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6 INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10
11 **KARL AUERBACH,**
12 **Plaintiff,**
13 **v.**
14 **INTERNET CORPORATION FOR**
ASSIGNED NAMES AND NUMBERS,
15 **Defendant.**

Case No. BS 074771

**DECLARATION OF M. STUART LYNN IN
SUPPORT OF DEFENDANT ICANN'S
MOTION FOR SUMMARY JUDGMENT**

(THE HONORABLE DZINTRA JANAVS)

Date: June 21, 2002
Time: 9:30 a.m.
Dept.: 85

1 I, M. Stuart Lynn, declare:

2 1. I am the President and Chief Executive Officer of Defendant Internet Corporation
3 for Assigned Names and Numbers ("ICANN"), a position I have held since March 13, 2001. I
4 have personal knowledge of the matters set forth herein and am competent to testify to those
5 matters.

6 **Bylaws and Inspection Procedures**

7 2. Article V, Section 21 of ICANN's Corporate bylaws provides that "[t]he
8 Corporation shall establish reasonable procedures to protect against the inappropriate disclosure
9 of confidential information." A true and correct copy of this section of ICANN's bylaws is
10 attached hereto as Exhibit 1.

11 3. ICANN's procedures for director access to its corporate records and properties are
12 called "ICANN Procedures Concerning Director Inspection of Records and Properties"
13 ("ICANN's Inspection Procedures"). A true and correct copy of the Inspection Procedures is
14 attached hereto as Exhibit 2.

15 4. Section 1 of ICANN's Inspection Procedures provides that "[t]hese procedures
16 balance the Directors' interest in inspecting records and corporate properties with the legitimate
17 interests of the Corporation in ensuring that requests are addressed in a reasonable fashion
18 without undue burden on management, and with the protection of the security of corporate
19 information against inappropriate disclosure and the protection of privacy interests. These
20 procedures do not diminish a Director's rights to inspect, as reflected in California law and Article
21 V, Section 21 of the Corporation's bylaws"

22 5. Section 5 of ICANN's Inspection Procedures provides that "[t]o the extent the
23