments) is provided. There is also a progress report on the work that each panel is performing.

The clarifying question pilot concluded on September 17 with 36 participants providing responses. A summary and analysis of the survey responses are included in this paper.

The application comment period closed on September 26. There were 8956 comments that were directed to the evaluation panels. The panels will be performing due diligence on these comments and will issue clarifying questions if a comment has the potential to change the score of an application.

The customer service center has received 128 requests from applicants to change certain parts of their applications. These requests are being processed and will be posted soon.

Customer service has implemented some changes based on feedback received.

The communications team has focused on providing applicants with updates during the evaluation process, and has plans to educating Internet users about the new gTLD program.

The Support Applicant Review Panel (SARP) has been convened to review applications from applicants seeking financial assistance.

Work on EBERO is continuing to progress forward. The goal is to select 3-4 service providers. We expect to have the contracted EBEROs announced and onboard by May 2013.

Application Statistics

As of 8 October 2012, there are 7 requests for withdrawal of applications. Six of these 7 requests have completed processing and now officially reflect a status of withdrawn:

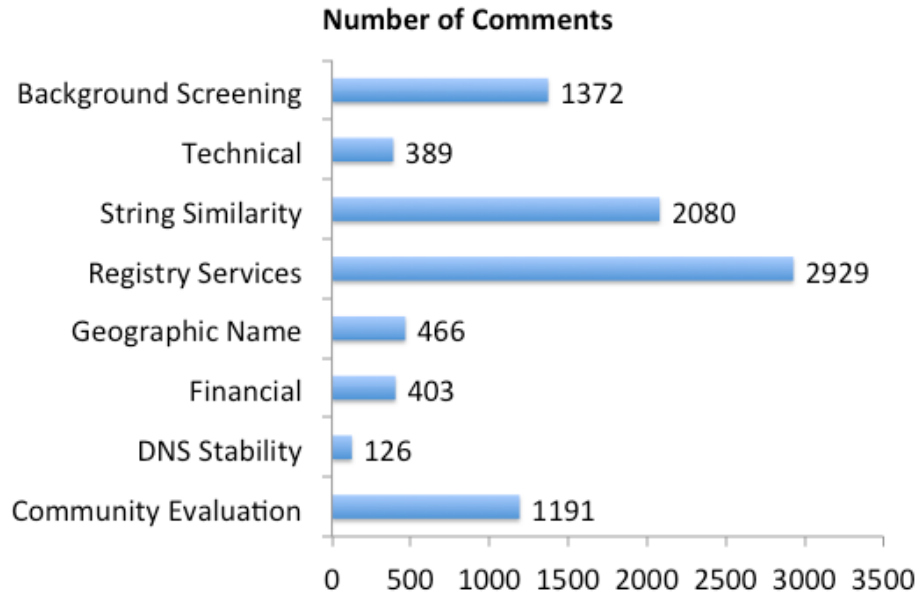
- AND
- ARE
- EST
- CHATR
- KSB
- CIALIS

There are no objections filed as of the date of this paper.

Applicants have submitted 128 application change requests. Of these:

- 33 have completed the review process and have all been approved. These changes are being made and will be posted soon.
- 73 are in the process of being reviewed.
- 22 require follow-up with applicants.

The application comment closed on September 26 with a total of 8956 submitted for panel consideration. The breakdown of the application comments is provided in the chart below:



The evaluation panels will consider those comments that were directed to them for the TLD designated.

There will be no response period following the close of the application comment window. However, clarifying questions will be issued to the applicant if a comment has the potential to impact scoring.

Progress Report by Panel

The Geographic Name, String Similarity, DNS Stability, Registry Services, Financial, and Technical panels are continuing their work. The following table provides application processing progress to-date:

Panel	Target Completion	Apps Assigned	Apps in Evaluation	Preliminary App Results ¹
Financial	Jun-13	864	636	228
Technical and Operations	Jun-13	864	630	234
Geographic Names	Nov-12 ²	1916	159	1757
String Similarity ³	Nov-1 ⁴	1407	588	819
Registry Services	Jan-13	all	1865	59
DNS Stability	Oct-12	all	all	0

¹ These numbers represent completed applications or applications with queued clarifying questions. They are subject to change due to application comments and/or change requests.

² Geographic Name evaluation is targeted to be completed by Nov-12, but applicants will receive more time to supply the letters of support.

³ String Similarity statistics are based on unique string counts, not total applications.

⁴ Revised date provided by panel from previous date of Oct-12

As previously mentioned, applications are being allocated to evaluators in a way that takes advantage of similarities such as those coming from the same applicant, or having the same “back-end provider.”

Price Waterhouse Cooper is performing the background screening review. It is expected to complete work in February or March. Review will be performed on:

- The applying entity
- Officers
- Directors
- Major shareholders (15% or more)

If during the review process, this panel determines that additional information is required to complete a meaningful background check, the applicant will be contacted via the clarifying question process. This panel may also reach out to applicants if consent from the applicant is required in order to obtain the necessary information to perform background review.

InterConnect Communications (ICC) is the firm performing string similarity review. Per the Applicant Guidebook, string confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. Performed by expert linguistics, the test is whether a commoner would find a string confusing similar to another. ICC is targeting a completion date of November 1. A second evaluator will then confirm TLDs that are put in a contention set. Publication will follow.

Areas of string similarity review include:

- Applied-for TLDs against existing TLDs, reserved names, and TLDs ineligible for delegation
- Applied-for TLDs against other applied-for TLDs
- Applied-for TLDs against TLDs requested as IDN ccTLDs
- Applied-for 2-character IDN strings against every other single-character and any other 2-character ASCII TLDs

There are 2 possible outcomes of string similarity review:

- Fail if the applied-for TLD is found to be:
 - Confusingly similar to an existing TLD, to one requested as IDN ccTLD, to one-character label in any script, to any possible 2-character ASCII combination
 - On the reserved name or TLD ineligible for delegation list
- Put in a content set if it is found to be confusingly similar to another applied-for TLD

Interisle is the firm performing DNS stability review on the strings themselves and also on proposed registry services. The string review checks to ensure that the applied-for TLD will not cause security and stability issues. (There is a low probability that issues would arise for any applied-for TLD that fully complies with the string requirements in section 2.2.1.3.2 of the Applicant Guidebook. However, in certain instances, extended review of the TLD during Initial Evaluation may be necessary.)

The registry services reviews are performed on the applicant's proposed registry services against criteria in section 2.2.3 of the Applicant Guidebook.

Geographic names review is performed by both ICC and the Economist Intelligence Unit (EIU). This review is performed on all applications to determine whether the applied-for TLD is a geographic name according to section 2.2.1.4.2 of the Applicant Guidebook. In cases where the applied-for TLD is determined to be a geographic name, this panel will determine whether sufficient support is provided.

Support or non-objection letters must express government's support or non-objection to the application and demonstrate the government's understanding of the intended use of the TLD. The letters should demonstrate the government's understanding that the TLD is being sought through the new gTLD process and that the applicant accepts the conditions associated with the new gTLD program.

This panel will begin issuing questions in November to those applicants that have not furnished the requisite documentation. Applicants will have until the end of

Initial Evaluation (June 2013) to provide or amend deficient documentation. If support documentation is not provided or amended by this time, or if revised documentation provided is still deficient, applicants will be notified and given an additional 90 days to comply.

Technical and financial review is performed by three firms: KPMG, Ernst & Young, and JAS Global Advisors. These panels, which represent the most complex evaluations, are preparing to ramp up to a processing rate of 300 applications per month. We anticipate that these panels will reach this processing capacity by January of 2013.

Work is continuing to ensure consistency and quality. These firms are also working on implementing improvements to clarifying questions based on feedback received from the clarifying question pilot.

Clarifying Question Pilot

As previously mentioned, a large number of applications will receive clarifying questions. A clarifying question pilot was held to ensure questions developed by the evaluators are clear, concise and consistent. Clarifying questions and a survey were sent to participants on August 31. Participants were given 2 weeks (until September 17) to provide responses. There were a total of 41 participants that opted to participate in the pilot. Of this number, 36 participants provided responses. Applicants should note that participation or non-participation in the pilot has no impact on the processing of their application.

Applicants were asked to respond to survey questions to help ICANN and evaluators identify areas for improvements. The survey questions were:

1. Is 6000 characters sufficient space for CQ responses?
2. Are CQs clear? If not, which questions were unclear?
3. Suggestions for improvements to structure of CQs?
4. Is 2 weeks sufficient time to respond to CQs? If not, how much time is needed and why?
5. Other comments about the CQ pilot?

Regarding the first question: Is 6000 characters enough space?

- 72% responded that 6000 is sufficient space
- 28% responded that is not enough and requested on average 12000 characters

Regarding the second question: Are CQs clear? If not, which questions were unclear?

- 61% said the CQs were clear

- 19% said the CQs were not clear
- 19% said some of the CQs were clear and some were not

Of the 19% that said the CQs were not clear, the questions that were identified as most unclear were associated with application questions:

- Q49: 56%
- Q50: 37%
- Q44: 71%
- Q30: 67%
- Q35: 67%

Regarding the third question: Suggestions for improving the structure of CQs, the most common responses were:

- Use bullets instead of paragraph form
- Be more specific
- Allow applicants to correspond with evaluators
- Disclose current scores
- For question 50, provide sample LOC and answers that meet requirements

Regarding the fourth question: Is 2 weeks sufficient time to respond? If not, how much time is needed and why?

- 11% said 2 weeks is sufficient time
- 33% said 2 weeks is sufficient time, but depends on some factors
- 56% said 2 weeks is not enough time

“No” responders request on average 4 weeks to respond to CQs.

Those that responded “depends” cited volume of CQs and external dependencies such as banks as potential factors impacting their ability to respond within the 2 weeks timeframe.

Regarding the fifth question: Other comments about the CQ pilot?

- Allow applicants to correspond with evaluators
- Provide sample LOC and answers that meet requirements
- Some requested information are confidential and cannot be provided by applicants
- Some requested information are not applicable to certain business models

These suggestions are being considered and will be incorporated if in alignment with the Guidebook and our goals of consistency and timeliness.

ICANN is also working on developing advisories that will provide applicants with specific examples of answers that meet or do not meet requirements. These advisories are will be published in the next couple of weeks. Additionally, ICANN is contemplating a notification process to enable applicants to better plan for responding to CQs. There are some areas of feedback that will not be accommodated such as the request for applicants to correspond with evaluators during the CQ process.

CQs are currently scheduled for issuance on November 26 through TAS. Additional information regarding how to respond to CQs will be provided prior to this date.

Objections

Request to clarify the conclusion of the objection period are being considered and a recommendation will be published shortly.

Outreach efforts are currently underway to inform the community and those outside of the community of this process. Some of these activities include:

- Regional outreach
- Enlisting assistance of the community, including the supporting organizations (SOs) and advisory committees (ACs)
- Webinar planned for early November
- Microsite (blog, FAQs, video, fact sheet)

Customer Service Update

Several efforts have been made and are currently underway to improve the delivery of customer service:

- Completed move of SugarCRM behind Citrix to enhance security
- New email templates targeted for roll-out week after Toronto
- Additional work underway to improve user experience of CSC portal with a target roll-out date of early December
- Recruiting efforts underway to expand reach of support

ICANN has received a total of 128 requests from applicants to change certain information in their applications. To expedite processing of these types of requests, please be sure to submit the request from the primary contact's email address through the CSC portal. Include with the request the completed Change Request Form (<http://newgtlds.icann.org/en/applicants/customer-service/change-requests/form-05sep12-en.docx>) and the redline document of the changes being requested. Requests will be reviewed against the 7 criteria posted at <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>.

Applications with approved change requests will be held for 30 days to allow comments on the changes.

The first set of approved changes will be posted the week after Toronto.

Communications

Since Prague, multiple communications efforts have taken place with the goal of keeping applicants informed during the application evaluation process. These efforts include:

- A monthly webinar where updates on evaluation progress is provided to applicants.
- Weekly updates that are posted on the microsite summarizing application statistics and any other new gTLD activities.
- Video updates where information regarding certain new gTLD program processes are provided.

In addition to these efforts, an Applicant's Corner will be rolled-out to applicants soon. This is a new area on the microsite that will provide applicants with access to all of the information that will be useful to them.

Advisories will also be provided to applicants on the microsite soon. These advisories will provide specific examples of answers that meet or do not meet requirements. The purpose of these advisories is so applicants can prepare in advance for clarifying questions.

Efforts are also being made to reach out to Internet users beyond the ICANN community.

Regional outreach efforts include:

- outreach to various gov't officials in Latin America & the Caribbean regarding application comments, objections, GAC Early Warning, and
- presentations on new gTLDs to at MENOG 11 (Jordan), PacNOG 11 (Fiji), Asia Pacific Telecommunity (Fiji), European Union HLIG, Digital Europe EU ICT Business Group

Media efforts resulted in over 150 news articles since Prague.

The microsite will be getting a new look. Navigation will be improved as well. We will also begin increased communications to inform Internet users about the objection and dispute resolution mechanisms.

Applicant Support Update

The applicant support program was created to provide financial and non-financial assistance to qualifying new gTLD applicants. For non-financial assistance, an applicant support directory was created to connect potential applicants who wish to establish a new public interest gTLD registry in their community with organizations that offer either financial or non-financial assistance. The directory is at <http://newgtlds.icann.org/applicants/candidate-support/non-financial-support>. To-date, there are 19 service providers and 24 service seekers in the directory.

The program also provides financial assistance in the form of a reduced application fee, USD47000 instead of USD185000 for qualifying applicants. ICANN received 3 applications through the applicant support program.

A Support Applicant Review Panel (SARP) was convened to review applicant support applications. SARP members were selected with the goal of reflecting diversity and balance in expertise, nationality, gender and profession. SARP consists of senior individuals with direct experience in the developing world managing registries, awarding grants, running small businesses and serving the public interest. These individuals came from the non-profit, private and government sectors with a dedication to serving the global public interest, promoting worldwide Internet access and competition, and supporting new gTLD applicants from developing economies.

Applicant support applications are being reviewed by a 5-member SARP. The SARP has self-selected a chairperson to lead the panel sessions and to serve as the main point of contact. Panel members have completed training.

SARP is slated to deliver results to applicants on November 30.

EBERO

During the past few months ICANN staff has listened to oral presentations from selected RFI respondents and is drafting the contract terms. Based on the new gTLD applicants and potential volume and geographic distribution of the future registries, the goal is to have three to four EBERO providers. If EBERO services are required, the fee for their service will be paid from the Continuity Operations Instrument (COI) required for all new gTLDs. Next steps are:

- Finalize the contract terms
- Publish selected providers
- Finalize the process design
- Conduct emergency simulations and training

We expect to have the contracted EBEROs announced and onboard by May 2013.

Reference Material 21.

INFORMATION PAPER: NEW GTLD UPDATE

Table of Contents

Executive Summary	1
Application Statistics.....	2
Evaluation Progress.....	2
Clarifying Questions	4
Geographic Names Clarifying Questions.....	5
Prioritization Draw.....	5

Executive Summary

This paper is for information only and provides an update since the October 15 New gTLD session at the ICANN Toronto meeting.

A summary of statistics on withdrawals, objections, change requests is provided. There is no news to report on the objections front. There are an additional 5 requests for application withdrawal that were submitted since the last update. ICANN has also received more requests for changes to application materials.

A refund schedule is provided. The schedule has not changed from what is specified in the Applicant Guidebook, however clarification is provided regarding the end date for each stage of refund.

All evaluation panels have made significant progress since the last update and a report on the work that each panel is performing is included in this paper.

An update on clarifying questions is also provided, including the timing of their issuance, amount of time applicants have to respond, processing schedule, and how feedback from the CQ pilot is being incorporated. There is also an update on the estimated completion time of initial evaluation.

The comment period for the prioritization draw paper closed on November 9, 2012. A summary of comments will be posted soon. Some information about the draw is provided, including the date and location of the draw.

Application Statistics

As of November 13, 2012, there are 13 requests for withdrawal of applications. Six of these 7 requests have completed processing and now officially reflect a status of withdrawn:

- AND
- ARE
- EST
- CHATR
- KSB
- CIALIS

Refunds for withdrawals will follow the schedule in section 1.5 of the Applicant Guidebook based on the posting date of results of the application.

Refund Submission Date	Percentage	Amount
Within 21 calendar days of GAC EW	80%	USD 148,000
After June 13, 2012 and before posting of initial evaluation results for the application	70%	USD 130,000
After posting of initial evaluation results for the application	35%	USD 65,000
After completion of dispute resolution, EE, or string contention resolution	20%	USD 37,000
After registry agreement is fully executed by applicant and ICANN		None

There are no objections filed as of the date of this paper.

Applicants have submitted 169 application change requests. Of these:

- 29 have completed the review process and have been approved. These application updates were posted on the microsite on October 17, 2012.
- 130 are in the process of being reviewed.
- 10 require follow-up with applicants.

Evaluation Progress

The string similarity review has been completed. The secondary review will commence soon. After the secondary review completes, ICANN will require some time to process and post the results.

DNS stability review has also been completed with all strings passing the review.

Initial background screening review has been completed. The background screening service provider has identified some applications where additional information is required in order to continue with the review. Applicants for these applications will be contacted soon through the CSC to provide the additional information.

Geographic names review is close to completion. This panel will be releasing clarifying questions on November 26, 2012.

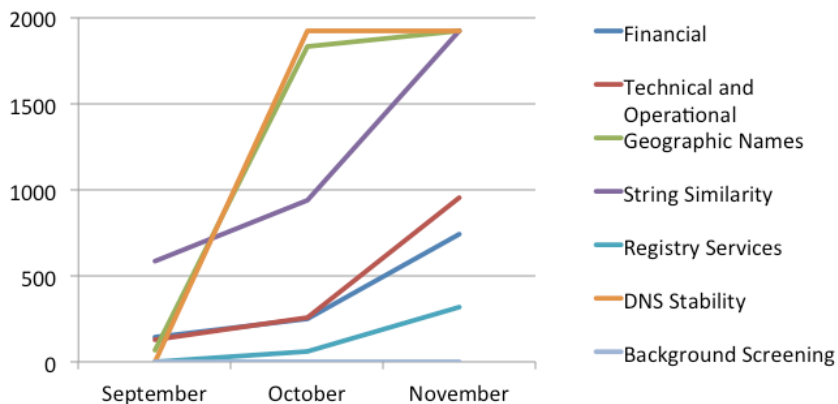
Registry services review is progressing and is expected to be completed in January of 2013.

Financial and Technical evaluations are also progressing. These panels are currently reviewing new applications that have been allocated to them in the past month, as well as updating the clarifying questions that were previously written to incorporate feedback received from the CQ pilot. These panels are expected to complete their evaluations in August of 2013. This is an extension to the previously published date of June 2013.

A summary of progress of evaluation by all of the panels is provided below.

Panel	Target Completion	Apps Assigned	Apps in Evaluation	Preliminary App Results
Financial	Aug-13	1,203	464	739
Technical and Operational	Aug-13	1,203	246	957
Geographic Names	Nov-12	1,924	-	1,924
String Similarity	Nov-12	1,924	-	1,924
Registry Services	Jan-13	1,924	1,607	317
DNS Stability	Oct-12	1,924	-	1,924
Background Screening	Feb-13	1,924	1,924	-

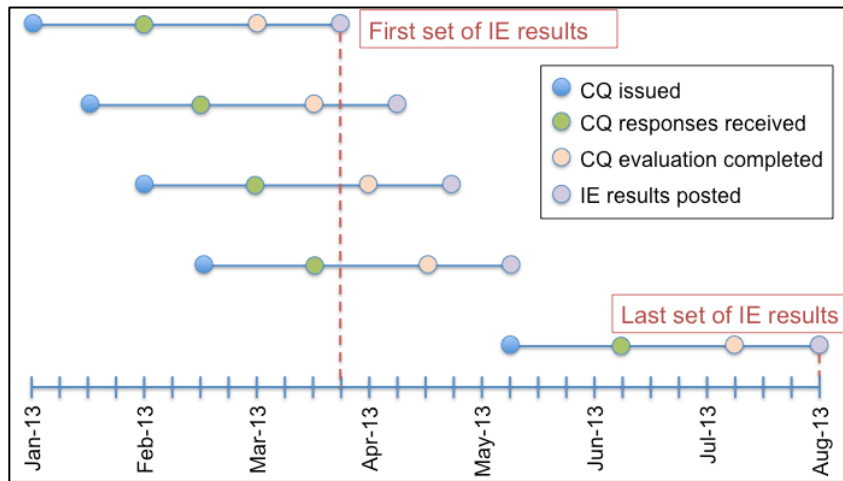
Preliminary Application Results by Month



Clarifying Questions

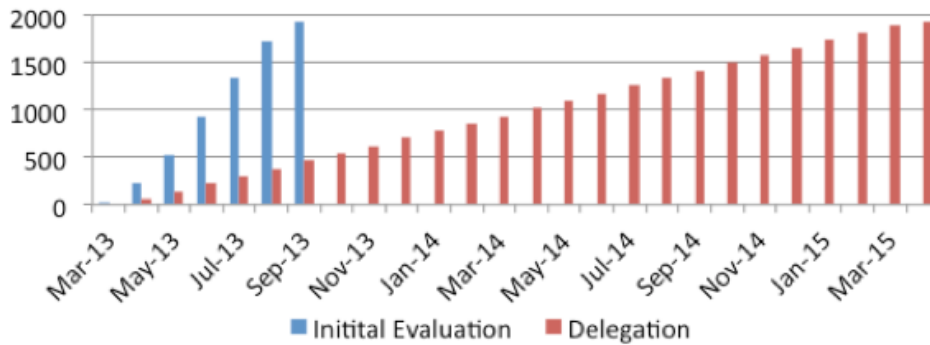
In response to the feedback received from the CQ pilot, the time to respond to clarifying questions is being extended to 4 weeks. In order to avoid the holiday disruption due to this extension, all other clarifying questions will be issued in January of 2013 through TAS. Delaying the issuance of clarifying questions to January will have no impact on the first publication of initial results on March 23, 2013 or the timing of delegation previously communicated in Toronto. It will, however, push the completion date of initial evaluation to August 2013.

Clarifying Questions Processing



It is worth noting that delegation of 1924 TLDs at a rate of 20 per week will take approximately 24 months to complete. Initial evaluation results for 1924 applications will be posted in a period of 5 months. Based on this, pushing the completion date of initial evaluation to August 2013 will have no impact to the delegation date of TLDs.

Initial Evaluation Pace vs. Delegation



Other feedback from the CQ pilot that is being incorporated include:

- Language of the clarifying questions is being modified to be more specific about why the information provided in the application is deficient, and exactly what the applicant needs to provide to meet the requirements in the Applicant Guidebook.
- Character limits for the responses will be increased to 7000 characters per question. If additional space is required, applicants may submit their answers as attachments.

To help applicants prepare in advance of receiving clarifying questions, advisories will be published this month. Advisories will be provided for Q25, Q30, Q48, and Q50.

Although requests were made to allow applicants to interact with the evaluation panels, this will not be allowed. Additionally, the CSC will not be able to answer any specific questions regarding clarifying questions.

Geographic Names Clarifying Questions

Geographic names clarifying questions will be issued on November 26, 2012 through the CSC portal. TAS will reopen on November 26, 2012 to allow applicants to view their application materials in order to respond to clarifying questions.

Applicants will have until the end of initial evaluation (August 2013) to respond to geographic names clarifying questions. However, applicants should take into account their draw number when responding. If support documentation requested is not provided prior to the anticipated posting date of the application's results, that application will be held.

If support documentation is not provided prior to the end of initial evaluation, or is provided but still deficient, the application will receive a second notification and be given an additional 90 days to comply with the requirements.

ICANN requests that applicants submit all requested support documentation in response to clarifying questions at the same time.

Prioritization Draw

The comment period for the prioritization draw paper closed on November 9, 2012. A summary of the comments will be posted soon.

Notifications of the draw will be sent to applicants on November 16, 2012.

14 November 2012

The draw will take place on December 17, 2012 at the Hilton LAX in Los Angeles. Ticket sales will take place December 12 through 16 and the morning of December 17 at the same location. Applicants are strongly encouraged to purchase tickets ahead of the draw date. There will only be a small window of time on December 17 to purchase tickets, and applicants should avoid the risk of missing this window by purchasing tickets ahead of time.

Additional information about the prioritization draw, including proxy and charity information will be provided to applicants soon.

Reference Material 22.

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

ICDR Case No. 50 117 T 00224 08

In the Matter of an Independent Review Process:

ICM REGISTRY, LLC,

Claimant,

v.

INTERNET CORPORATION FOR ASSIGNED NAMES
AND NUMBERS ("ICANN"),

Respondent

DECLARATION OF THE INDEPENDENT REVIEW PANEL

Judge Stephen M. Schwebel, *Presiding*
Mr. Jan Paulsson
Judge Dickran Tevrizian

February 19, 2010

PART ONE: INTRODUCTION

1. From its beginning in 1965, an exchange over a telephone line between a computer at the Massachusetts Institute of Technology and a computer in California, to the communications colossus that the Internet has become, the Internet has constituted a transformative technology. Its protocols and domain name system standards and software were invented, perfected, and for some 25 years before the formation of the Internet Corporation for Assigned Names and Numbers (ICANN), essentially overseen, by a small group of researchers working under contracts financed by agencies of the Government of the United States of America, most notably by the late Professor Jon Postel of the Information Sciences Institute of the University of Southern California and Dr. Vinton Cerf, founder of the Internet Society. Dr. Cerf, later the distinguished leader of ICANN, played a major role in the early development of the Internet and has continued to do so. European research centers also contributed. From the origin of the Internet domain name system in 1980 until the incorporation of ICANN in 1998, a small community of American computer scientists controlled the management of Internet identifiers. However the utility, reach, influence and exponential growth of the Internet quickly became quintessentially international. In 1998, in recognition of that fact, but at the same time determined to keep that management within the private sector rather than to subject it to the ponderous and politicized processes of international governmental control, the U.S. Department of Commerce, which then contracted on behalf of the U.S. Government with the managers of the Internet, transferred operational responsibility over the protocol and domain names system of the Internet to the newly formed Internet Corporation for Assigned Names and Numbers ("ICANN").

2. ICANN, according to Article 3 of its Articles of Incorporation of November 21, 1998, is a nonprofit public benefit corporation organized under the California Nonprofit Public Benefit Corporation Law "in recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization..." ICANN is charged with

"promoting the global public interest in the operational stability of the Internet by (i) coordinating the assignment of Internet technical parameters as needed to maintain universal connectivity on the Internet; (ii) performing and overseeing functions related to the coordination of the Internet Protocol ("IP") address space; (iii) performing and overseeing functions related to the coordination of the Internet domain name system ("DNS"), including the development of

policies for determining the circumstances under which new top-level domains are added to the DNS root system; (iv) overseeing operation of the authoritative Internet DNS root server system..." (Claimant's Exhibits, hereafter "C", at C-4.)

ICANN was formed as a California corporation apparently because early proposals for it were prepared at the instance of Professor Postel, who lived and worked in Marina del Rey, California, which became the site of ICANN's headquarters.

3. ICANN, Article 4 of its Articles of Incorporation provides,

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

4. ICANN's Bylaws, as amended effective May 29, 2008, in Section 1, define the mission of ICANN as that of coordination of the allocation and assignment

"of the three sets of unique identifiers for the Internet, ...(a) domain names forming a system referred to as "DNS", (b) ...Internet protocol ("IP") addresses and autonomous system ("AS") numbers and (c) Protocol port and parameter numbers". ICANN "coordinates the operation and evolution of the DNS root server system" as well as "policy development reasonably and appropriately related to these technical functions." (C-5.)

5. Section 2 of ICANN's Bylaws provides that, in performing its mission, core values shall apply, among them:

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

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

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

...

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

...

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

...

"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." (C-5.)

6. The Bylaws provide in Article II that the powers of ICANN shall be exercised and controlled by its Board, whose international composition, representative of various stakeholders, is otherwise detailed in the Bylaws. Article VI, Section 4.1 of the Bylaws provides that "no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director". They specify that "ICANN shall not apply its standards, policies, procedures, or practices inequitably, or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition." ICANN is to operate in an open and transparent manner "and consistent with procedures designed to ensure fairness" (Article III, Section 1.) In those cases "where the policy action affects public policy concerns," ICANN shall "request the opinion of the Governmental Advisory Committee and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board's request" (Article III, Section 6).

7. Article IV of the Bylaws, Section 3, provides that: "ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws." Any person materially affected by a decision or action of the Board that he or she asserts "is inconsistent" with those Articles and Bylaws may submit a request for independent review which shall be referred to an Independent Review Panel ("IRP"). That Panel "shall be charged with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws". "The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN...using arbitrators...nominated by that provider." The IRP shall have the authority to "declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or the Bylaws" and "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". Section 3 further specifies that declarations of the IRP shall be in writing, based solely on the documentation and arguments of the parties, and shall "specifically designate the prevailing party." The Section concludes by providing that, "Where feasible, the Board shall consider the IRP declaration at the Board's next meeting."

8. The international arbitration provider appointed by ICANN is the International Centre for Dispute Resolution ("ICDR") of the American Arbitration Association. It appointed the members of the instant Independent Review Panel in September 2008. Thereafter exchanges of written pleadings and extensive exhibits took place, followed by five days of oral hearings in Washington, D.C. September 21-25, 2009.

9. Article XI of ICANN's Bylaws provides, *inter alia*, for a Governmental Advisory Committee ("GAC") to "consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues". It further provides that the Board shall notify the Chair of the GAC in a timely manner of any proposal raising public policy issues. "The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually

acceptable solution." If no such solution can be found, the Board will state in its final decision the reasons why the GAC's advice was not followed.

PART TWO: FACTUAL BACKGROUND OF THE DISPUTE

10. The Domain Name System ("DNS"), a hierarchical name system, is at the heart of the Internet. At its summit is the so-called "root", managed by ICANN, although the U.S. Department of Commerce retains the ultimate capacity of implementing decisions of ICANN to insert new top-level domains into the root. The "root zone file" is the list of top-level domains. Top-level domains ("TLDs"), are identified by readable, comprehensible, "user-friendly" addresses, such as ".com", ".org", and ".net". There are "country-code TLDs" (ccTLDs), two letter codes that identify countries, such as .uk (United Kingdom), .jp (Japan), etc. There are generic TLDs ("gTLDs"), which are subdivided into sponsored TLDs ("sTLDs") and unsponsored TLDs ("gTLDs"). An unsponsored TLD operates under policies established by the global Internet community directly through ICANN, while a sponsored TLD is a specialized TLD that has a sponsor representing the narrower community that is most affected by the TLD. The sponsor is delegated, and carries out, policy-formulation responsibilities over matters concerning the TLD. Thus, under the root, top-level domains are divided into gTLDs such as .com, .net, and .info, and sTLDs such as .aero, .coop, and .museum. And there are ccTLDs, such as .fr (France). Second level domains, under the top-level domains, are legion; e.g., Microsoft.com, dassault.fr. While the global network of computers communicate with one another through a decentralized data routing mechanism, the Internet is centralized in its naming and numbering system. This system matches the unique Internet Protocol address of each computer in the world -- a string of numbers -- with a recognizable domain name. Computers around the world can communicate with one another through the Internet because their Internet Protocol addresses uniquely and reliably correlate with domain names.

11. When ICANN was formed in 1998, there were three generic TLDs: .com, .org, and .net. They were complemented by a few limited-use TLDs, .edu, .gov, .mil, and .int. Since its formation, ICANN has endeavored to introduce new TLDs. In 2000, ICANN opened an application process for the introduction of new gTLDs. This initial round was a preliminary effort to test a "proof of concept" in respect of new gTLDs. ICANN received forty-seven applications for both sponsored and unsponsored TLDs.

12. Among them was an application by the Claimant in these proceedings, ICM Registry (then under another ownership), for an unsponsored .XXX TLD,

which would responsibly present “adult” entertainment (*i.e.*, pornographic entertainment). ICANN staff recommended that the Board not select .XXX during the “proof of concept” round because “it did not appear to meet unmet needs”, there was “controversy” surrounding the application, and the definition of benefits of .XXX was “poor”. It observed that, “at this early ‘proof of concept’ stage with a limited number of new TLDs contemplated, other proposed TLDs without the controversy of an adult TLD would better serve the goals of this initial introduction of new TLDs.” (C-127, p. 230.) In the event, the ICANN Board authorized ICANN’s President and General Counsel to commence contract negotiations with seven applicants including three sponsored TLDs, .museum, .aero and .coop. Agreements were “subject to further Board approval or ratification.” (Minutes of the Second Annual Meeting of the Board, November 16, 2000, ICANN Exhibit G.)

13. In 2003, the ICANN Board passed resolutions for the introduction of new sponsored TLDs in another Round. The Board resolved that “upon the successful completion of the sTLD selection process, an agreement reflecting the commercial and technical terms shall be negotiated.” (C-78.) It posted a “Request for Proposals” (“RFP”), which included an application form setting out the selection criteria that would be used to evaluate proposals. The RFP’s explanatory notes provided that the sponsorship criteria required “the proposed sTLD [to] address the needs and interest of a ‘clearly defined community’...which can benefit from the establishment of a TLD operating in a policy formulation environment in which the community would participate.” Applicants had to show that the Sponsored TLD Community was (a) “Precisely defined, so it can readily be determined which persons or entities make up that community” and (b) “Comprised of persons that have needs and interests in common but which are differentiated from those of the general global Internet community”. (ICANN, New gTLD Program, ICANN Exhibit N.) The sponsorship criteria further required applicants to provide an explanation of the Sponsoring Organization’s policy-formulation procedures. They additionally required the applicant to demonstrate “broad-based support” from the sponsored TLD community. None of the criteria explicitly addressed “morality” issues or the content of websites to be registered in the new sponsored domains.

14. ICANN in 2004 received ten sTLD applications, including that of ICM Registry of March 16, 2004 for a .XXX sTLD. ICM’s application was posted on ICANN’s website. Its application stated that it was to

[REDACTED]

[REDACTED] and who are interested in the [REDACTED] [REDACTED] (C-Confidential Exh. B.) The International Foundation for Online Responsibility (“IFFOR”), a Canadian organization whose creation by ICM was in process, was proposed to be ICM’s sponsoring organization. The President of ICM Registry, Stuart Lawley, a British entrepreneur, was to explain that the XXX sTLD is a

“significant step towards the goal of protecting children from adult content, and [to] facilitate the efforts of anyone who wishes to identify, filter or avoid adult content. Thus, the presence of “.XXX” in a web address would serve a dual role: both indicating to users that the website contained adult content, thereby allowing users to choose to avoid it, and also indicating to potential adult-entertainment consumers that the websites could be trusted to avoid questionable business practices.” (Lawley Witness Statement, para. 15.)

15. ICANN constituted an independent panel of experts (the “Evaluation Panel”) to review and recommend those sTLD applications that met the selection criteria. That Panel found that two of the ten applicants met all the selection criteria; that three met some of the criteria; and that four had deficiencies that could not be remedied within the applicant’s proposed framework. As for .XXX, the Evaluation Panel found that ICM was among the latter four; it fully met the technical and financial criteria but not some of the sponsorship criteria. The three-member Evaluation Panel, headed by Ms. Elizabeth Williams of Australia, that analyzed sponsorship and community questions did not believe that the .XXX application represented “a clearly defined community”; it found that “the extreme variability of definitions of what constitutes the content which defines this community makes it difficult to establish which content and associated persons or services would be in or out of the community”. The Evaluation Panel further found that the lack of cohesion in the community and the planned involvement of child advocates and free expression interest groups would preclude effective formulation of policy for the community; it was unconvinced of sufficient support outside of North America; and “did not agree that the application added new value to the Internet name space”. Its critical evaluation of ICM’s application concluded that it fell into the category of those “whose deficiencies cannot be remedied with the applicant’s proposed framework” (C-110.)

16. Because only two of ten applicants were recommended by the Evaluation Panel, and because the Board remained desirous of expanding the number of sTLDs, the ICANN Board resolved to give the other sTLD applicants further opportunity to address deficiencies found by the

Evaluation Panel. ICM Registry responded with an application revised as of December 7, 2004. It noted that the independent teams that evaluated the technical merits and business soundness of ICM's application had unreservedly recommended its approval. It submitted, contrary to the analysis of the Evaluation Panel, that ICM and IFFOR also met the sponsorship criteria. "Nonetheless, the Applicants fully understand that the topic of adult entertainment on the Internet is controversial. The Applicants also understand that the Board might be criticized whether it approves or disapproves the Proposal." (C-127, p. 176.) In accordance with ICANN's practice, ICM's application again was publicly posted on ICANN's website.

17. Following discussion of its application in the Board, ICM was invited to give a presentation to the Board, which it did in April 2005, in Mar del Plata, Argentina. Child protection and free speech advocates were among the representatives of ICM Registry. The Chairman of the Governmental Advisory Committee, Mohamed Sharil Tarmizi, was in attendance for part of the meeting as well as other meetings of the Board. ICM offered then and at ICANN meetings in Capetown (December 2004) and Luxembourg (July 2005) to discuss its proposal with the GAC or any of its members, a proposal that was not taken up (C-127, p. 231; C-170, p.2). In a letter of April 3, 2005, the GAC Chairman informed the ICANN President and CEO, Paul Twomey, that: "No GAC members have expressed specific reservations or comments, in the GAC, about applications for sTLDs in the current round." (C-158, p.1.) ICM's Mar del Plata presentation to the ICANN Board included the results of a poll conducted by XBiz in February 2005 of "adult" websites that asked: "What do you think of Internet suffixes (.sex, .xxx) to designate adult sites?" 22% of the responders checked, "A Horrible Idea"; 57% checked, "A Good Idea"; 21% checked, "It's No Big Deal Either Way". ICM, while recognizing that its proposal aroused some opposition in the adult entertainment community, maintained throughout that it fully met the RFP requirement of demonstrating that it had "broad-based support from the community to be represented". (C-45.)

18. The ICANN Board held a special meeting by teleconference on May 3, 2005, the Chairman of the ICANN Board, Dr. Vinton G. Cerf, presiding. The minutes record, in respect of the .XXX sTLD application, that there was broad discussion of whether ICM's application met the RFP criteria, "particularly relating to whether or not there was a 'sponsored community'". It was agreed to "discuss this issue" at the next Board meeting. (C-134.)

19. On June 1, 2005, the Board met by teleconference and after considerable discussion adopted the following resolutions, with a 6-3 vote in favor, 2 abstentions and 4 Board members absent:

“Resolved...the Board authorizes the President and General Counsel to enter into negotiations relating to proposed commercial and technical terms for the .XXX sponsored top-level domain (sTLD) with the applicant.”

“Resolved...if after entering into negotiations with the .XXX sTLD applicant the President and General Counsel are able to negotiate a set of proposed commercial and technical terms for a contractual arrangement, the President shall present such proposed terms to this board, for approval and authorization to enter into an agreement relating to the delegation of the sTLD.” (C-120.)

20. While a few of the other applications that were similarly cleared to enter into negotiations relating to proposed commercial and technical terms, e.g., those of .JOBS, and .MOBI, contained conditions, the foregoing resolutions relating to ICM Registry contained no conditions. The .JOBS resolution, for example, specified that

“the board authorizes the President and General Counsel to enter into negotiations relating to proposed commercial and technical terms for the .JOBS sponsored top-level domain (sTLD) with the applicant. During these negotiations, the board requests that special consideration be taken as to how broad-based policy-making would be created for the sponsored community, and how this sTLD would be differentiated in the name space.”

In contrast, the .XXX resolutions do not refer to further negotiations concerning sponsorship, nor do the resolutions refer to further consideration by the Board of the matter of sponsorship. Upon the successful conclusion of the negotiation, the terms of an agreement with ICM Registry were to be presented to the Board “for approval and authorization to enter into an agreement relating to the delegation of the sTLD”.

21. At the meeting of the Governmental Advisory Committee in Luxembourg July 11-12, 2005, under the chairmanship of Mr. Tarmizi, the foregoing resolutions gave rise to comment. The minutes contain the following summary reports:

"The Netherlands, supported by several members, including Brazil, EC and Egypt, raised the point about what appears to be a change in policy as regards the evaluation for the .xxx TLD.

"On that issue, the Chair stressed that the Board came to a decision after a very difficult and intense debate which has included the moral aspects. He wondered what the GAC could have done in this context.

"Brazil asked clarification about the process to provide GAC advice to the ICANN Board and to consult relevant communities on matter such as the creation of new gTLDs. The general public was likely to assume that GAC had discussed and approved the proposal; otherwise GAC might be perceived as failing to address the matter. This is a public policy issue rather than a moral issue.

"Denmark commented on the fact that the issue of the creation of the .xxx extension should have been presented to the GAC as a public policy issue. EC drew attention to the 2000 Evaluation report on .xxx that had concluded negatively.

"France asked about the methodology to be followed for the evaluation of new gTLDs in future and if an early warning system could be put in place. Egypt wished to clarify whether the issue was the approval by ICANN or the apparent change in policy.

"USA remarked that GAC had several opportunities to raise questions, notably at Working Group level, as the process had been open for several years. In addition there are not currently sufficient resources in the WGI to put sufficient attention to it. We should be working on an adequate methodology for the future. Netherlands commented that the ICANN decision making process was not sufficiently transparent for GAC to know in time when to reach [sic; react] to proposals.

"The Chair thanked the GAC for these comments which will be given to the attention of the ICANN Board." (C-139, p. 3.)

22. There followed a meeting of the GAC with the ICANN Board, at which the following statements are recorded in the summary minutes:

"Netherlands asked about the new criteria to be retained for new TLDs as it seems there was a shift in policy during the evaluation process.

"Mr. Twomey replied that there might be key policy differences due to learning experiences, for example it is now accepted not to put a limit on the number of new TLDs. He also noted that no comments had been received from governments regarding .xxx.

"Dr. Cerf added, taking the example of .xxx that there was a variety of proposals for TLDs before, including for this extension, but this time the way to cope with the selection was different. The proposal this time met the three main criteria, financial, technical and sponsorship. They [sic: There] were doubts expressed about the last criteria [sic] which were discussed extensively and the Board reached a positive decision considering that ICANN should not be involved in content matters.

"France remarked that there might be cases where the TLD string did infer the content matter. Therefore the GAC could be involved if public policies issues are to be raised.

"Dr. Cerf replied that in practice there is no correlation between the TLD string and the content. The TLD system is neutral, although filtering systems could be solutions promoted by governments. However, to the extent the governments do have concerns they relate to the issues across TLDs. Furthermore one could not slip into censorship.

"Chile and Denmark asked about the availability of the evaluation Report for .xxx and wondered if the process was in compliance with the ICANN Bylaws.

"Brazil asserted that content issues are relevant when ICANN is creating a space linked to pornography. He considered the matter as a public policy issue in the Brazilian context and repeated that the outside world would assume that GAC had been fully cognizant of the decision-making process.

"Mr. Twomey referred to the procedure for attention for GAC in the ICANN Bylaws that could be initiated if needed. The bylaws could work both ways: GAC could bring matters to ICANN's attention. Dr. Cerf invited GAC to comment in the context of the ICANN public

comments process. Spain suggested that ICANN should formally request GAC advice in such cases.

"The Chair [Dr. Cerf] noted in conclusion that it is not always clear what the public policy issues are and that an early warning mechanism is called for." (C-139, P. 5.)

23. When it came to drafting the GAC Communique, the following further exchanges were summarized:

"Brazil referred to the decision taken for the creation of .xxx and asked if anything could be done at this stage...

"On .xxx, USA thought that it would be very difficult to express some views at this late stage. The process had been public since the beginning, and the matter could have been raised before at Plenary or Working group level...

"Italy would be in favour of inserting the process for the creation of new TLDs in the Communique as GAC failed in some way to examine in good time the current set of proposal [sic] for questions of methodology and lack of resources.

"Malaysia recalled the difficult situation in which governments are faced with the evolution of the DNS system and the ICANN environment. ICANN and GAC should be more responsive to common issues...

"Canada raise [sic] the point of the advisory role of the GAC vis-à-vis ICANN and it would be difficult to go beyond this function for the time being.

"Denmark agreed with Canada but considered that the matter could have been raised before within the framework of the GAC; if necessary issues could be raised directly in Plenary.

"France though [sic] that the matter should be referred to in the Communique. Since ICANN was apparently limiting its consideration to financial, technical and sponsorship aspects, the content aspects should be treated as a problem for the GAC from the point of view of the general public interest."

"The Chair took note of the comments that had been made. He mentioned that the issues of new gTLDs...would be mentioned in the Communique." (C-139, p. 7.)

24. Finally, in respect of "New Top Level Domains"

"...the Chair recalled that members had made comments during the consultation period regarding the *.tel* and *.mobi* proposals, but not regarding other sTLD proposals.

"The GAC has requested ICANN to provide the Evaluation Report on the basis of which the application for *.xxx* was approved. GAC considered that some aspects of content related to top level extensions might give rise of [sic] public policies [sic] issues.

"The Chair confirmed that, having consulted the ICANN Legal Counsel, GAC could still advise ICANN about the *.xxx* proposal, should it decide to do so. However, no member has yet raised this as an issue for formal comments to be given to ICANN in the Communique." (C-139, p. 13.)

25. The Luxembourg Communique of the GAC as adopted made no express reference to the application of ICM Registry nor to the June 1, 2005 ICANN Board resolutions adopted in response to it. In respect of "New Top Level Domains", the Communique stated:

"The GAC notes from recent experience that the introduction of new TLDs can give rise to significant public policy issues, including content. Accordingly, the GAC welcomes the initiative of ICANN to hold consultations with respect to the implementation of the new Top Level Domains strategy. The GAC looks forward to providing advice to the process." (C-159, p. 1.)

26. Negotiations on commercial and technical terms for a contract between ICANN's General Counsel, John Jeffrey, and the counsel of ICM Registry, Ms. J. Beckwith Burr, in pursuance of the ICANN Board's resolutions of June 1, 2005, progressed smoothly, resulting in the posting in early August 2005 of the First Draft Registry Agreement. It was expected that the Board would vote on the contract at its meeting of August 16, 2005.

27. This expectation was overturned by ICANN's receipt of two letters. On August 11, 2005, Michael D. Gallagher, Assistant Secretary for

Communications and Information of the U.S. Department of Commerce, wrote Dr. Cerf, with a copy to Mr. Twomey, as follows:

"I understand that the Board of Directors of the Internet Corporation for Assigned Names and Numbers (ICANN) is scheduled to consider approval of an agreement with the ICM Registry to operate the .xxx top level domain (TLD) on August 16, 2005. I am writing to urge the Board to ensure that the concerns of all members of the Internet community on this issue have been adequately heard and resolved before the Board takes action on this application.

"Since the ICANN Board voted to negotiate a contract with ICM Registry for the .xxx TLD in June 2005, this issue has garnered widespread public attention and concern outside of the ICANN community. The Department of Commerce has received nearly 6000 letters and emails from individuals expressing concern about the impact of pornography on families and children and opposing the creation of a new top level domain devoted to adult content. We also understand that other countries have significant reservations regarding the creation of a .xxx TLD. I believe that ICANN has also received many of these concerned comments. The volume of correspondence opposed to the creation of a .xxx TLD is unprecedented. Given the extent of the negative reaction, I request that the Board will provide a proper process and adequate additional time for these concerns to be voiced and addressed before any additional action takes place on this issue.

"It is of paramount importance that the Board ensure the best interests of the Internet community as a whole are fully considered as it evaluates the addition to this new top level domain..." (C-162, p. 1.)

28. On August 12, 2005, Mohamed Sharil Tarmizi, Chairman, GAC, wrote to the ICANN Board of Directors, in his personal capacity and not on behalf of the GAC, with a copy to the GAC, as follows:

"As you know, the Board is scheduled to consider approval of a contract for a new top level domain intended to be used for adult content...

"You may recall that during the session between the GAC and the Board in Luxembourg that some countries had expressed strong positions to the Board on this issue. In other GAC sessions, a number of other governments also expressed some concern with the potential

introduction of this TLD. The views are diverse and wide ranging. Although not necessarily well articulated in Luxembourg, as Chairman, I believe there remains a strong sense of discomfort in the GAC about the TLD, notwithstanding the explanations to date.

“I have been approached by some of these governments and I have advised them that apart from the advice given in relation to the creation of new TLDs in the Luxembourg Communiqué that implicitly refers to the proposed TLD, sovereign governments are also free to write directly to ICANN about their specific concerns.

“In this regard, I would like to bring to the Board’s attention the possibility that several governments will choose to take this course of action. I would like to request that in any further debate that we may have with regard to this TLD that we keep this background in mind.

“Based on the foregoing, I believe that the Board should allow time for additional governmental and public policy concerns to be expressed before reaching a final decision on this TLD.”

29. The *volte face* in the position of the United States Government evidenced by the letter of Mr. Gallagher appeared to have been stimulated by a cascade of protests by American domestic organizations such as the Family Research Council and Focus on the Family. Thousands of email messages of identical text poured into the Department of Commerce demanding that .XXX be stopped. Copies of messages obtained by ICM under the Freedom of Information Act show that while officials of the Department of Commerce concerned with Internet questions earlier did not oppose and indeed apparently favored ICANN’s approval of the application of ICM, the Department of Commerce was galvanized into opposition by the generated torrent of negative demands, and by representations by leading figures of the so-called “religious right”, such as Jim Dobson, who had influential access to high level officials of the U.S. Administration. There was even indication in the Department of Commerce that, if ICANN were to approve a top level domain for adult material, it would not be entered into the root if the United States Government did not approve (C-165, C-166.) The intervention of the United States came at a singularly delicate juncture, in the run-up to a United Nations sponsored conference on the Internet, the World Summit on the Information Society, which was anticipated to be the forum for concentration of criticism of the continuing influence of the United States over the Internet. The *Congressional Quarterly Weekly* ran a story entitled, “Web Neutrality vs. Morality” which said: “The flap over .xxx has put ICANN

in an almost impossible position. It is facing mounting pressure from within the United States and other countries to reject the domain. But if it goes back on its earlier decision, many countries will see that as evidence of its allegiance to and lack of independence from the U.S. government. 'The politics of this are amazing,' said Cerf. 'We're damned if we do and damned if we don't.' (C-284.)

30. Doubt about the desirability of allocating a top-level domain to ICM Registry, or opposition to so doing, was not confined to the U.S. Department of Commerce, as illustrated by the proceedings at Luxembourg quoted above. A number of other governments also expressed reservations or raised questions about ICM's application on various grounds, including, at a later stage, those of Australia (letter from the Minister for Communications, Information Technology and the Arts of February 28, 2007 expressing Australia's "strong opposition to the creation of a .XXX sTLD"), Canada (comment expressing concern that ICANN may be drawn into becoming a global Internet content regulator, Exhibit DJ) and the United Kingdom (letter of May 4, 2006 stressing the importance of ICM's monitoring all .XXX content from "day one", C-182). The EC expressed the view that consultation with the GAC had been inadequate. The Deputy Director-General of the European Commission on September 16, 2005 wrote Dr. Cerf stating that the June 1, 2005 resolutions were adopted without the benefit of such consultation and added:

"Moreover, while the .xxx TLD raises obvious and predictable public policy issues, the fact that a similar application from the same applicants had been rejected in 2000 (following a negative evaluation) had, not surprisingly, led many GAC representatives to expect that a similar decision would have been reached on this occasion...such a change in approach would benefit from an explanation to the GAC.

"I would therefore ask ICANN to reconsider the decision to proceed with this application until the GAC have had an opportunity to review the evaluation report." (C-172, p. 1.)

31. The State Secretary for Communications and Regional Policy of the Government of Sweden, Jonas Bjelfvenstam, wrote Dr. Twomey a letter carrying the date of November 23, 2005, as follows:

"I have followed recent discussions by the Board of Directors of ...ICANN concerning the proposed top level domain (TLD) .xxx. I appreciate that the Board has deferred further discussions on the

subject...taking account of requests from the applicant ICM, as well as the ...GAC Chairman's and the US Department of Commerce's request to allow for additional time for comments by interested parties.

"Sweden strongly supports the ICANN mission and the process making ICANN an organization independent of the US Government. We appreciate the achievements of ICANN in the outstanding technical and innovative development of the Internet, an ICANN exercising open, transparent and multilateral procedures.

"The Swedish line on pornography is that it is not compatible with gender equality goals. The constant exposure of pornography and degrading pictures in our everyday lives normalizes the exploitation of women and children and the pornography industry profits on the documentation.

"A TLD dedicated for pornography might increase the volume of pornography on the Internet at the same time as foreseen advantages with a dedicated TLD might not materialize. These and other comments have been made in the many comments made directly to ICANN through the ICANN web site. There are a considerable number of negative reactions within and outside the Internet community.

"I know that all TLD applications are dealt with in procedures open to everyone for comment. However, in a case like this, where public interests clearly are involved, we feel it could have been appropriate for ICANN to request advice from GAC. Admittedly, GAC could have given advice to ICANN anyway at any point in time in the process and to my knowledge, no GAC members have raised the question before the GAC meeting July 9-12 in Luxembourg. However, we all probably rested assured that ICANN's negative opinion on .xxx, expressed in 2000, would stand.

"From the ICANN decision on June 1, 2005, there was too little time for GAC to have an informed discussion on the subject at its Luxembourg summer meeting. ..

"Therefore we would ask ICANN to postpone conclusive discussions on .xxx until after the upcoming GAC meeting in November 29-30 in Vancouver...In due time before that meeting, it would be helpful if ICANN could present in detail how it means that .xxx fulfils the criteria set in advance..." (C-168, p. 1.)

32. At its meeting by teleconference of September 15, 2005, the Board, "after lengthy discussion involving nearly all of the directors regarding the sponsorship criteria, the application, and additional supplemental materials, and the specific terms of the proposed agreement," adopted a resolution providing that:

" ...

"Whereas the ICANN Board has expressed concerns regarding issues relating to the compliance with the proposed .XXX Registry Agreement (including possible proposals for codes of conduct and ongoing obligations regarding potential changes in ownership)...

"Whereas, ICANN has received significant levels of correspondence from the Internet community users over recent weeks, as well as inquiries from a number of governments,

"Resolved...that the ICANN President and General Counsel are directed to discuss possible additional contractual provisions or modifications for inclusion in the XXX Registry Agreement, to ensure that there are effective provisions requiring development and implementation of policies consistent with the principles in the ICM application. Following such additional discussions, the President and General Counsel are requested to return to the board for additional approval, disapproval or advice." (C-119, p. 1.)

33. At the Vancouver meeting of the Board in December 2005, the GAC requested an explanation of the processes that led to the adoption of the Board's resolutions of June 1. Dr. Twomey replied with a lengthy and detailed letter of February 11, 2006. The following extracts are of interest:

"Where an applicant passed all three sets of criteria and there were no other issues associated with the application, the Board was briefed and the application was allowed to move on to the stage of technical and commercial negotiations designed to establish a new sTLD. One application – POST – was in this category. In other cases – where an evaluation team indicated that a set of criteria was not met, or there were other issues to be examined – each applicant was provided an opportunity to submit clarifying or additional documentation before presenting the evaluation panel's recommendation to the Board for a decision on whether the applicant could proceed to the next stage. The other nine applications, including .XXX, were in this category.

"Because of the more subjective nature of the sponsorship/community value issues being reviewed, it was decided to ask the Board to review these issues directly.

...

"It should be noted that, consistent with Article II, Section 1 of the Bylaws, it is the ICANN Board that has the authority to decide, upon the conclusion of technical and commercial negotiations, whether or not to approve the creation of a new sTLD...Responsibility for resolving issues relating to an applicant's readiness to proceed to technical and commercial negotiations and, subsequently, whether or not to approve delegation of a new sTLD, rests with the Board.

...

"Extensive Review of ICM Application

...

"On 3 May 2005, the Board held a 'broad discussion...regarding whether or not there was a 'sponsored community' . The Board agreed that it would discuss this issue again at the next Board Meeting.'

"Based on the extensive public comments received, the independent evaluation panel's recommendations, the responses of ICM and the proposed Sponsoring Organization (IFFOR) to those evaluations, ...at its teleconference on June 1, 2005, the Board authorized the President and General Counsel to enter into negotiations relating to proposed commercial and technical terms with ICM. It also requested the President to present any such negotiated agreement to the Board for approval and authorization..." (C-175.)

34. Subsequent draft registry agreements of ICM were produced in response to specific requests of ICANN staff for amendments, to which requests ICM responded positively. In particular, a provision was included stating that all requirements for registration would be "in addition to the obligation to comply with all applicable law[s] and regulation[s]". (Claimant's Memorial on the Merits, pp. 128-129.)

35. Just before the Board met in Wellington, New Zealand in March 2006, the GAC convened and, among other matters, discussed the above letter of the

ICANN President of February 11, 2006. Its Communique of March 28 states that the GAC

“does not believe that the February 11 letter provides sufficient detail regarding the rationale for the Board determination that the application [of ICM Registry] had overcome the deficiencies noted in the Evaluation Report. The Board would request a written explanation of the Board decision, particularly with regard to the sponsored community and public interest criteria outlined in the sponsored top level domain selection criteria.

“...ICM promised a range of public interest benefits as part of its bid to operate the .xxx domain. To the GAC’s knowledge, these undertakings have not yet been included as ICM obligations in the proposed .xxx Registry Agreement negotiated with ICANN.”

“The public policy aspects identified by members of the GAC include the degree to which the .xxx application would:

- Take appropriate measures to restrict access to illegal and offensive content;
- Support the development of tools and programs to protect vulnerable members of the community;
- Maintain accurate details of registrants and assist law enforcement agencies to identify and contact the owners of particular websites, if need be; and

“Without in any way implying an endorsement of the ICM application, the GAC would request confirmation from the Board that any contract currently under negotiation between ICANN and ICM Registry would include enforceable provisions covering all of ICM Registry’s commitments, and such information on the proposed contract being made available to member countries through the GAC.

“Nevertheless without prejudice to the above, several members of the GAC are emphatically opposed from a public policy perspective to the introduction of a .xxx sTLD.”

36. At the Board’s meeting in Wellington of March 31, 2006, a resolution was adopted by which it was:

“Resolved, the President and General Counsel are directed to analyze all publicly received inputs, to continue negotiations with ICM Registry, and to return to the Board with any recommendations regarding amendments to the proposed sTLD registry agreement, particularly to ensure that the TLD sponsor will have in place adequate mechanisms to address any potential registrant violations of the sponsor’s policies.” (C-184, p. 1.)

37. On May 4, 2006, Dr. Twomey sent a further letter to the Chairman and members of the GAC in response to the GAC’s request for information regarding the decision of the ICANN Board to proceed with several sTLD applications, notwithstanding negative reports from one or more evaluation teams. The following extracts are of interest:

“It is important to note that the Board decision as to the .XXX application is still pending. The decision by the ICANN Board during its 1 June 2005 Special Board Meeting reviewed the criteria against the materials supplied and the results of the independent evaluations. ...the board voted to authorize staff to enter into contractual negotiations without prejudicing the Board’s right to evaluate the resulting contract and to decide whether it meets all the criteria before the Board including public policy advice such as might be offered by the GAC. The final conclusion on the Board’s decision to accept or reject the .XXX application has not been made and will not be made until such time as the Board either approves or rejects the registry agreement relating to the .XXX application. In fact, it is important to note that the Board has reviewed previous proposed agreements with ICM for the .XXX registry and has expressed concerns regarding the compliance structures established in those drafts.

...

In some instances, such as with .XXX, while the additional materials provided sufficient clarification to proceed with contractual discussions, the Board still expressed concerns about whether the applicant met all of the criteria, but took the view that such concerns could possibly be addressed by contractual obligations to be stated in a registry agreement.” (C-188, pp. 1, 2.)

38. On May 10, 2006, the Board held a telephonic special meeting and addressed ICM’s by now Third Draft Registry Agreement. After a roll call, there were 9 votes against accepting the agreement and 5 in favor. Those

who voted against (including Board Chairman Cerf and President Twomey), in brief explanations of vote, indicated that they so voted because the undertakings of ICM could not in their view be fulfilled; because the conditions required by the GAC could not be met; because doubts about sponsorship remained and had magnified as a result of opposition from elements of the adult entertainment community; because the agreement's reference to "all applicable law" raised a wide and variable test of compliance and enforcement; and because guaranty of compliance with obligations of the contract was lacking. Those who voted in favor indicated that changing ICANN's position after an extended process weakens ICANN and encourages the exertions of pressure groups; found that there was sufficient support of the sponsoring community, while invariable support was not required; held it unfair to impose on ICM a complete compliance model before it is allowed to start, a requirement imposed on no other applicant; maintained that ICANN is not in the business and should not be in the business of judging content which rather is the province of each country, that ICANN should not be a "choke-point for content limitations of governments"; and contended that ICANN should avoid applying subjective and arbitrary criteria and should concern itself with the technical merits of applications. (C-189.) The vote of May 10, 2006 was not to approve the agreement as proposed "but it did not reject the application" of ICM (C-197.)

39. ICM Registry filed a Request for Reconsideration of Board Action on May 21, 2006, pursuant to Article IV, Section 2 of ICANN's Bylaws providing for reconsideration requests. (C-190.) However, after being informed by ICANN's general counsel that the Board would be prepared to consider still another revised draft agreement, ICM withdrew that request on October 29, 2006. Working as she had throughout in consultation with ICANN's staff, particularly its general counsel, Ms. Burr, on behalf of ICM, engaged in further negotiations with ICANN endeavoring to accommodate its requirements, demonstrate that the concerns raised by the GAC had been met to the extent possible, and provide ICANN with additional support for ICM's commitment to abide by the provisions of the proposed agreement. Among the materials provided, earlier and then, were a list of persons within the child safety community willing to serve on the board of IFFOR, commitments to enter into agreements with rating associations to provide tags for filtering .XXX websites and to monitor compliance with rules for the suppression of child pornography provisions, and data about a "pre-reservation service" for reservations for .XXX from webmasters operating adult sites on other ICANN-recognized top level domains. ICANN claimed to have registered more than 75,000 pre-reservations in the first six months that this service was publicly available. (Claimant's Memorial on the Merits,

pp. 138-139.) The proposed agreement was revised to include, *inter alia*, provision for imposing certain requirements on registrants; develop mechanisms for compliance with those requirements; create dispute resolution mechanisms; and engage independent monitors. ICM agreed to enter into a contract with the Family Online Safety Institute. The clause regarding registrants' obligations to comply with "all applicable law" was deleted because, in ICM's view, it had given rise to misunderstanding about whether ICANN would become involved in monitoring content. ICM maintains that, in the course of exchanges about making these revisions and preparing its Fourth Draft Registry Agreement, "ICANN never sought to have ICM attempt to re-define the sponsored community or otherwise demonstrate that it met any of the RFP criteria". (*Id.*, p. 141.)

40. On February 2, 2007, the Chairman and Chairman-Elect of the GAC wrote the Chairman of the ICANN Board, speaking for themselves and not necessarily for the GAC, as follows:

"We note that the Wellington Communique...requested clarification from the ICANN Board regarding its decision of 1 June 2005 authorising staff to enter into contractual negotiations with ICM Registry, despite deficiencies identified by the Sponsorship...Panel...we reiterate the GAC's request for a clear explanation of why the ICANN Board is satisfied that the .xxx application has overcome the deficiencies relating to the proposed sponsorship community.

"In Wellington, the GAC also requested confirmation from the ICANN Board that the proposed .xxx agreement would include enforceable provisions covering all of ICM Registry's commitments...

"...GAC members would urge the Board to defer any final decision on this application until the Lisbon meeting." (C-198.)

41. A special meeting of the ICANN Board on February 12, 2007, was held by teleconference. Consideration of the proposed .XXX Registry Agreement was introduced by Mr. Jeffrey, who asked the Board to consider (a) public comment on the proposed agreement (which had been posted by ICANN on its website) (b) advice proffered by the GAC and (c) "how ICM measures up against the RFP criteria" (C-199, p.1). He noted in relation to community input that since the initial ICM application over 200,000 pertinent emails had been sent to ICANN.

42. Rita Rodin, a new Board member, noted that she had not been on the Board at previous discussions of the ICM application, but based on her

review of the papers “she had some concerns about whether the proposal met the criteria set forth in the RFP. For example, she noted that it was not clear to her whether the sponsoring community seeking to run the domain genuinely could be said to represent the adult on-line community. However Rita requested that John Jeffrey and Paul Twomey confirm that this sort of discussion should take place during this meeting. She said that she did not want to reopen issues if they had already been decided by the Board.” (*Id.*, pp. 2-3.)

43. While there was no direct response to the foregoing request of Ms. Rodin, Dr. Cerf noted “that had been the subject of debate by the Board in earlier discussions in 2006...over the last six months, there seem to have been a more negative reaction from members of the online community to the proposal.” Rita Rodin agreed; “there seems to be a ‘splintering of support in the adult on-line community.” She was also concerned “that approval of this domain in these circumstances would cause ICM to become a de facto arbiter of policies for pornography on the Internet...she was not comfortable with ICANN saying to a self-defined group that they could define policy around pornography on the internet. This was not part of ICANN’s technical decision-making remit...” (*Id.*, p. 3) Dr. Twomey said that the Board needed to focus on whether there was a need for further public comment on the new version, the GAC comments, “and whether ICM had demonstrated to the Board’s satisfaction that it had met criteria against the RFP for sTLDs.” Dr. Cerf agreed that “the sponsorship grouping for a new TLD was difficult to define.”

44. Susan Crawford expressed the view that “no group can demonstrate in advance that they will meet the interests and concerns of all members in their community and that this was an unrealistic expectation to place on any applicant...if that test was applied to any sponsor group for a new sTLD, none would ever be approved.”

45. The Acting Chair conducted a “straw poll” of the Board as to whether members held “serious concerns” about the level of support for the creation of the domain from this sponsoring community. A majority indicated that they did, while a minority indicated that “it was an inappropriate burden to place on ICM to ensure that the entire adult online community was supportive of the proposed domain”. (*Id.*) The following resolution was unanimously adopted:

"Whereas a majority of the Board has serious concerns about whether the proposed .XXX domain has the support of a clearly-defined sponsored community as per the criteria for sponsored TLDs;

"Whereas a minority of the Board believed that the self-described community of sponsorship made known by the proponent of the .XXX domain, ICM Registry, was sufficient to meet the criteria for an sTLD.

"Resolved that:

- I. The revised version [now the fifth version of the draft agreement] be exposed to a public comment period of no less than 21 days, and
- II. ICANN staff consult with ICM and provide further information to the Board prior to its next meeting, so as to inform a decision by the Board about whether sponsorship criteria is [sic] met for the creation of a new .XXX sTLD." (*Id.*, p. 4.)

46. The Governmental Advisory Committee met in Lisbon on March 28, 2007 and issued "formal advice to the Board". It reaffirmed the Wellington Communique as "a valid and important expression of the GAC's views on .xxx. The GAC does not consider the information provided by the Board to have answered the GAC concerns as to whether the ICM application meets the sponsorship criteria." It called attention to an expression of concern by Canada that, with the revised proposed ICANN-ICM Registry agreement, "the Corporation could be moving towards assuming an ongoing management and oversight role regarding Internet content, which would be inconsistent with its technical mandate." (C-200, pp. 4, 5.) It also adopted "Principles Regarding New TLDs" which contain the following provision in respect of delegation of new gTLDs:

"2.5 The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process." (*Id.*, p. 12.)

47. The climactic meeting of the ICANN Board took place in Lisbon, Portugal, on March 30, 2007. A resolution was adopted by a vote of nine to five, with one abstention (that of Dr. Twomey), whose operative paragraphs provide that:

"...the board has determined that

"ICM's application and the revised agreement failed to meet, among other things, the sponsored community criteria of the RFP specification.

"Based on the extensive public comment and from the GAC's communiqués, that this agreement raises public policy issues.

"Approval of the ICM application and revised agreement is not appropriate, as they do not resolve the issues raised in the GAC communiqués, and ICM's response does not address the GAC's concern for offensive content and similarly avoids the GAC's concern for the protection of vulnerable members of the community. The board does not believe these public policy concerns can be credibly resolved with the mechanisms proposed by the applicant.

"The ICM application raises significant law enforcement compliance issues because of countries' varying laws relating to content and practices that define the nature of the application, therefore obligating ICANN to acquire responsibility related to content and conduct.

"The board agrees with the reference in the GAC communiqué from Lisbon that under the revised agreement, there are credible scenarios that lead to circumstances in which ICANN would be forced to assume an ongoing management and oversight role regarding Internet content, which is inconsistent with its technical mandate.

Accordingly, it is resolved...that the proposed agreement with ICM concerning the .xxx sTLD is rejected and the application request for delegation of the .XXX sTLD is hereby denied."

48. Debate in the Board over adoption of the resolution was intense. Dr. Cerf, who was to vote in favor of the resolution (and hence against the ICM application) observed that he had voted in favor of proceeding to negotiate a contract.

"Part of the reason for that was to try to understand more deeply exactly how this proposal would be implemented, and seeing the contractual terms...would put much more meat on the bones of the initial proposal. I have been concerned about the definition of 'responsible'...there's uncertainty in my mind about what behavioral

patterns to expect...over time, the two years that we've considered this, there has been a growing disagreement within the adult content community as to the advisability of this proposal. As I looked at the contract...the mechanisms for assuring the behavior of the registrants in this top-level domain seemed, to me, uncertain. And I was persuaded ... that there were very credible scenarios in which the operation of IFFOR and ICM might still lead to ICANN being propelled into responding to complaints that some content on some of the registered .xxx sites didn't somehow meet the expectations of the general public this would propel ICANN and its staff into making decisions or having to examine content to decide whether or not it met the IFFOR criteria ... I would also point out that the GAC has raised public policy concerns about this particular top level domain." (C-201, p. 6.)

49. Rita Rodin said that she did not believe

"that this is an appropriate sponsored community...it's inappropriate to allow an applicant in any sTLD to simply define out ...any people that are not in favor of this TLD..as irresponsible...this will be an enforcement headache...for ICANN..way beyond the technical oversight role of ICANN's mandate...there's porn all over the Internet and...there isn't a mechanism with this TLD to have it all exclusively within one string to actually effect some of the purposes of the TLD...to be responsible with respect to the distribution of pornography, to prevent child pornography on the Internet..." (*id.*, p. 7.)

50. Peter Dengate Thrush, who favored acceptance of the ICM contract, voted against the resolution. On the issue of the sponsored community,

"there is on the evidence a sufficiently identifiable, distinct community which the TLD could serve. It's the adult content providers wanting to differentiate themselves by voluntary adoption of this labeling system. It's not affected ... by the fact that that's a self-selecting community...or impermanence of that community...This is the first time in any of these sTLD applications that we have had active opposition. And we have no metrics...to establish what level of opposition by members of the potential community might have caused us concern...the resolution I am voting against is particularly weak on this issue. On why the board thinks this community is not sufficiently identified. No fact or real rationale are provided in the resolution, and...given the considerable importance that the board has placed on this...and the cost and effort that the applicant has gone to answer the

board's concern demonstrating the existence of a sponsored community...this silence is disrespectful to the applicant and does a disservice to the community...I've also been concerned ... about the scale of the obligations accepted by the applicant...some of those have been forced upon them by the process..in the end I am satisfied that the compliance rules raise no new issues in kind from previous contracts. And I say that if ICANN is going to raise this kind of objection, then it better think seriously of getting out of the business of introducing new TLDs ... I do not think that this contract would make ICANN a content regulator..." (*Id.*, pp. 7-8.)

51. Njeri Ronge stated that, in addition to the reasons stated in the resolution, "the ICM proposal will not protect the relevant or interested community from the adult entertainment Web sites by a significant percentage; ... the ICM proposal focuses on content management which is not in ICANN's technical mandate." (*Id.*, p. 8.)

52. Susan Crawford dissented from the resolution, which she found "not only weak but unprincipled".

"I am troubled by the path the board has followed on this issue...ICANN only creates problems for itself when it acts in an ad hoc fashion in response to political pressures. ICANN...should resist efforts by governments to veto what it does...The most fundamental value of the global Internet community is that people who propose to use the Internet protocols and infrastructures for otherwise lawful purposes, without threatening the operational stability or security of the Internet, should be presumed to be entitled to do so. In a nutshell, everything not prohibited is permitted. This understanding...has led directly to the striking success of the Internet around the world. ICANN's role in gTLD policy development is to seek to assess and articulate the broadly shared values of the Internet community. We have very limited authority. I am personally not aware that any global consensus against the creation of a triple X domain exists. In the absence of such a prohibition, and given our mandate to create TLD competition, we have no authority to block the addition of this TLD to the root. It is very clear that we do not have a global shared set of values about content on line, save for the global norm against child pornography. But the global Internet community clearly does share the core value that no centralized authority should set itself up as the arbiter of what people may do together on line, absent a demonstration that most of those affected by the proposed activity agree that it should be banned...the

fact is that ICANN evaluated the strength of the sponsorship of triple X, the relationship between the applicant and the community behind the TLD, and...concluded that this criteria [sic] had been met as of June 2005. ICANN then went on to negotiate specific contractual terms with the applicant. Since then, real and AstroTurf comments – that’s an Americanism meaning filed comments claiming to be grass roots opposition that have actually been generated by organized campaigns – have come into ICANN that reflect opposition to this application. I do not find these recent comments sufficient to warrant revisiting the question of the sponsorship strength of this TLD which I personally believe to be closed. No applicant for any sponsored TLD could ever demonstrate unanimous, cheering approval for its application. We have no metric against which to measure this opposition....We will only get in the way of useful innovation if we take the view that every new TLD must prove itself to us before it can be added to the root...what is meant by sponsorship...is that there is enough interest in a particular TLD that it will be viable. We also have the idea that registrants should participate in and be bound by the creation of policies for a particular string. Both of these requirements have been met by this applicant. There is clearly enough interest, including more than 70,000 preregistrations from a thousand or more unique registrants who are member of the adult industry, and the applicant has undertaken to us that it will require adherence to its self-regulatory policies by all of its registrants...Many of my fellow board members are undoubtedly uncomfortable with the subject of adult entertainment material. Discomfort may have been sparked anew by first the letter from individual GAC members...and second the letter from the Australian Government. But the entire point of ICANN's creation was to avoid the operation of chokepoint control over the domain name system by individual or collective governments. The idea was the U.S. would serve as a good steward for other governmental concerns by staying in the background and...not engaging in content-related control. Australia’s letter and concerns expressed...by Brazil and other countries about triple X are explicitly content-based and, thus, inappropriate...If after the creation of a triple X TLD certain governments of the world want to ensure that their citizens do not see triple X content, it is within their prerogative as sovereigns to instruct Internet access providers physically located within their territory to block such content...But content-related censorship should not be ICANN's concern...To the extent there are public policy concerns with this TLD, they can be dealt with through local laws.” (*Id.*, pp. 9-11.)

53. Demi Getschko declared that her vote in favor of the resolution was her own decision "without any kind of pressure". (*Id.*, p. 12.) Alejandro Pisanty denied that "the board has been swayed by political pressure of any kind" and affirmed that, "ICANN has acted carefully and strictly within the rules." He accepted "that there is no universal set of values regarding adult content other than those related to child pornography...the resolution voted is based precisely on that view, not on any view of content itself." (*Id.*

PART THREE: THE ARGUMENTS OF THE PARTIES

The Contentions of ICM Registry

54. ICM Registry contends that (a) the Independent Review Process is an arbitration; (b) that Process does not afford the ICANN Board a "deferential standard of review"; (c) the law to be applied by that Process comprises the relevant principles of international law and local law, *i.e.*, California law, and that the particularly relevant principle is good faith; (d) in its treatment and rejection of the application of ICM Registry, ICANN did not act consistently with its Articles of Incorporation and Bylaws.

The Nature of the Independent Review Process

55. In respect of the nature of the Independent Review Process, ICM, noting that these proceedings are the first such Process brought under ICANN's Bylaws, maintains that they are arbitral and not advisory in character. It observes that the current provisions governing the Independent Review Process were added to the Bylaws in December 2002 partly as a result of international and domestic concern about ICANN's lack of accountability. It recalls that ICANN's then President, Stuart Lynn, announced in a U.S. Senate hearing in 2002 that ICANN planned to "strengthen ... confidence in the fairness of ICANN decision-making through... creating a workable mechanism for speedy independent review of ICANN Board actions by experienced arbitrators..." (Claimant's Memorial on the Merits, p. 162). His successor, Dr. Twomey, stated to a committee of the U.S. House of Representatives in 2006 that, "ICANN does have well-established principles and processes for accountability in its decision-making and in its bylaws...there is ability for appeal to...independent arbitration." (*Id.*, p. 163.) Article IV, Section 3, of ICANN's Bylaws provides that: "The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN...using arbitrators...nominated by that provider." Pursuant to that provision, ICANN appointed the International Centre for Dispute Resolution ("ICDR") of the American Arbitration Association as the international arbitration provider

(which in turn appointed the members of the instant Independent Review Panel). The term "arbitration" imports the binding resolution of a dispute. Courts in the United States – including the Supreme Court of California – have held that the term "arbitration" connotes a binding award. (*Id.*, pp. 168-169.) Article 27(1) of the ICDR Rules provides that "[a]wards...shall be final and binding on the parties. The parties undertake to carry out any such award without delay." (C-11.) The Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process specify that "the ICDR's International Arbitration Rules...will govern the Process in combination with these Supplementary Procedures." They provide that the "Independent Review Panel (IRP) refers to the neutral(s) appointed to decide the issue(s) presented." "The Declaration shall specifically designate the prevailing party." (C-12.) In view of all of the foregoing, ICM maintains that the IRP is an arbitral process designed to produce a decision on the issues that is binding on the parties.

The Standard of Review is Not Deferential

56. ICM also maintains that, contrary to the position now advanced by counsel for ICANN, ICANN's assertion that the Panel must afford the ICANN Board "a deferential standard of review" has no support in the instruments governing this proceeding. The term "independent review" connotes a review that is not deferential. Both Federal law and California law treat provision for an independent review as the equivalent of *de novo* review. In California law, when an appellate court employs independent, *de novo* review, it generally gives no special deference to the findings or conclusions of the court from which appeal is taken. (Claimant's Memorial on the Merits, with citations, pp. 173-174.) ICANN's reliance on the "business judgment rule" and the related doctrine of "judicial deference" under California law is misplaced, because under California law the business judgment rule is employed to protect directors from personal liability (typically in shareholder suits) when the directors have made good faith business decisions on behalf of the corporation. The IRP is not a court action seeking to impose individual liability on the ICANN board of directors. Rather, this is an Independent Review Process with the specific purpose of declaring "whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws." As California courts have explicitly stated, "the rule of judicial deference to board decision-making can be limited ... by the association's governing documents." The IRP, to quote Dr. Twomey's testimony before Congress, is a process meant to establish a "final method of accountability."

The notion now advanced on behalf of ICANN, that this Panel should afford the Board “a deferential standard of review” and only “question” the Board’s actions upon “a showing of bad faith” is at odds with that purpose as well as with the plain meaning of “independent review”. (*Id.*, pp. 176-177.)

The Applicable Law of this Proceeding

57. Article 4 of ICANN’s Articles of Incorporation provides that, “The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with the relevant principles of international law and applicable international conventions and local law...” (C-4). The prior version of the draft Articles had provided for ICANN’s “carrying out its activities with due regard for applicable local and international law”. This language was regarded as inadequate, and was revised, as the then Interim Chairman of ICANN explained, “to mak[e] it clear that ICANN will comply with relevant and applicable international and local law”. (*Id.*, p. 180.) As ICANN’s President testified in the U.S. Congress in 2003, the International Review Process was put in place so that disputes could “be referred to an independent review panel operated by an international arbitration provider with an appreciation for and understanding of applicable international laws, as well as California not-for-profit corporation law.” (*Id.*, p. 182.) According to the Expert Report of Professor Jack Goldsmith, on which ICM relies:

“...in an attempt to bring accountability and thus legitimacy to its decisions, ICANN (a) assumed in its Articles of Incorporation an obligation to act in conformity with ‘relevant principles of international law’ and (b) in its Bylaws extended to adversely affected third parties a novel right of independent review in this arbitration proceeding for consistency with ICANN’s Articles and Bylaws. The parties have agreed to international arbitration in this forum to determine consistency with the international law standards set forth in Article 4 of the Articles of Incorporation. California law allows a California non-profit corporation to bind itself in this way.” (*Id.*, p. 11.)

In ICM’s view, Article 4 of ICANN’s Articles of Incorporation acts as a choice-of-law provision. It notes that Article 28 of the ICDR Arbitration Rules specifically provides that “the Tribunal shall apply the substantive law(s) or rules of law designated by the parties as applicable to this dispute.” (C-11.) It points out that the choice of a concurrent law clause – as in ICANN’s Articles providing for the application of relevant principles of both

international and domestic law – is not unusual, especially in transactions involving a public resource.

58. Professor Goldsmith observes that: "... "principles of international law and applicable international conventions and local law" refers to three types of law. Local law means the law of California. Applicable international conventions refers to treaties. "The term 'principles of international law' includes general principles of law. Given that the canonical reference to the sources of international law is Article 38 of the Statute of the International Court of Justice, which lists international conventions, customary international law, and "the general principles of law recognized by civilized nations", the reference to "principles of international law" in ICANN's Articles must refer to customary international law and to the general principles of law. (Expert Report, p. 12.) Professor Goldsmith notes that the Iran-United States Claims Tribunal has interpreted the "principles of commercial and international law" to include the general principles of law. ICSID tribunals similarly have interpreted "the rules of international law" to include general principles of law.

"It is perfectly appropriate to apply general principles in this IRP even though ICANN is technically a non-profit corporation and ICM is a private corporation. ICANN voluntarily subjected itself to these general principles in its Articles of Incorporation, something that both California law permits and that is typical in international arbitrations, especially when public goods are at stake. The 'international' nature of this arbitration – ... is evidenced by the global impact of ICANN's decisions...ICANN is only nominally a private corporation. It exercises extraordinary authority, delegated from the U.S. Government, over one of the globe's most important resources...its control over the Internet naming and numbering system does make sense of its embrace of the 'general principles' standard. While there is no doubt that ICANN can and has bound itself to general principles of law as that phrase is understood in international law... the general principles relevant here complement, amplify and give detail to the requirements of independence, transparency and due process that ICANN has otherwise assumed in its Articles and Bylaws and under California law. General principles thus play their classic supplementary role in this proceeding." (*Id.*, pp. 15-16.)

59. Professor Goldsmith continues: "The general principle of good faith is 'the foundation of all law and all conventions'" (quoting the seminal work of Bin Cheng, *General Principles of Law as Applied by International Courts and*

Tribunals, p. 105). "As the International Court of Justice has noted, 'the principle of good faith is a well established principle of international law'". (*Case concerning the Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 296, with many citations.) Applications of the principle are "the requirement of good faith in complying with legal restrictions" and "the requirement of good faith in the exercise of discretion, also known as the doctrine of non-abuse of rights..." as well as the requirement of good faith in contractual negotiations. (*Id.*, pp. 17-18.) The principle is "equally applicable to relations between individuals and to relations between nations." (Cheng, *loc. cit.*).

60. Professor Goldsmith maintains that the abuse of right alleged by ICM that is

"most obvious is the clearly fictitious basis ICANN gave for denying ICM's application...the concern about 'law enforcement compliance issues because of countries' varying laws relating to content and practices that define the nature of the application' applies to many top-level domains besides .XXX. The website 'pornography.com' would be no less subject to various differing laws around the world than the website 'pornography.xxx.' ...a website on the .XXX domain is *easier* for nations to regulate and exclude from computers in their countries because they can block all sites on the .XXX domain with relative ease but have to look at the content, or make guesses based on domain names, to block unwanted pornography on .COM and other top level domains. In short, this reason for ICANN's denial, if genuine, would extend to many top-level domains and would certainly apply to all generic top-level domains (like .COM, .INFO, .NET and .ORG) where pornographic sites can be found. But ICANN has only applied this reason for denial to the .XXX domain. This strongly suggests that the reasons for the denial are pretextual and thus the denial is an abuse of right..."

61. Professor Goldsmith further argues that "similarly pretextual is ICANN's claim that 'there are credible scenarios that leads to circumstances in which ICANN would be forced to assume an ongoing management and oversight role regarding Internet content.'" He contends that the scenario is "unlikely", but, more importantly, "*the same logic applies to generic top level domains* like .COM. The identical scenario could arise if a national court ordered...the registry operator for .COM...to shut down one of the hundreds of thousands of pornography sites on .COM. But ICANN has only expressed concern about ICM..."

ICANN Did Not Act Consistently with its Articles of Incorporation and Bylaws

62. ICM Registry contends that ICANN failed to act consistently with its Articles of Incorporation and Bylaws in the following respects.

63. ICANN, ICM maintains, conducted the 2004 Round of applications for top-level domains as a two-step process, in which it was first determined whether or not each applicant met the RFP criteria. If the criteria were met, "upon the successful completion of the sTLD process" (ICANN Board resolution of October 31, 2003, C-78), the applicant then would proceed to negotiate the commercial and technical terms of a registry agreement. (This Declaration, paras. 13-16, *supra*.) The RFP included detailed description of the criteria to be met to enable the applicant to proceed to contract negotiations, and specified that the selection criteria would be applied "based on principles of objectivity, non-discrimination and transparency". (C-45.) On June 1, 2005, the ICANN Board concluded that ICM had met all of the RFP criteria - financial, technical and sponsorship - and authorized ICANN's President and General Counsel to enter into negotiations over the "commercial and technical terms" of a registry agreement with ICM. "The record evidence in this case demonstrates overwhelmingly that when the Board approved ICM to proceed to contract negotiations on 1 June 2005, the Board concluded that ICM had met all of the RFP criteria - including, specifically, sponsorship." (Claimant's Post-Hearing Submission, p. 11.) While ICANN now claims that the sponsorship criterion remained open, and that the Board's resolution of June 1, 2005, authorized negotiations in which whether ICM met sponsorship requirements could be more fully tested, ICM argues that no credible evidence, in particular, no contemporary documentary evidence, supports these contentions. To the contrary, ICM:

- (a) recalls that ICANN's written announcement of applications received provided: "The applications will be reviewed by independent evaluation teams beginning in May 2004. The criteria for evaluation were posted with the RFP. All applicants that are found to satisfy the posted criteria will be eligible to enter into technical and commercial negotiations with ICANN for agreements for the allocation and sponsorship of the requested TLDs." (C-82.)

- (b) emphasizes that ICANN's Chairman of the Board, Dr. Cerf, is recorded in the GAC's Luxembourg minutes as stating, shortly after the adoption of the June 1, 2005, resolution, that the application of .xxx "this time met the three main criteria, financial, technical and sponsorship". Sponsorship was

extensively discussed "and the Board reached a positive decision considering that ICANN should not be involved in content matters." (C-139; *supra*, para. 22.)

- (c) notes that a letter of ICANN's President of February 11, 2006. states that: "...it is the ICANN Board that has the authority to decide, upon the conclusion of technical and commercial negotiations, whether or not to approve the creation of a new sTLD...Responsibility for resolving issues relating to an applicant's readiness to proceed to technical and commercial negotiations...rests with the Board." (*Supra*, paragraph 33.)

- (d) notes that the GAC's Wellington Communique states, in respect of a letter of February 11, 2006 of ICANN's President, that the GAC "does not believe that the February 11 letter provides sufficient detail regarding the rationale for the Board determination" that ICM's application "had overcome the deficiencies noted in the Evaluation Report". (*Supra*, paragraph 35.)

- (e) stresses that the ICANN Vice President in charge of the Round, Kurt Pritz, whom ICANN chose not to call as a witness in the hearing, stated in a public forum meeting in April 2005 that: "If it was determined that an application met those three baseline criteria, technical, commercial and sponsorship community, they, then, were informed that they would enter into a phase of commercial and technical negotiation with ICANN, the culmination of those negotiations is and was intended to result in the designation of the new top-level domain. At the conclusion of that, we would sign agreements that would be forwarded to the Board for their approval." (C-88.)

- (f) recalls that Dr. Pritz stated in Luxembourg that ICM was among the "applicants that have been found to satisfy the baseline criteria and they're presently in negotiation for the designation of registries..." (C-140, p. 28).

- (g) observes that the General Counsel of ICANN, Mr. Jeffery, in an exchange with Ms. Burr acting as counsel of ICM, accepted a draft press release in respect of the June 1, 2005 resolution stating that, "ICANN's board of directors today determined that the proposal for a new top level domain submitted by ICM Registry meets the criteria established by ICANN." (C-221.)

- (h) reproduces a Fox News Internet story of June 2, 2005, captioned, "Internet Group OKs New Suffix for Porn Sites," which cites ICANN spokesman Kieran Baker as saying that adult oriented sites, a \$12 billion industry, "could begin buying .xxx addresses as early as fall or winter depending on ICM's plans." (C-283.)

- (i) recalls that a member of the Board when the June 1, 2005 resolution was adopted, Joicho Ito, posted on his blog the next day that "the .XXX proposal, in my opinion, has met the criteria set out in the RFP. Our approval of .XXX is a decision based on whether .XXX met the criteria and does not endorse or condone any particular type of content or moral belief." (Burr Exhibit 35.)

ICM argues that ICANN's witnesses had no response to the foregoing evidence, other than to say that they could not remember or had not seen it (testimony of Dr. Cerf, Tr. 615:18-21, 660:9-12, 675:3-16; Testimony of Dr. Twomey, 914: 4-11, 915:2-11).

64. Dr. Cerf testified at the hearing that,

"At the point where the question arose whether we should proceed or could proceed to contract negotiation, in the absence of having decided that the sponsorship criteria had been met, the board consulted with counsel [the General Counsel, Mr. Jeffery] and my recollection of this discussion is that we could leave undetermined and undecided the question of sponsorship and could use the discussions with regard to the contract as a means of exposing and understanding more deeply whether the sponsorship criteria had been or could be adequately met...prior to the board vote on the question, should we proceed to contract, this question was raised, and it was my understanding that we were not deciding the question of sponsorship. We were using the contract negotiations as a means of clarifying whether or not...the sponsorship criteria could be or had been met or would be met..." (Tr. 600:6-18, 601: 1-8).

65. ICM however claims that Dr. Cerf's testimony "is flatly contradicted by the numerous contemporaneous statements of ICANN Board members and officials that ICM had, in fact, met the criteria, including Dr. Cerf's own contemporaneous statement to the GAC in Luxembourg..." (Claimant's Post-Hearing Submissions, p. 14.) ICM maintains that there is no contemporary documentary evidence that sustains Dr. Cerf's recollection. Nor did ICANN present Mr. Jeffery as a witness, despite his presence in the hearing room. No mention of reservations about sponsorship is to be found in the June 1, 2005 resolution; it contains no caveats, unlike the resolutions adopted in respect of the applications for .JOBS and .MOBI adopted by the Board in 2004.

66. ICANN further argues, ICM observes, that the June 1, 2005, resolution provides that the contract would be entered into "if" the parties were able to negotiate "commercial and technical terms"; therefore ICM should have known that all other issues also remained open. But, responds ICM, "Complete silence on an issue -- when other issues are specifically mentioned -- does not create ambiguity on the missing issue. It means that the missing issue is no longer an issue." (*Id.*, pp. 15-16.)

67. Shortly after adoption of the June 1, 2005 resolution, contract negotiations commenced. As predicted by Mr. Jeffrey in a June 13, 2005, email to Ms. Burr, the negotiations were "quick" and "straightforward". (C-150.) Agreement on the terms of a registry contract was reached between them by August 1, 2005. That draft registry agreement was posted on the ICANN website on August 9, 2005. The Board was scheduled to discuss it at a meeting to be held on August 16.

68. But then came the intervention of the U.S. Department of Commerce described *supra*, paragraphs 27 and 29. ICM argues that it is remarkable that the U.S. Government responded in the way it did to a lobbying campaign largely generated by the website of the Family Research Council. "What is even more remarkable is the extent to which ICANN altered its course of conduct with respect to ICM in response to the U.S. government's intervention." ICM contends that: "The unilateral intervention by the U.S. government was entirely inappropriate and ICANN knew it. But rather than adhere to the principles of its Articles and Bylaws, ICANN quickly bowed to the U.S. intervention, and, at the same time tried to conceal it." (Claimant's Post-Hearing Submission, p. 27.) The charge of concealment relates to Dr. Twomey's having "suggested" to the Chairman of the GAC that he write to ICANN requesting delay in considering the draft contract with ICM (*supra*, paragraph 28). Dr. Twomey acknowledged at the hearing that he so suggested but explained that the letter was nothing more than a confirmation of what Board members had heard weeks before from the GAC in Luxembourg. (Tr. 856:8-19, 859:1-12, 861:10-20, and *supra*, paragraphs 21-25.)

69. ICM invokes the witness statement provided by the chair of the Sponsorship Evaluation Team, Dr. Williams, who, as a fellow Australian, had a close working relationship with Dr. Twomey. She wrote that:

"The June 2005 vote should have marked the completion of the substantive discussions of the .XXX application, especially in light of the Board resolution that approved the .XXX application with no

reservations or caveats. Instead, following the vote, the ICANN Governmental Advisory Committee 'woke up' to the .XXX application, and ICANN began to feel pressure from a number of governments, especially from the United States and Australia...An open dispute with the United States would have been very damaging to ICANN's credibility, and it was therefore very difficult to resist pressure from the United States...Dr. Twomey expressed to me his anxiety about the .XXX registry agreement as a result of this [Gallagher] intervention. This concern went to the heart of ICANN's legitimacy as a quasi-independent technical regulatory organization with the power to establish the process by which new TLDs could be created and put on the root. If the United States Government disagreed with ICANN's process or decision at any point and did not enter a TLD accepted by ICANN to the root, it would call into question ICANN's authority, competence, and entire reason for existence." (Witness Statement of Elizabeth Williams, pp. 26-28.)

70. ICM points out that the Wellington Communique of the GAC (*supra*, paragraph 35) referred to "the Board determination that the [ICM] application had overcome the deficiencies noted in the Evaluation Report." ICM maintains that, at ICANN's staff prompting, ICM responded to all of the concerns raised in the GAC's Wellington Communique. Thus, the Third Draft Registry Agreement of April 18, 2006, included commitments of ICM to establish policies and procedures to label the sites on the domain, to use automated tools to detect and prevent child pornography, to maintain accurate lists of registrants and assist law enforcement agencies to identify and contact the owners of particular sites, and to ensure the intellectual property and trademark rights, personal names, country names, names of historical, cultural and religious significance and names of geographic identifiers, drawing on domain name registry best practices (C-171).

71. ICM construes a statement of Dr. Cerf at the hearing as indicating that the reason, or a reason, why ICM ultimately did not obtain a registry agreement was that ICM could not provide adequate solutions "to deal with the problem of pornography on the Net". It counters that ICM had never undertaken to "deal with" or solve "the problem of pornography on the Net". "The purpose of .XXX was to create an sTLD where responsible adult content providers would agree, *inter alia*, to submit to technological tools to help tag and filter their sites; allow their sites to be 'crawled' for indicia of child pornography (real or virtual); and otherwise adhere to best practices for responsible members of the industry (including practices to prevent credit card fraud, spam, misuse of personal data, the sending of unsolicited

promotional email, the 'capture' of visitors to their sites, *etc.*).” (Claimant’s Post-Hearing Submission, p. 42.) However, Dr. Twomey seized on a phrase in the Wellington Communique “in order to impose an impossible burden on ICM.” According to ICM, Dr. Twomey asserted that “the GAC was now insisting that ICM be responsible for ‘enforcing restrictions’ around the world on access to illegal and offensive content.” (*Id.*, pp. 42-43.) But, ICM argues, to the extent that the GAC was requesting ICM to enforce restrictions on illegal and offensive content, ICANN was

“not merely acting outside its mission. It was also imposing a requirement on ICM that had never been imposed on any other registrant for any other top level domain, and that, indeed, no registrant could possibly fulfil. .COM, for example, is unquestionably filled with content that is considered ‘illegal and offensive’ in many countries. Some of its content is considered ‘illegal and offensive’ in all countries. Adult content can be found on numerous other TLDs...Dr. Cerf had told the GAC in Luxembourg in July 2005, when he was explaining the Board’s determination that ICM had met the RFP criteria: ‘to the extent that governments do have concerns they relate to the issues across TLDs.’ ICANN has never suggested that the registries for those other TLDs must ‘enforce’ restrictions on access to illegal or offensive content for sites on their TLDs.” (*Id.*, pp. 43-44.)

72. ICM adds that if “the GAC was in fact asking ICANN to impose such an absurd requirement on ICM, then ICANN should have told the GAC that it could not do so.” The GAC is no more than an advisory body supposed to provide “advice” on a “timely” basis. “ICANN is by no means under any obligation to do whatever the GAC tells it to do.” Indeed, ICANN’s Bylaws specifically contemplate that the Board may decide not to follow the GAC’s advice. (*Id.*, p. 44.)

73. ICM invokes the terms of the Bylaws, Section 2(1)(j), which provide that:

“The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. If no such solution can be found, the ICANN Board will state

in its final decision the reasons why the Governmental Advisory Committee's advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities." (C-5, and *supra*, paragraph 9.)

74. ICM further argues however that Dr. Twomey's reading of the Wellington Communique was not a reasonable one. The Wellington Communique recalls that "ICM promised a range of public interest benefits as part of its bid to operate the .xxx domain...The public policy aspects identified by members of the GAC include the degree to which .xxx application would: Take appropriate measures to restrict access to illegal and offensive content..." (*Id.* p. 45; C-181). As promised in its application, ICM in fact proposed numerous measures to restrict access to illegal and offensive content. But nowhere did the GAC state that ICM should be responsible for "enforcing" the restrictions of countries on access to illegal and offensive content. ICM argues that the very fact that the GAC wanted ICM to "maintain accurate details of registrants and assist law enforcement agencies to identify and contact the owners of particular websites" (C-181, p. 3) demonstrates that the GAC did *not* expect ICM to enforce various national restrictions on access to illegal and offensive content.

75. The numerous measures that ICM set out in its revised draft registry agreement in consultation with the staff of ICANN did not constitute an agreement or "representation to enforce the laws of the world on pornography" (testimony of Ms. Burr, Tr. 1044: 8-9). Actually the activation of an .XXX TLD would make it far easier for governments to restrict access to content that they deemed illegal or offensive. Indeed, as Dr. Cerf told the GAC in Luxembourg in July 2005 in defending ICANN's agreeing to enter into contract negotiations with ICM, "The TLD system is neutral, although filtering systems could be solutions promoted by governments." (C-139, p. 5.) "In other words," ICM argues, "the appropriate place for restricting access to content deemed illegal or offensive by any particular country is within that particular country. ICM offered far more tools for countries to effectuate such restrictions than have ever existed before. Thus, ICM provided 'appropriate measures to restrict access to illegal and offensive content.'" (Claimant's Post-Hearing Submission, p. 47.)

76. ICM alleges that, "Nonetheless, on 10 May 2006, the ICANN Board proceeded to reject ICM's registry agreement because, in Dr. Twomey's words, ICM had not demonstrated how it would 'ensure enforcement of these contractual terms' as they relate to various countries' individual laws

'concerning pornographic content' [citing C-189, p.6]. In other words, ICM's draft registry agreement was rejected on the basis of its inability to comply with a contractual undertaking to which it had never agreed in the first place." (*Id.*, p. 48.)

77. At that same meeting of the Board, Dr. Twomey drew attention to a letter of May 4, 2006 from Martin Boyle, UK Representative to the GAC, which read as follows:

"The discussions held by the Governmental Advisory Committee in Wellington in March have highlighted some of the key concerns, and strong opposition by some administrations, to the application for a new top-level domain for pornographic content, dot.xxx. I thought that it would be helpful to follow up those discussions by submitting directly to the ICANN Board the views of the UK Government. In preparing these views, we have consulted a number of stakeholders in the UK, including Internet safety groups...

"Having examined the proposal in detail, and recognizing ICANN's authority to grant such domain names, the UK expresses its firm view that if the dot .xxx domain name is to be authorized, it would be important that ICANN ensures that the benefits and safeguards proposed by the registry, ICM, including the monitoring of all dot.xxx content and rating of content on all servers pointed to by .xxx, are genuinely achieved from day one. Furthermore, it will be important to the integrity of ICANN's position as final approving authority for the dot.xxx domain name, to be seen as able to intervene promptly and effectively if for any reason failure on the part of ICM in any of these fundamental safeguards becomes apparent. It would also in our view be essential that ICM liaise with the relevant bodies in charge of policing illegal Internet content at national level, such as the Internet Watch Foundation (IWF) in the UK, so as to ensure the effectiveness of the solutions it proposes to avoid the further propagation of illegal content. Specifically, ICM should undertake to monitor all dot.xxx content as it proposed and cooperate closely with IWF and equivalent agencies.

"This is an important decision that the ICANN Board has to take and whatever you decide will probably attract criticism from one quarter or another. This makes it all the more important that in making a decision, you reach a clear view on the extent to which the benefits which ICM claim are likely to be sustainable and reliable." (C-182.)

78. Dr. Twomey said this about Mr. Boyle's position:

"...the contractual terms put forward by ICM to meet the sorts of public-policy concerns raised by the Governmental Advisory Committee in my view are very difficult to implement, and I retain concerns about their ability to actually be implemented in an international environment where the important phrase, 'all applicable law', would raise a very wide and variable test for enforcement and compliance. And I can't see how that will actually be achieved under the contract. The letter from the UK is an indication of the expectations of the international governmental community to ensure enforcement of these contractual terms as they individually interpret them against their own law concerning pornographic content. This will put ICANN in an untenable position." (C-189, p. 6.)

79. ICM contends that "it is impossible to reconcile the points made in Mr. Boyle's letter - *i.e.*, that ICANN should ensure that ICM delivered from "day one" on the 'benefits and safeguards' promised in its contract, and that ICM should liase with the IWF - as a requirement 'to ensure enforcement of the contractual terms as they each individually interpret them against their own law concerning pornographic content'. And even if Mr. Boyle had been making such a demand, it would have been entirely outside ICANN's mandate to impose it on ICM, and would have imposed a requirement on ICM that it has never imposed on any other registry." (Claimant's Post-Hearing Submission, p. 50.)

80. ICM however acknowledges that other members of the Board shared Dr. Twomey's analysis. It concludes that:

"...the ICANN Board was now imposing a requirement that was outside the mission of ICANN; that had never been imposed on any other registry; and that - had it been included in the RFP - would have kept any applicant from applying for an sTLD dealing with adult content." (*Id.*, p. 51.)

81. ICM observes that, following the ICANN Board's rejection of the ICM registry agreement on May 10, 2006, and then its renewed consideration of it after ICM withdrew its request for reconsideration (*supra*, paragraph 39), ICM responded to further requests of ICANN staff. It agreed to conclude a contract with what is now known as the Family Online Safety Institute ("FOSI") specifying that FOSI was "to use an automated tool to scan" the .XXX domain and develop other ways to monitor ICM's compliance with its

commitments. ICM notes that, throughout the entire negotiation process, the ICANN staff never asked ICM to change the definition of the sponsored community, which remained the same though each of the five renderings of the draft registry agreement.

82. At the Board's meeting of February 12, 2007, the question of the solidity of ICM's sponsorship was re-opened – in ICM's view, inappropriately --- as described above (*supra*, paragraphs 41-45 and C-199). ICM argues that the data that it responsively submitted to the ICANN Board in March 2007 demonstrated that its application met the RFP standard of "broad-based support from the community". 76,723 adult website names had been pre-reserved in .XXX since June 1, 2005; 1,217 adult webmasters from over 70 countries had registered on the ICM Registry website, saying that they supported .XXX. But, ICM observes, none of the Board members voting against acceptance of ICM's application at the dispositive meeting of March 30, 2007, mentioned the extensive evidence provided by ICM in support of sponsorship.

83. For the reasons set forth above in paragraphs 63-82, ICM contends that the Board's rejection of its application was not consistent with ICANN's Articles of Incorporation and Bylaws. As regards the five specific reasons for rejection set forth in the Board's resolution of March 30, 2007 (*supra*, paragraph 47), ICM makes the following allegations of inconsistency.

84. Reason 1: ICM's application and revised agreement fail to meet the sponsored community criteria of the RFP specification. ICM responds that the Board concluded by its resolution of June 1, 2005, that ICM had met the RFP's sponsorship criteria; and that the Board's abandonment of the two-step process and its reopening of sponsorship at the eleventh hour, and only in respect of ICM's application, violated ICANN's Articles and Bylaws. The manner in which it then "reapplied" the sponsorship criteria to ICM was "incoherent, discriminatory and pretextual". (Claimant's Post-Hearing Submission, pp. 61-62.) There was no evidence before the Board that ICM's support in the community was eroding. No other applicant was held to a similar standard of demonstrating community support. ICM produced sufficient evidence of what was required by the RFP: "broad-based support from the community".

85. ICANN also complained that ICM's community definition was self-identifying but that was true of numerous sTLDs; as Dr. Twomey acknowledged in a letter of May 6, 2006, "(m)embers of both .TEL and .MOBI communities are self-identified". Both sTLDs are now in the root.

86. ICANN further complained that the sponsored community as defined by ICM was not sufficiently differentiated from other adult entertainment providers. But, besides the fact that ICM had set forth numerous criteria by which members of its community would differentiate themselves from others providers of the adult community, this too could be said to apply to other TLDs. Thus .TRAVEL, much like .XXX, is designed to provide an sTLD for certain members of the industry that wish to follow the rules of a particular charter.

87. ICANN further complained that .XXX would merely duplicate content found elsewhere on the Internet. But again, the same was true for virtually all of the other sTLDs.

88. In sum "ICANN's reopening of the sponsorship criteria - which it did *only* for ICM - was unfair, discriminatory and pretextual, and a departure from transparent, fair and well documented policies...not done neutrally and objectively, with integrity and fairness...[it] singled out ICM for disparate treatment, without substantial and reasonable cause." (*Id.*, p. 65.)

89. Reason 2: based on the extensive comment and from the GAC's Communiques, ICM's agreement raises public policy issues. ICANN never precisely identified the "public policy" issues raised nor does it explain why they warrant rejection of the application. But, ICM argues, Reasons 2-5 all arise from the same flawed interpretation of the Wellington Communique and other governmental comments, namely, that ICM was to be responsible for enforcing the world's various and different laws and standards concerning pornography. That interpretation "was sufficiently absurd as to have been made in bad faith"; in any event it holds ICM to an "impossible standard", and is one never imposed on any other registrant and that no registrant could possibly perform. It led to further flawed conclusions, *viz.*, that if ICM could not meet its responsibility (and no one could) then ICANN would have to take it over, and, if it did so, ICANN would be taking on an oversight role regarding Internet content, which was beyond its technical mandate. ICANN's imposition of this impossible requirement on ICM alone was discriminatory. It rejected ICM's application on grounds that were not applied neutrally and objectively, which were suggestive of a "pretextual basis to 'cover' the real reason for rejecting .XXX, *i.e.*, that the U.S. government and several other powerful governments objected to its proposed content." (*Id.*, pp. 66-67.)

90. Reason 3: the ICM application and revised agreement do not resolve GAC's issues, its concern for offensive content and protection of the vulnerable; the Board finds that these public policy concerns cannot be

credibly resolved with the mechanisms proposed by the applicant. ICM responds that this is merely an elaboration of Reason 2. ICM's proposed agreement contained detailed provisions to address child pornography issues and detailed mechanisms that would permit the identification and filtration of content deemed to be illegal or offensive.

91. Reason 4: the ICM application raises significant law enforcement compliance issues because of countries' varying laws relating to content and practices that define the nature of the application, therefore obligating ICANN to acquire a responsibility related to content and conduct. ICM responds that this builds on the fallacy of Reasons 2 and 3: according to the Board's apparent reasoning, the GAC was requiring ICM to enforce local restrictions on access to illegal and offensive content and if proved unable to do so, ICANN would have to do so. ICM responds that ICANN could not properly require ICM to undertake such enforcement obligations, whether or not the GAC actually so requested. Given that it would have been discriminatory and unfeasible to require ICM to enforce varying national laws regarding adult content, ICANN would not have been obligated to take over that responsibility if ICANN were unable to fulfill it.

92. Reason 5: there are credible scenarios in which ICANN would be forced to assume an ongoing management and oversight role regarding Internet content, inconsistent with its technical mandate. ICM responds that this largely restates Reason 4. ICANN interpreted the GAC's advice to require ICM to be responsible for regulating content on the Internet - a task plainly outside ICANN's mandate. ICANN then criticized ICM for taking on that task and complained that it would have to undertake the task if ICM were unable to fulfill it. But ICANN could not properly require ICM to regulate content on the Internet and ICM did not undertake to do so.

93. The above exposition of the contentions of ICM, while long, does not exhaust the full range of its arguments, which were developed at length and in detail in its Memorial and in oral argument. It does not, for example, fully set out its contentions on the effect of international law and the local law on these proceedings. The essence of that argument is that ICANN is bound to act in good faith, an argument that the Panel does not find it necessary to expound since the conclusion is not open to challenge and is not challenged by counsel for ICANN. ICANN does not accept ICM's reliance on principles of international law but it agrees that the principle of good faith is found in the corporate law of California and hence is applicable in the instant dispute.

94. The "Relief Requested" by ICM Registry consists, *inter alia*, of requesting that the Panel declare that its Declaration is binding upon ICM and ICANN; and that ICANN acted inconsistently with its Articles of Incorporation and Bylaws by:

"i. Failing to conduct negotiations in good faith and to conclude an agreement with ICM to serve as registry operator for the .XXX sTLD;

"ii. Rejecting ICM's proposed agreement to serve as registry operator...

"iii. Rejecting ICM's application on 30 March 2007, after having previously concluded that it met the RFP criteria on 1 June 2005;

"iv. Rejecting ICM's application on 30 March 2007 on the basis of the five grounds set forth...none of which were based on criteria set forth in the RFP criteria...

"v. Rejecting ICM's application after ICANN had approved ICM to proceed to contract negotiations..." (Claimant's Memorial on the Merits, pp. 265-267.)

The Contentions of ICANN

95. ICANN maintains that (a) the Independent Review Process is advisory, not arbitral; (b) the judgments of the ICANN Board are to be deferentially appraised; (c) the governing law is that of the State of California, not the principles of international law; and (d) in its treatment and disposition of the application of ICM Registry, ICANN acted consistently with its Articles of Incorporation and Bylaws.

The Nature of the Independent Review Process

96. ICANN invokes the provisions of the Bylaws that govern the IRP process, entitled, "Independent Review of Board Actions". Article IV, Section 3, provides that:

"1. ...ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.

"2. Any person materially affected by a decision or action of 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 and Bylaws.

"4. The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN ("the IRP Provider") using arbitrators ...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.

...

"8. The IRP shall have the authority to:

...

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.

...

"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.

...

"15. Where feasible, the Board shall consider the IRP declaration at the Board's next meeting." (C-5.)

97. ICANN contends that the foregoing terms make it clear that the IRP's declarations are advisory and not binding. The IRP provisions commit the Board to review and consideration of declarations of the Panel. The Bylaws direct the Board to "consider" the declaration. "The direction to 'consider' the Panel's declaration necessarily means that the Board has discretion whether and how to implement it; if the declaration were binding such as with a court judgment or binding arbitration ruling, there would be nothing to consider, only an order to implement." (ICANN's Response to Claimant's Memorial on the Merits, p. 32.) ICANN's Board is specifically directed to "review" the Panel's declarations, not to implement them. Moreover, the Board is "not even required to review or consider the declaration immediately, or at any particular time," but is encouraged to do so at the next Board meeting, where "feasible", reinforcing the fact that the Board's review and consideration of the Panel's declaration does not require its acceptance. The Panel may "recommend", but not require, interim action. If final Panel declarations were binding, it would make no sense for interim remedies to be merely recommended to the Board. (*Id.*, p. 33.)

98. ICANN maintains that the preparatory work of the Bylaws demonstrates that the Independent Review Process was designed to be advisory. The Draft Principles for Independent Review state that the IRP's authority would be persuasive, "rest[ing] on its independence, on the prestige and professional standing of its members, and on the persuasiveness of its reasoned opinions". But "the ICANN Board should retain ultimate authority over ICANN's affairs – after all, it is the Board...that will be chosen by (and is directly accountable to) the membership and supporting organizations". (*Id.*, p. 34.) The primary pertinent document, "ICANN: A Blueprint for Reform," calls for the creation of "a process to require non-binding arbitration by an international arbitration body to review any allegation that the Board has acted in conflict with ICANN's Bylaws". ICM Registry's counsel in its negotiations with ICANN for a top-level domain, Ms. Burr, who as a senior official of the U.S. Department of Commerce was the principal official figure immediately involved in the creation and launching of ICANN, in addressing

the independent review process, observed that “decisions will be nonbinding, because the Board will retain final decision-making authority”. (*Ibid.*, p. 36.) In accepting recommendations for an independent review process that expressly disclaimed creation of a “Supreme Court” for ICANN, the Board changed the reference to “decisions” of the IRP to “declarations” precisely to avoid any inference that IRP determinations are binding decisions akin to those of a judicial or arbitral tribunal. (*Ibid.*, p. 38.)

99. ICANN further points out that, while the IRP Provider selected by it is the American Arbitration Association’s International Centre for Dispute Resolution, and while its Rules apply to IRP proceedings, those Rules in their application to IRP were amended to omit provision for the binding effect of an award.

The Standard of Review is Deferential

100. ICANN contends that the actions of the ICANN Board are entitled to substantial deference from this Panel. It maintains that that conclusion follows from the terms of Article 1, Section 2 of the Bylaws that set out the core values of ICANN (*supra*, paragraph 5). Article 1, Section 2 of the Bylaws provides that, “In performing its mission, the following core values should guide the decisions and actions of ICANN”; and the core values referred to in paragraph 5 of this Declaration are then spelled out. Section 2 concludes:

“These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand and to determine, if necessary, an appropriate and defensible balance among competing values.” (C-5.)

101. ICANN argues that since, pursuant to the foregoing provision, the ICANN Board “shall exercise its judgment” in the application of competing core values, and since those core values embrace the neutral, objective and fair decision-making at issue in these proceedings, “the deference expressly

accorded to the Board in implementing the core values applies..." ICANN continues:

"Thus, by its terms, the Bylaws' conferral of discretionary authority makes clear that any reasonable decision of the ICANN Board is, *ipso facto*, not inconsistent with the Bylaws and consequently must be upheld. Indeed, the Bylaws even go so far as to provide that outright departure from a core value is permissible in the judgment of the Board, so long as the Board reasonably 'exercise[s] its judgment' in determining that other relevant principles outweighed that value in the particular circumstances at hand."

While in the instant case, in ICANN's view, there was not even an arguable departure from the Articles of Incorporation or Bylaws, "...because such substantial deference is in fact due, there is no basis whatsoever for a declaration in ICM's favor because the Board's decisions in this matter were, at a minimum, clearly justified and within the range of reasonable conduct." (ICANN's Response to Claimant's Memorial on the Merits, pp. 45-47.)

102. ICANN further argues that the Bylaws governing the independent review process sustain this conclusion. Article 4, Section 3, "strictly limits the scope of independent review proceedings to the narrow question of whether ICANN acted in a manner 'inconsistent with' the Articles of Incorporation and the Bylaws. In confining the inquiry into whether ICANN's conduct was *inconsistent with* its governing documents, the presumption is one of consistency so that inconsistency must be established, rather than the reverse...independent review is not to be used as a mechanism to upset arguable or reasonable actions of the Board." (*Ibid.*, p. 48.)

103. ICANN contends, moreover, that,

"Basic principles of corporate law supply an independent basis for the deference due to the reasonable judgments of the ICANN Board in this matter. It is black-letter law that 'there is a presumption that directors of a corporation have acted in good faith and to the best interest of the corporation'...In California...these principles require deference to actions of a corporate board of directors so long as the board acted 'upon reasonable investigation, in good faith and with regard for the best interests' of the corporation and 'exercised discretion within the scope of its authority'". This includes the boards of not-for-profit corporations." (*Ibid.*, pp. 49-50.)

The Applicable Law of This Proceeding

104. ICANN contests ICM's invocation of principles of international law, in particular the principle of good faith, and allied principles, estoppel, legitimate expectations and abuse of right. It notes that ICM's invocation of international law depends upon a two-step argument: first, ICM interprets Article 4 of the Articles of Incorporation, providing that ICANN will operate for the benefit of the Internet community "in conformity with relevant principles of international law", as a "choice-of-law" provision; second, ICM infers that "any violation of any principles of international law" constitutes a violation of Article 4 (thus allegedly falling within the Panel's jurisdiction to evaluate the consistency of ICANN's actions with its Articles and Bylaws).

105. ICANN contends that that two-step argument contravenes the plain language of the governing provisions as well as their drafting history. Article 4 of the Articles does not operate as a "choice-of-law" provision for the IRP processes prescribed in the Bylaws. Rather the provisions of the Bylaws and Articles, as construed in the light of the law of California, govern the claims before the Panel. Nor are the particular principles of international law invoked by ICM relevant to the circumstances at issue in these proceedings.

106. Article 4 is quoted in full in paragraph 3 of this Declaration. The specific activities that ICANN must carry out "in conformity with the relevant principles of international law and applicable international conventions and local law" are specified in Article 3 (*supra*, paragraph 2). Thus "relevant" in Article 4 means only principles of international law relevant to the activities specified in Article 3. "ICANN did not adopt principles of international law indiscriminately, but rather to ensure consistency between its policies developed for the world-wide Internet community and well-established substantive international law on matters relevant to various stakeholders in the global Internet community, such as general principles on trademark law and freedom of expression relevant to intellectual property constituencies and governments." (ICANN's Response to Claimant's Memorial on the Merits, pp. 59-60.) The principles of international law relied upon by ICM in this proceeding – the requirement of good faith and related doctrines – are principles of general applicability, and are not specially directed to concerns relating to the Internet, such as freedom of expression or trademark law. Therefore, ICANN argues, they are not "relevant". (*Ibid.*) Article 4 does not operate as a choice-of-law provision requiring ICANN to adapt its conduct to any and all principles of international law. It is not worded as choice-of-law clauses are. As ICANN's expert, Professor David D. Caron notes, it is unlikely that a choice-of-law clause would designate three sources of law on the

same level. It is the law of California, the place of ICANN's incorporation, that – by reason of ICANN's incorporation under the law of California -- governs how ICANN runs its business and interacts with another U.S. corporation regarding a contract to be performed within the United States. The IRP provisions of the Bylaws, drafted years after the Articles of Incorporation, and their drafting history, do not even mention Article 4 of the Articles.

107. Moreover, the specification of "relevant" principles of international law in Article 4 "must mean principles of international law that apply to a private entity such as ICANN" (*id.*, p. 66.) As a private party, ICANN is not subject to law governing sovereigns. International legal principles do not apply to a dispute between private entities located in the same nation because the dispute may have global effects.

108. Furthermore, ICM's cited general principles perform no clarifying role in this proceeding. The applicable rules set forth in ICANN's Bylaws and Articles as well as California law render resort to general principles unnecessary. In any event, California law and the Bylaws and Articles themselves provide sufficient guidance for the Panel's analysis.

ICANN Acted Consistently with its Articles of Incorporation and Bylaws

109. ICANN contends that each of ICM's key factual assertions is wrong. In view of the deference that should be accorded to the judgments of the ICANN Board, the Panel should declare that ICANN's conduct was not inconsistent with its Bylaws and Articles even if ICM's treatment of the facts were largely correct (as it is not). The issues presented to the ICANN Board by ICM's .XXX sTLD application were "difficult", ICANN's Board addressed them with "great care", and devoted "an enormous amount of time trying to determine the right course of action". ICM was fully heard; the Board deliberated openly and transparently. ICANN is unaware of a corporate deliberative process more open and transparent than its own. After this intensive process, the Board twice concluded that ICM's proposal should be rejected, "with no hint whatsoever of the 'bad faith' ICM alleges." (ICANN's Response to Claimant's Memorial on the Merits, pp. 79-80.)

110. ICM's claims "begin with the notion that ICANN adopted, and was bound by, an inflexible, two-step procedure for evaluating sTLD applications. First, according to ICM, applications would be reviewed by the Evaluation Panel for the baseline selection criteria. Second, only after applications were finally and irrevocably approved by the ICANN Board would the applications

proceed to contract negotiations with ICANN staff with no ability by the Board to address any of the issues that the Board had previously raised in conjunction with the sTLD application.” But the RFP refutes this contention. It does not suggest that the Board’s “allowance for an application to proceed to contract negotiations confirms the close of the evaluation process.” ICANN recalls the public statement of Mr. Pritz in Kuala Lumpur in 2004: “Upon completion of the technical and commercial negotiations, successful applicants will be presented to the ICANN Board with *all* the associated information, so the Board can independently review the findings along with the information and make their own adjustments. *And then* final decisions will be made by the Board, and they’ll authorize staff to complete or execute the agreements with the sponsoring organizations...” (*Ibid.*, pp. 81-82.) It observes that Dr. Cerf affirmed that: “ICANN never intended that this would be a formal, ‘two-step’ process, where proceeding to contract negotiations automatically constituted a *de facto* final and irrevocable approval with respect to the baseline selection criteria, including sponsorship.” (At p. 82, quoting V. Cerf Witness Statement, para. 15.) ICANN maintains that there were “two overlapping phases in the evaluation of the sTLDs” and the Board always retained the right “to vote against a proposed sTLD should the Board find deficiencies in the proposed registry agreement or in the sTLD proposal as a whole”. (P. 83.) There was a two-stage process but the two phases could and often did overlap in time. This is confirmed not only by Dr. Cerf but by Dr. Twomey and the then Vice-Chairman of the Board, Alejandro Pisanty. Each explains that the ICANN Board retained the authority to review and assess the baseline RFP selection criteria even after an applicant was allowed to proceed to contract negotiations. After the June 1, 2005, vote, members supporting ICM’s application did not argue that the Board had already approved the .XXX sTLD. The following exchange with Dr. Cerf took place in the course of the hearing:

“Q. Now, ICM’s position in this proceeding is that if the board voted to proceed to contract negotiations, the board was at that time making a finding that a particular applicant had satisfied the technical, financial and sponsorship criteria and that that issue was closed. Is that consistent with your understanding of how the process worked?

“A. Not, it’s not. The matter was discussed very explicitly during our consideration of the ICM proposal. We were using the contract negotiations as a means of clarifying whether or not...the sponsorship criteria could be or had been met...this was not a decision that all three of the criteria had been met.” (Tr. 601:4:13.)

111. ICM's evidence is not to the contrary. That evidence shows that there were two major steps in the evaluation process. It does not show that those steps could not be overlapping. The relevant question, not answered by ICM, is whether ICANN's Bylaws required these steps to be non-overlapping. "such that contract negotiations could not commence until the satisfaction of the RFP criteria was finally and irrevocably determined..." (*Ibid.*, p. 84.)

112. ICM's claims are also based on the argument that, by its terms, the Board's resolutions of June 1, 2005 gave "unconditional" approval of the .XXX sTLD application. (The June 1, 2005 resolutions are set out *supra*, paragraph 19.) But nothing in the resolutions actually says that ICM's application satisfied the RFP criteria, including sponsorship. In fact, nothing in the resolutions expresses approval at all because it provides that "if", after entering negotiations, the applicant is able to negotiate commercial and technical terms for a contractual arrangement, those terms shall be presented to the Board for approval and authorization to enter into an agreement relating to the delegation of the sTLD. "The plain language of the resolutions makes clear that they did not themselves constitute approval of the .XXX sTLD application. The resolutions thus track the RFP, which makes clear that a 'final decision will be made by the Board' only *after* 'completion of the technical and commercial negotiations'". (*Ibid.*, p. 86.)

113. ICANN maintains that as of June 2005, there remained numerous unanswered questions and concerns regarding ICM's ability to satisfy the baseline sponsorship criteria set forth in the RFP. An important purpose of the June 1 resolutions was to permit ICM to proceed to contract negotiations in an effort to determine whether ICM's sponsorship shortcomings could be resolved in the contract.

114. The ICANN Board also permitted other applicants for sTLDs -- .JOBS and .MOBI – to proceed to contract negotiations despite open questions relating to the initial RFP criteria. However, ICM was unique among the field of sTLD applicants due to "the extremely controversial nature of the proposed sTLD, and concerns as to whether ICM had identified a 'community' that existed and actually supported the proposed sTLD...there was a significant negative response to ICM's proposed .XXX sTLD by many adult entertainment providers, the very individuals and entities who logically would be in ICM's proposed community." (*Ibid.*, p. 87.)

115. ICM's position is further refuted by continued discussion by the Board of sponsorship criteria at meetings subsequent to June 1, 2005. The fact that most Board members expressed concern about sponsorship

shortcomings after the June 1, 2005, resolutions negates any notion that the Board had conclusively determined the sponsorship issue.

116. A member of the Board elected after the June 1, 2005, vote, Rita Rodin, expressed "some concerns about whether the [ICM] proposal met the criteria set forth in the RFP..." She said that she did not want to re-open issues if they had already been decided by the Board (*supra*, paragraphs 42-43). In response to her query, no one stated that the sponsorship issue had already been decided by the Board. (ICANN'S Response to Claimant's Memorial on the Merits, p. 90.)

117. ICANN also draws attention to Dr. Twomey's letter of May 4, 2006 (*supra*, paragraph 37) in which he wrote that the Board's decision of June 1, 2005, was without prejudice to the Board's right to decide whether the contract reached with ICM meets all the criteria before the Board.

118. ICANN recalls that within days of the posting of the June 1, 2005, resolutions, GAC Chairman Tarmizi wrote Dr. Cerf expressing the GAC's "diverse and wide-ranging concerns" with the .XXX sTLD. The ICANN Board was required by the ICANN Bylaws to take account of the views of the GAC. Nor could ICANN have ignored concerns expressed by the U.S. Government and other governments. ICANN recalls the concerns expressed thereafter, in the Wellington Communique and otherwise. It observes that "some countries were concerned that, because the .XXX application would not require all pornography to be located within the .XXX domain, a new .XXX sTLD would simply result in the expansion of the number of domain names that involved pornography." (*Ibid.*, p. 102.)

119. ICANN points out that:

"In revising its proposed registry agreement to address the GAC's concerns...ICM took the position that it would install 'appropriate measures to restrict access to illegal and offensive content,' including monitoring such content globally. This was immediately controversial among many ICANN Board members because complaints about ICM's 'monitoring' would inevitably be sent to ICANN, which is neither equipped nor authorized to monitor (much less resolve) 'content-based' objections to Internet sites." (*Ibid.*, pp. 103-104.)

120. ICANN recalls Board concerns that were canvassed at its meetings of May 10, 2006, (*supra*, paragraph 38) and February 12, 2007, (*supra*, paragraphs 41-45). Board members increasingly were concluding that the results promised by ICM were unachievable. Whether their conclusions were

or were not incorrect is “irrelevant for purposes of determining whether the Board violated its Bylaws or Articles in rejecting ICM’s application.” (*Ibid.*, p. 105.) Board doubts were accentuated by growing opposition to the .XXX sTLD from elements of the online adult entertainment industry (*ibid.*).

121. The Board’s May 10, 2006 vote (*supra*, paragraph 38) rejected ICM’s then current draft, but provided ICM “yet another opportunity to attempt to revise the agreement to conform to the RFP specifications. Notably, the Board’s decision to allow ICM to continue to work the problem is directly at odds with ICM’s position that the Board decided ‘for political reasons’ to reject ICM’s application; if so, it would have been much easier for the Board to reject ICM’s application in its entirety in 2006.” (*Ibid.*, p. 106.)

122. At its meeting of February 12, 2007, (*supra*, paragraphs 41-45), concerns in the Board about whether ICM’s application enjoyed the support of the community it purported to represent were amplified.

123. At the meeting of March 30, 2007 at which ICM’s application and agreement were definitively rejected, the majority was, first, concerned by ICM’s definition of its community to include only those members of the industry who supported the creation of .XXX sTLD and its exclusion from the sponsored community of all online adult entertainment industry members who opposed ICM’s application.

“Such self-selection and extreme subjectivity regarding what constituted the content that defined the .XXX community made it nearly impossible to determine which persons or services would be in or out of the community...without a precisely defined Sponsored TLD Community, the Board could not approve ICM’s sTLD application.” (*Ibid.*, pp. 108-109.)

124. Second, ICM’s proposed community was not adequately differentiated; ICM failed to demonstrate that excluded providers had separate needs or interests from the community it sought to represent. As contract negotiations progressed, it became increasingly evident that ICM was actually proposing an unsponsored TLD for adult entertainment, “a uTLD, disguised as an sTLD, just as ICM had proposed in 2000.” (*Ibid.*, p. 209.)

125. Third, whatever community support ICM may have had at one time, it had “fallen apart by early 2007” (*ibid.*). During the final public comment period in 2007, “a vast majority of the comments posted to the public forum and sent to ICANN staff opposed ICM’s .XXX sTLD...” (p. 110). “Broad-based support” was lacking. (P. 111.) 75,000 pre-registrations for .XXX... “Out of

the over 4.2 million adult content websites in operation" hardly represents broad-based support. (P. 115.)

126. Fourth, ICM could not demonstrate that it was adding new and valuable space to the Internet name space, as required by the RFP. "In fact, the existence of industry opposition to the .XXX sTLD demonstrated that the needs of online adult entertainment industry members were met via existing TLDs without any need for a new TLD." (P. 112.)

127. Fifth and finally, ICM and its supporting organization, IFFOR, proposed to "proactively reach out to governments and international organizations to provide information about IFFOR's activities and solicit input and participation". But such measures "diluted the possibility that their policies would be 'primarily in the interests of the Sponsored TLD Community' as required by the sponsorship selection criteria." (Pp. 112-113.)

128. ICANN concludes that, "despite the good-faith efforts of both ICANN and ICM over a lengthy period of time, the majority of the Board determined that ICM could not satisfy, among other things, the sponsorship requirements of the RFP." Reasonable people might disagree – as did a minority of the Board – "but that disagreement does not even approach a violation of a Bylaw or Article of Incorporation." (P. 113.)

129. The treatment of ICM's application was procedurally fair. It was not the object of discrimination. Applications for .JOBS and .MOBI were also allowed to proceed to contractual negotiations despite open questions relating to selection criteria. ICANN applied documented policies neutrally and objectively, with integrity and fairness. ICM was provided with every opportunity to address the concerns of the Board and the GAC. ICANN did not reject ICM's application only for reasons of public policy (although they were important). ICM's application was rejected because of its inability to show how the sTLD would meet sponsorship criteria. The Board ultimately rejected ICM's application for "many of the same sponsorship concerns noted in the initial recommendation of the Evaluation Panel." (*Ibid.*, p. 124.) It also rejected the application because ICM's proposed registry agreement "would have required ICANN to manage the content of the .XXX sTLD" (p. 126). The Board took into account the views of the GAC in arriving at its independent judgment. "Had the ICANN Board taken the view that the GAC's views must in every case be followed without independent judgment, the Board presumably would have rejected ICM's application in late 2005 or early 2006, rather than waiting another full year for the parties to try to identify a resolution that would have allowed the sTLD to proceed." (*Ibid.*)

130. As to whether ICM was treated unfairly and was the object of discrimination, ICANN relies on the following statement of Dr. Cerf at the hearing:

“...I am surprised at an assertion that ICM was treated unfairly...the board could have simply accepted the recommendations of the evaluation teams and rejected the proposal at the outset...the board went out of its way to try to work with ICM through the staff to achieve a satisfactory agreement. We spent more time on this particular proposal than any other...We repeatedly defended our continued consideration of this proposal...If...ICM believes that it was treated in a singular way, I would agree that we spent more time and effort on this than any other proposal that came to the board with regard to sponsored TLDs.” (Tr. 654:3-655:7.)

PART FOUR: THE ANALYSIS OF THE INDEPENDENT REVIEW PANEL

The Nature of the Independent Review Panel Process

131. ICM and ICANN differ on the question of whether the Declaration to be issued by the Independent Review Panel is binding upon the parties or advisory. The conflicting considerations advanced by them are summarized above at paragraphs 51 and 91-94. In the light of them, the Panel acknowledges that there is a measure of ambiguity in the pertinent provisions of the Bylaws and in their preparatory work.

132. ICANN's officers testified before committees of the U.S. Congress that ICANN had installed provision for appeal to “independent arbitration” (*supra*, paragraph 55). Article IV, Section 3 of ICANN's Bylaws specifies that, “The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN...using arbitrators...nominated by that provider”. The provider so chosen is the American Arbitration Association's International Centre for Dispute Resolution (“ICDR”), whose Rules (at C-11) in Article 27 provide for the making of arbitral awards which “shall be final and binding on the parties. The parties undertake to carry out any such award without delay.” The Rules of the ICDR “govern the arbitration” (Article 1). It is unquestioned that the term, “arbitration” imports production of a binding award (in contrast to conciliation and mediation). Federal and California courts have so held. The Supplementary Procedures adopted to supplement the independent review procedures set forth in ICANN's Bylaws provide that the ICDR's “International Arbitration Rules...will govern the process in combination with these Supplementary Procedures”. (C-12.) They specify

that the Independent Review Panel refers to the neutrals “appointed to decide the issue(s) presented” and further specify that, “DECLARATION refers to the decisions/opinions of the IRP”. “The DECLARATION shall specifically designate the prevailing party.” All of these elements are suggestive of an arbitral process that produces a binding award.

133. But there are other indicia that cut the other way, and more deeply. The authority of the IRP is “to declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws” – to “declare”, not to “decide” or to “determine”. Section 3(8) of the Bylaws continues that the IRP shall have the authority to “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”. The IRP cannot “order” interim measures but do no more than “recommend” them, and this until the Board “reviews” and “acts upon the opinion” of the IRP. A board charged with reviewing an opinion is not charged with implementing a binding decision. Moreover, Section 3(15) provides that, “Where feasible, the Board shall consider the IRP declaration at the Board’s next meeting.” This relaxed temporal proviso to do no more than “consider” the IRP declaration, and to do so at the next meeting of the Board “where feasible”, emphasizes that it is not binding. If the IRP’s Declaration were binding, there would be nothing to consider but rather a determination or decision to implement in a timely manner. The Supplementary Procedures adopted for IRP, in the article on “Form and Effect of an IRP Declaration”, significantly omit the provision of Article 27 of the ICDR Rules specifying that award “shall be final and binding on the parties”. (C-12.) Moreover, the preparatory work of the IRP provisions summarized above in paragraph 93 confirms that the intention of the drafters of the IRP process was to put in place a process that produced declarations that would not be binding and that left ultimate decision-making authority in the hands of the Board.

134. In the light of the foregoing considerations, it is concluded that the Panel’s Declaration is not binding, but rather advisory in effect.

The Standard of Review Applied by the Independent Review Process

135. For the reasons summarized above in paragraph 56, ICM maintains that this is a *de novo* review in which the decisions of the ICANN Board do not enjoy a deferential standard of review. For the reasons summarized above in paragraphs 100-103, ICANN maintains that the decisions of the Board are entitled to deference by the IRP.

136. The Internet Corporation for Assigned Names and Numbers is a not-for-profit corporation established under the law of the State of California. That law embodies the “business judgment rule”. Section 309 of the California Corporations Code provides that a director must act “in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders...” and shields from liability directors who follow its provisions. However ICANN is no ordinary non-profit California corporation. The Government of the United States vested regulatory authority of vast dimension and pervasive global reach in ICANN. In “recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization” – including ICANN -- ICANN is charged with “promoting the global public interest in the operational stability of the Internet...” ICANN “shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law...” Thus, while a California corporation, it is governed particularly by the terms of its Articles of Incorporation and Bylaws, as the law of California allows. Those Articles and Bylaws, which require ICANN to carry out its activities in conformity with relevant principles of international law, do not specify or imply that the International Review Process provided for shall (or shall not) accord deference to the decisions of the ICANN Board. The fact that the Board is empowered to exercise its judgment in the application of ICANN’s sometimes competing core values does not necessarily import that that judgment must be treated deferentially by the IRP. In the view of the Panel, the judgments of the ICANN Board are to be reviewed and appraised by the Panel objectively, not deferentially. The business judgment rule of the law of California, applicable to directors of California corporations, profit and non-profit, in the case of ICANN is to be treated as a default rule that might be called upon in the absence of relevant provisions of ICANN’s Articles and Bylaws and of specific representations of ICANN – as in the RFP – that bear on the propriety of its conduct. In the instant case, it is those Articles and Bylaws, and those representations, measured against the facts as the Panel finds them, which are determinative.

The Applicable Law of this Proceeding

137. The contrasting positions of the parties on the applicable law of this proceeding are summarized above at paragraphs 59-62 and 104-109. Both parties agree that the “local law” referred to in the provision of Article 4 of the Articles of Incorporation – “The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international

conventions and local law” – is the law of California. But they differ on what are “relevant principles of international law” and their applicability to the instant dispute.

138. In the view of ICM Registry, principles of international law are applicable; that straightforwardly follows from their specification in the foregoing phrase of Article 4 of the Articles, and from the reasons given in introducing that specification. (*Supra*, paragraphs 53-54.) Principles of international law in ICM’s analysis include the general principles of law recognized as a source of international law in Article 38 of the Statute of the International Court of Justice. Those principles are not confined, as ICANN argues, to the few principles that may be relevant to the interests of Internet stakeholders, such as principles relating to trademark law and freedom of expression. Rather they include international legal principles of general applicability, such as the fundamental principle of good faith and allied principles such as estoppel and abuse of right. ICM’s expert, Professor Goldsmith, observes that there is ample precedent in international contracts and in the holdings of international tribunals for the proposition that non-sovereigns may choose to apply principles of international law to the determination of their rights and to the disposition of their disputes.

139. ICANN and its expert, Professor David Caron, maintain that international law essentially governs relations among sovereign States; and that to the extent that such principles are “relevant” in this case, it is those few principles that are applicable to a private non-profit corporation that bear on the activities of ICANN described in Article 3 of its Articles of Incorporation (*supra*, paragraph 2). General principles of law, such as that of good faith, are not imported by Article 4 of ICANN’s Articles of Incorporation; still less are principles derived from treaties that protect legitimate expectations. Nor is Article 4 of the Articles a choice-of-law provision; in fact, no governing law has been specified by the disputing parties in this case. If ICANN, by reason of its functions, is to be treated as analogous to public international organizations established by treaty (which it clearly is not), then a relevant principle to be extracted and applied from the jurisprudence of their administrative tribunals is that of deference to the discretionary authority of executive organs and of bodies whose decisions are subject to review.

140. In the view of the Panel, ICANN, in carrying out its activities “in conformity with the relevant principles of international law,” is charged with acting consistently with relevant principles of international law, including the general principles of law recognized as a source of international law.

That follows from the terms of Article 4 of its Articles of Incorporation and from the intentions that animated their inclusion in the Articles, an intention that the Panel understands to have been to subject ICANN to relevant international legal principles because of its governance of an intrinsically international resource of immense importance to global communications and economies. Those intentions might not be realized were Article 4 interpreted to exclude the applicability of general principles of law.

141. That said, the differences between the parties on the place of principles of international law in these proceedings are not of material moment to the conclusions that the Panel will reach. The paramount principle in play is agreed by both parties to be that of good faith, which is found in international law, in the general principles that are a source of international law, and in the corporate law of California.

The Consistency of the Action of the ICANN Board with the Articles of Incorporation and Bylaws

142. The principal – and difficult – issue that the Panel must resolve is whether the rejection by the ICANN Board of the proposed agreement with ICM Registry and its denial of the application’s request for delegation of the .XXX sTLD was or was not consistent with ICANN’s Articles of Incorporation and Bylaws. The conflicting contentions of the parties on this central issue have been set forth above (paragraphs 63-93, 109-131).

143. The Panel will initially consider the primary questions of whether by adopting the resolutions of June 1, 2005, the ICANN Board determined that the application of ICM Registry met the sponsorship criteria, and, if so, whether that determination was definitive and irrevocable.

144. The parties agree that, pursuant to the RFP, applications for sTLDs were to be dealt with in two stages. First, the Evaluation Panel was to review applications and recommend those that met the selection criteria. Second, those applicants that did meet the selection criteria were to proceed to negotiate commercial and technical terms of a contract with ICANN’s President and General Counsel. If and when those terms were agreed upon, the resultant draft contract was to be submitted to the Board for approval. As it turned out, the Board was not content with the fact that the Evaluation Panel positively recommended only a few applications. Accordingly the Board itself undertook to consider and decide whether the other applications met the selection criteria.

145. In the view of the Panel, which has weighed the diverse evidence with care, the Board did decide by adopting its resolutions of June 1, 2005, that the application of ICM Registry for a sTLD met the selection criteria, in particular the sponsorship criteria. ICM contends that that decision was definitive and irrevocable. ICANN contends that, while negotiating commercial and technical terms of the contract, its Board continued to consider whether or not ICM's application met sponsorship criteria, that it was entitled to do so, and that, in the course of that process, further questions about ICM's application arose that were not limited to matters of sponsorship, which the Board also ultimately determined adversely to ICM's application.

146. The considerations that militate in favor of ICM's position are considerable. They are summarized above in paragraphs 63, 65 and 66. ICM argues that these considerations must prevail because they are sustained by contemporary documentary evidence, whereas the contrary arguments of ICANN are not.

147. The Panel accepts the force of the foregoing argument of ICM insofar as it establishes that the June 1, 2005, resolutions accepted that ICM's application met the sponsorship criteria. The points summarized in subparagraphs (a) through (i) of paragraph 63 above are in the view of the Panel not adequately refuted by the recollections of ICANN's witnesses, distinguished as they are and candid as they were. Their current recollection, the sincerity of which the Panel does not doubt, is that it was their understanding in adopting the June 1, 2005 resolution that the Board was entitled to continue to examine whether ICM's application met the sponsorship criteria, even if it had by adopting that resolution found those criteria to have been provisionally met (which they challenge). While that understanding is not supported by factors (a) through (i) of paragraph 63, it nevertheless can muster substantial support on the question of whether any determination that sponsorship criteria had been met was subject to reconsideration.

148. Support on that aspect of the matter consists of the following:

- (a) The resolutions of June 1, 2005 (*supra*, paragraph 19) make no reference to the satisfaction of sponsorship criteria or to whether that question is definitively resolved.
- (b) Those resolutions however expressly provide that the approval and authorization of the Board is required to enter into an agreement relating to

the delegation of the sTLD; that being so, the Board viewed itself to be entitled to review all elements of the agreement before approving and authorizing it, including whether sponsorship criteria were met.

- (c) At the meeting of the GAC in July, 2005, some six weeks after the adoption by the Board of its resolutions of June 1, in the course of preparing the GAC Communique, the GAC Chair "confirmed that, having consulted the ICANN Legal Counsel, GAC could still advise ICANN about the .xxx proposal, should it decide to do so." (*Supra*, paragraph 24.) Since on the advice of counsel the GAC could still advise ICANN about the .XXX proposal, and since questions had been raised in the GAC about whether ICM's application met sponsorship criteria in the light of the appraisal of the Evaluation Panel, it may seem to follow that that advice could embrace the question of whether sponsorship criteria had been met and whether any such determination was subject to reconsideration. In point of fact, after June 1, 2005, a number of members of the GAC challenged or questioned the desirability of approving the ICM application on a variety of grounds, including sponsorship (*supra*, paragraphs 21-25, 40).

- (d) At its teleconference of September 15, 2005, there was "lengthy discussion involving nearly all of the directors regarding the sponsorship criteria..." (*supra*, paragraph 32). That imports that the members of the Board did not regard the question of sponsorship criteria to have been closed by the adoption of the resolutions of June 1, 2005.

- (e) In a letter of May 4, 2006, the President Twomey wrote the Chairman and Members of the GAC noting

"that the Board decision as to the .XXX application is still pending...the Board voted to authorize staff to enter into contractual negotiations without prejudicing the Board's right to evaluate the resulting contract and to decide whether it meets all of the criteria before the Board including public policy advice such as might be offered by the GAC... Due to the subjective nature of the sponsorship related criteria that were reviewed by the Sponsorship Evaluation Team, additional materials were requested from each applicant to be supplied directly for Board review and consideration...In some instances, such as with .XXX, while the additional materials provided sufficient clarification to proceed with contractual discussions, the Board still expressed concerns about whether the applicant met all of the criteria, but took the view that such concerns could possibly be

addressed by contractual obligations to be stated in a registry agreement." (C-188, and *supra*, paragraph 37.)

- (f) At a Board teleconference of February 12, 2007, ICANN's General Counsel asked the Board to consider "how ICM measures up against the RFP criteria," a request that implies that questions about whether such criteria had been met were not foreclosed. (*Supra*, paragraph 41.)
- (g) ICM provided data to ICANN staff, in the course of the preparation of its successive draft registry agreements, that bore on sponsorship. It has not placed in evidence contemporaneous statements that in its view such data was not relevant to continued consideration of its application on the ground that it had met sponsorship criteria or that the Board's June 1, 2005 resolutions foreclosed further consideration of sponsorship criteria. It is understandable that it did not do so, because it was in the process of endeavoring to respond positively to every request of the ICANN Board and staff that it could meet in the hope of promoting final approval of its application; but nevertheless that ICM took part in a continuing dialogue on sponsorship criteria suggests that it too did not regard, or at any rate, treat, that question as definitively resolved by adopted of the June 1, 2005 resolutions.
- (h) When Rita Rodin, a new member of the Board, raised concerns about ICM's meeting of sponsorship criteria at the Board's teleconference of February 12, 2007, she said that she did "not wish to reopen issues if they have already been decided by the Board" and asked the President and General Counsel to confirm that the question was open for discussion. There was no direct reply but the tenor of the subsequent discussion indicates that the Board did not view the question as closed. (During the Board's debate over adoption of its climactic resolution of March 30, 2007, Susan Crawford said that opposition to ICM's application was not sufficient "to warrant revisiting the question of the sponsorship strength of this TLD which I personally believe to be closed.") (*Supra*, paragraph 52.)

149. While the Panel has concluded that by adopting its resolutions of June 1, 2005, the Board found that ICM's application met financial, technical and sponsorship criteria, less clear is whether that determination was subject to reconsideration. The record is inconclusive, for the conflicting reasons set forth above in paragraphs 63, 65 and 66 (on behalf of ICM) and paragraph 149 (on behalf of ICANN). The Panel nevertheless is charged with arriving at a conclusion on the question. In appraising whether ICANN on this issue "applied documented policies, neutrally and objectively, with integrity and

fairness" (Bylaws, Section 2(8), the Panel finds instructive the documented policy stated in the Board's Carthage resolution of October 31, 2003 on "Finalization of New sTLD RFP," namely, that an agreement "reflecting the commercial and technical terms shall be negotiated upon the successful completion of the sTLD selection process." (C-78, p. 4.) In the Panel's view, the sTLD process was "successfully completed", as that term is used in the Carthage RFP resolution, in the case of ICM Registry with the adoption of the June 1, 2005, resolutions. ICANN should, pursuant to the Carthage documented policy, then have proceeded to conclude an agreement with ICM on commercial and technical terms, without reopening whether ICM's application met sponsorship criteria. As Dr. Williams, chair of the Evaluation Panel, testified, the RFP process did not contemplate that new criteria could be added after the [original] criteria had been satisfied. (Tr. 374: 1719). It is pertinent to observe that the GAC's proposals for new TLDs generally exclude consideration of new criteria (*supra*, paragraph 46).

150. In so concluding, the Panel does not question the integrity of the ICANN Board's disposition of the ICM Registry application, still less that of any of the Board's members. It does find that reconsideration of sponsorship criteria, once the Board had found them to have been met, was not in accord with documented policy. If, by way of analogy, there was a construction contract at issue, the party contracting with the builder could not be heard to argue that specifications and criteria defined in invitations to tender can be freely modified once past the qualification stage; the conditions of any such modifications are carefully circumscribed. Admittedly in the instant case the Board was not operating in a context of established business practice. That fact is extenuating, as are other considerations set out above. The majority of the Board appears to have believed that was acting appropriately in reconsidering the question of sponsorship (although a substantial minority vigorously differed). The Board was pressed to do so by the Government of the United States and by quite a number of other influential governments, and ICANN was bound to "duly take into account" the views of those governments. It is not at fault because it did so. It is not possible to estimate just how influential expressions of governmental positions were. They were undoubtedly very influential but it is not clear that they were decisive. If the Board simply had yielded to governmental pressure, it would have disposed of the ICM application much earlier. The Panel does not conclude that the Board, absent the expression of those governmental positions, would necessarily have arrived at a conclusion favorable to ICM. It accepts the affirmation of members of the Board that they did not vote against acceptance of ICM's application because of governmental pressure. Certainly there are those, including Board members,

who understandably react negatively to pornography, and, in some cases, their reactions may be more visceral than rational. But they may also have had doubts, as did the Board, that ICM would be able successfully to achieve what it claimed .XXX would achieve.

151. The Board's resolution of March 30, 2007, rejecting ICM's proposed agreement and denying its request for delegation of the .XXX sTLD lists four grounds for so holding in addition to failure to meet sponsored community criteria (*supra*, paragraph 47). The essence of these grounds appears to be the Board's understanding that the ICM application "raises significant law enforcement compliance issues ... therefore obligating ICANN to acquire responsibility related to content and conduct ... there are credible scenarios that lead to circumstances in which ICANN would be forced to assume an ongoing management and oversight role regarding Internet content, which is inconsistent with its technical mandate." ICM interprets these grounds, and statements of Dr. Twomey and Dr. Cerf, as seeking to impose on ICM responsibility for "enforcing restrictions around the world on access to illegal and offensive content" (*supra*, paragraph 66-67). ICM avers that it never undertook "to enforce the laws of the world on pornography", an undertaking that it could never discharge. It did undertake, in the event of the approval and activation of .XXX, to install tools that would make it far easier for governments to restrict access to content that they deemed illegal and offensive. ICM argues that its application was rejected in part because of its inability to comply with a contractual undertaking to which it never had agreed in the first place (*supra*, paragraphs 66-71). To the extent that this is so – and the facts and the conclusions drawn from the facts by the ICANN Board in its resolution of March 30, 2007, in this regard are not fully coherent – the Panel finds ground for questioning the neutral and objective performance of the Board, and the consistency of its so doing with its obligation not to single out ICM Registry for disparate treatment.

PART FIVE: CONCLUSIONS OF THE INDEPENDENT REVIEW PANEL

152. The Panel concludes, for the reasons stated above, that:

First, the holdings of the Independent Review Panel are advisory in nature; they do not constitute a binding arbitral award.

Second, the actions and decisions of the ICANN Board are not entitled to deference whether by application of the "business judgment" rule or otherwise; they are to be appraised not deferentially but objectively.

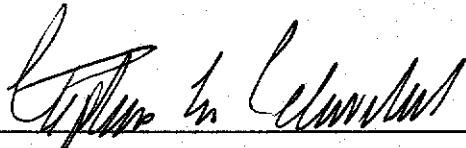
Third, the provision of Article 4 of ICANN's Articles of Incorporation prescribing that ICANN "shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law," requires ICANN to operate in conformity with relevant general principles of law (such as good faith) as well as relevant principles of international law, applicable international conventions, and the law of the State of California.

Fourth, the Board of ICANN in adopting its resolutions of June 1, 2005, found that the application of ICM Registry for the .XXX sTLD met the required sponsorship criteria.

Fifth, the Board's reconsideration of that finding was not consistent with the application of neutral, objective and fair documented policy.

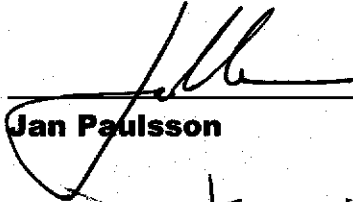
Sixth, in respect of the first foregoing holding, ICANN prevails; in respect of the second foregoing holding, ICM Registry prevails; in respect of the third foregoing holding, ICM Registry prevails; in respect of the fourth foregoing holding, ICM Registry prevails; and in respect of the fifth foregoing holding, ICM Registry prevails. Accordingly, the prevailing party is ICM Registry. It follows that, in pursuance of Article IV, Section 3(12) of the Bylaws, ICANN shall be responsible for bearing all costs of the IRP Provider. Each party shall bear its own attorneys' fees. Therefore, the administrative fees and expenses of the International Centre for Dispute Resolution, totaling \$4,500.00, shall be borne entirely by ICANN, and the compensation and expenses of the Independent Review Panel, totaling \$473,744.91, shall be borne entirely by ICANN. ICANN shall accordingly reimburse ICM Registry with the sum of \$241,372.46, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by ICM Registry.

Judge Tevrizian is in agreement with the first foregoing conclusion but not the subsequent conclusions. His opinion follows.



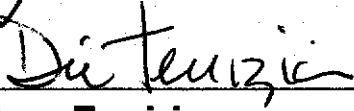
Stephen M. Schwebel

Date: February 19, 2010



Jan Paulsson

Date: 16 February 2010



Dickran Tevrizian

Date: February 18, 2010

CONCURRING AND DISSENTING OPINION

I concur and expressly join in the Panel's conclusion that the holdings of the Independent Review Panel are advisory in nature and do not constitute a binding arbitral award. I adopt the rationale and the reasons stated by the Panel on this issue only.

However, I must respectfully dissent from my learned colleagues as to the remainder of their findings. I am afraid that the majority opinion will undermine the governance of the internet community by permitting any disgruntled person, organization or governmental entity to second guess the administration of one of the world's most important technological resources.

I

INTRODUCTION

The Internet Corporation for Assigned Names and Numbers (hereinafter "ICANN") is a uniquely created institution: a global, private, not-for-profit organization incorporated under the laws of the State of California (Calif. Corp. Code 5100, et seq.) exercising plenary control over one of the world's most important technological resources: the Internet Domain Name System or "DNS." The DNS is the gateway to the nearly infinite universe of names and numbers that allow the Internet to function.

ICANN is a public benefit, non-profit corporation that was established under the law of the State of California on September 30, 1998. ICANN's Articles of Incorporation were finalized and adopted on November 21, 1998, and its By-Laws were finalized and adopted on the same day as its Articles of Incorporation.

Article 4 of ICANN's Articles of Incorporation sets forth the standard of conduct under which ICANN is required to carry out its activities and mission to protect the stability, integrity and utility of the Internet Domain Name System on behalf of the global Internet community pursuant to a series of agreements with the United States Department of Commerce. ICANN is headquartered in Marina del Rey, California, U.S.A.

Article 4 of ICANN's Articles of Incorporation specifically provide:

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

ICANN serves the function as the DNS root zone administrator to ensure and is required by its Articles of Incorporation to be a neutral and open facilitator of Internet coordination. ICANN's function and purpose was never meant to be content driven in any respect.

The Articles of Incorporation provide that ICANN is managed by a Board of Directors ("Board"). The Board consists of 15 voting directors and 6 non-voting liaisons from around the world, "who in the aggregate [are to] display diversity in geography, culture, skills, experience and perspective." (Article VI, § 2). The voting directors are composed of: (1) six representatives of ICANN's Supporting Organizations, which are sub-groups dealing with specific sections of the policies under ICANN's purview; (2) eight independent representatives of the general public interest, currently selected through ICANN's Nominating Committee, in which all the constituencies of ICANN are represented; and (3) the President and CEO, who is appointed by the rest of the Board. Consistent with ICANN's mandate to provide private sector technical leadership in the management of the DNS, "no official of a national government" may serve as a director. (Article VI, § 4). In carrying out its functions, it is obvious that ICANN is expected to solicit and will receive input from a wide variety of Internet stakeholders and participants.

ICANN operates through its Board of Directors, a Staff, An Ombudsman, a Nominating Committee for Directors, three Supporting Organizations, four Advisory Committees and numerous other stakeholders that participate in the unique ICANN process. (By-Laws Articles V through XI).

As was stated earlier, ICANN was formed under the laws of the State of California as a public benefit, non-profit corporation. As such, it would appear that California Corporations Code Section 5100, et seq., together with ICANN's Articles of Incorporation and By-Laws, control its governance and accountability.

In general, a non-profit director's fiduciary duties include the duty of care, which includes an obligation of due inquiry and the duty of loyalty among others. The term "fiduciary" refers to anyone who holds a position requiring trust, confidence and scrupulous exercise of good faith and candor. It includes anyone who has a duty, created by a particular undertaking, to act primarily for the benefit of others in matters connected with the undertaking. A fiduciary relationship is one in which one person reposes trust and confidence in another person, who "must exercise a corresponding degree of fairness and good faith." (Blacks Law Dictionary). The type of persons who are commonly referred to as fiduciaries include corporate directors. The California Corporation's Code makes no distinction between

directors chosen by election and directors chosen by selection or designation in the application of fiduciary duties.

Directors of non-profit corporations in California owe a fiduciary duty to the corporation they serve and to its members, if any. See Raven's Cove Townhomes, Inc. v. Knuppe Dev. Co., (1981) 114 CA3d 783, 799; Burt v. Irvine Co., (1965) 237 CA2d 828, 852. See also, Harvey v. Landing Homeowners Assn., (2008) 162 CA4th 809, 821-822.

The "business judgment rule" is the standard the California courts apply in deciding whether a director, acting without a financial interest in the decision, satisfied the requirements of careful conduct imposed by the California Corporations Code. See Gaillard v. Natomas Co., (1989) 208 CA3d 1250, 1264. The rule remains a creature of common law. Some California courts define it as a standard of reasonable conduct. See Burt v. Irvine Co., (1965) 237 CA2d 828, while others speak of actions taken in good faith. See Marble v. Latchford Glass Co., (1962) 205 CA2d 171. While, still others examine whether the director "rationally believes that the business judgment is in the best interests of the corporation." See Lee v. Interinsurance Exch., (1996) 50 CA4th 694.

The business judgment rule is codified in Section 309 of the California Corporations Code, which provides that a director must act "in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances." Cal. Corp. Code § 309(a); see also Lee v. Interinsurance Exch., (1996) 50 CA4th 694, 714. Section 309 shields from liability directors who follow its provisions: "A person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director." Cal. Corp. Code § 309 (c).

II

THE ACTIONS OF THE ICANN BOARD OF DIRECTORS ARE ENTITLED TO SUBSTANTIAL DEFERENCE FROM THE INDEPENDENT REVIEW PANEL

ICANN's By-Laws, specifically Article I, § 2, sets forth 11 core values and concludes as follows:

"These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new

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

The By-Laws make it clear that the core values must not be construed in a “narrowly prescriptive” manner. To the contrary, Article I, § 2, provides that the ICANN Board is vested with board discretion in implementing its responsibility such as is mentioned in the business judgment rule.

III

PRINCIPLES OF INTERNATIONAL LAW DO NOT APPLY

Article 4 of the ICANN Articles of Incorporation does not preempt the California Corporations Code as a “choice-of-law provision” importing international law into the independent review process. Rather, the substantive provisions of the By-Laws and Articles of Incorporation, as construed in light of the law of California, where ICANN is incorporated as a non-profit entity, should govern the claims before the Independent Review Panel (hereinafter “IRP”).

Professor Caron opined that principles of international law do not apply because, as a private entity, ICANN is not subject to that body of law governing sovereigns. To adopt a more expansive view is tantamount to judicial legislation or mischief.

IV

THE ICANN BOARD OF DIRECTORS DID NOT ACT INCONSISTENTLY WITH ICANN’S ARTICLES OF INCORPORATION AND BY-LAWS IN CONSIDERING AND ULTIMATELY DENYING ICM REGISTRY, LLC’S APPLICATION FOR A SPONSORED TOP LEVEL DOMAIN NAME

On March 30, 2007, the ICANN Board of Directors approved a resolution rejecting the proposed registry agreement and denying the application submitted by ICM Registry, LLC for a sponsored top level domain name. The findings of the Board was that the application was deficient in that the applicant, ICM Registry, LLC, (hereinafter “ICM”), failed to satisfy the

Request For Proposal (“hereinafter “RFP”) posted June 24, 2003, in the following manner:

- “1. ICM’s definition of its sponsored TLD community was not capable of precise or clear definition;
2. ICM’s policies were not primarily in the interests of the sponsored TLD community;
3. ICM’s proposed community did not have needs and interests which are differentiated from those of the general global Internet community;
4. ICM could not demonstrate that it had the requisite community support; and,
5. ICM was not adding new and valuable space to the Internet name space.”

On December 15, 2003, ICANN posted a final RFP for a new round of sponsored Top Level Domain Names (hereinafter “STLD”). On March 16, 2004, ICM submitted its application for the .XXX STLD name. From the inception, ICM knew that its .XXX application would be controversial. From the time that ICM submitted its applications until the application was finally denied on March 30, 2007, ICM never was able to clearly define what the interests of the .XXX community would be or that ICM had adequate support from the community it sought to represent.

ICM has claimed during these proceedings that the RFP posted by ICANN established a non-overlapping two-step procedure for approving new STLDs, under which applications would first be tested for baseline criteria, and only after the applications were finally and irrevocably approved by the ICANN Board could the applications proceed to technical and commercial contract negotiations with ICANN staff. ICM forcefully argues that on June 1, 2005, the ICANN Board irrevocably approved the ICM .XXX STLD application so as to be granted vested rights to enter into registry agreement negotiations dealing with economic issues only. The evidence introduced at the independent review procedure refutes this contention. Nothing contained in the ICANN RFP permits this interpretation.

Before the ICANN Board could approve a STLD application, applicants had to satisfy the baseline selection criteria set forth in the RFP, including the technical, business, financial and sponsorship criteria, and also negotiate an acceptable registry contract with ICANN staff. A review of the relevant documents and testimony admitted into evidence established that the two phases could overlap in time.

The fact that most ICANN Board members expressed significant concerns about ICM’s sponsorship shortcomings after the June 1, 2005,

resolutions negates any notion that the June 1, 2005, resolutions (which do not say that the Board is approving anything and, to the contrary, state clearly that the ICANN Board is not doing so) conclusively determined the sponsorship issue.

The sponsorship issues and shortcomings in ICM's application were also raised by ICANN Board members who joined the ICANN Board after the June 1, 2005, resolutions. Between the June 2005 and February 2007 ICANN Board meetings, there were a total of six new voting Board members (out of a total of fifteen) considering ICM's application.

Both Dr. Cerf and Dr. Pisanty testified during the evidentiary hearing that the ICANN Board's vote on June 1, 2005, made clear that the Board's vote was intended only to permit ICM to proceed with contract negotiations. Under no circumstances was ICANN bound by the vote to award the .XXX STLD to ICM because the resolution that the ICANN Board adopted was not a finding that ICM had satisfied the sponsorship criteria set forth in the Request for Proposal.

By August 9, 2005, ICM's first draft of the proposed .XXX STLD registry agreement was posted on ICANN's website and submitted to the ICANN Board for approval. ICANN's next Board meeting was scheduled for August 16, 2005, at which time the ICANN Board had planned on discussing the proposed agreement.

Within days of ICANN posting the proposed registry agreement, the Government Advisory Committee (hereinafter "GAC") Chairman wrote Dr. Cerf a letter expressing the GAC's diverse and wide ranging" concerns with the .XXX STLD and requesting that the ICANN Board provide additional time for governments to express their public policy concerns before the ICANN Board reached a final decision on the proposed registry agreement.

The GAC's input was significant and proper because the ICANN By-Laws require the ICANN Board to take into account advice from the GAC on public policy matters, both in formulation and adoption of policies. ICANN By-Laws Article XI, § 2.1 (j), provides: "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." Where the ICANN Board seeks to take actions that are inconsistent with the GAC's advice, the Board must tell the GAC why. Thus, it was perfectly acceptable, appropriate and fully consistent with the ICANN Articles of Incorporation and By-Laws for the ICANN Board to consider and to address the GAC's concerns.

Further, throughout 2005 and up to the ICANN Board's denial of the ICM .XXX STLD on March 30, 2007, a number of additional continuing concerns and issues appeared beyond those originally voiced by the evaluation panel at the beginning of the review process. Despite the best efforts of many and

numerous opportunities, ICM could not satisfy these additional concerns and, most importantly, could not cure the continuing sponsorship defects.

In all respects, ICANN operated in a fair, transparent and reasoned manner in accordance with its Articles of Incorporation and By-Laws.

V

CONCLUSION

For the reasons stated above, I would give substantial deference to the actions of the ICANN Board of Directors taken on March 30, 2007, in approving a resolution rejecting the proposed registry agreement and denying the application submitted by ICM Registry, LLC for a sponsored top level domain name. I specifically reject any notion that there was any sinister motive by any ICANN Director, governmental entity or religious organization to undermine ICM Registry, LLC's application. In my opinion, the application was rejected on the merits in an open and transparent forum. On the basis of that, ICM Registry, LLC never satisfied the sponsorship requirements and criteria for a top level domain name.

The rejection of the business judgment rule will open the floodgates to increased collateral attacks on the decisions of the ICANN Board of Directors and undermine its authority to provide a reliable point of reference to exercise plenary control over the Internet Domain Name System. In addition, it will leave the ICANN Board in a very vulnerable position for politicization of its activities.

The business judgment rule establishes a presumption that the directors' and officers' decisions are based on sound business judgment, and it prohibits courts from interfering in business decisions made by the management in good faith and in the absence of a conflict of interest. *Katz v. Chevron Corp.*, 22 Cal.App.4th 1352. In most cases, "the presumption created by the business judgment rule can be rebutted only by affirmative allegations of facts which, if proven, would establish fraud, bad faith, overreaching or an unreasonable failure to investigate material facts." The record in this case does not support such findings. In addition, interference with the discretion of the directors is not warranted in doubtful cases such as is present here. *Lee v. Interinsurance Exch.*, 50 Cal.App.4th 694.

In *Marble v. Latchford Glass Co.*, 205 Cal.App.2nd 171, the court stated that it would "not substitute its judgment for the business judgment of the board of directors made in good faith." Similarly, in *Eldridge v. Tymshare, Inc.*, 186 Cal.App.3rd 767, the court stated that the business judgment rule "sets up a presumption that directors' decisions are based on sound business judgment. This presumption can be rebutted only by a factual showing of fraud, bad faith or gross overreaching." ICM Registry, LLC has not met the standard articulated by established law.

In the present case, regardless of how ICM Registry, LLC stylizes its allegations, the business judgment rule poses a substantial hurdle for ICM's effort which I submit was never met by the evidence presented. The evidence presented at the hearing held in this matter disclosed that at every step the decisions made by the ICANN Board were made in good faith, and for the benefit of the continued operation of ICANN in its role as exercising plenary control over one of the world's most important technological resources: the Internet Domain Name System.

Simply stated, as long as ICANN is incorporated and domiciled within the State of California, U.S.A., it is the undersigned's opinion that the standard of review to be used by the Independent Review Panel in judging the conduct of the ICANN board, is the abuse of discretion standard, based upon the business judgment rule, and not a de novo review of the evidence.

JUDGE DICKRAN TEVRIZIAN (Retired)

Dickran Tevrian
February 18, 2010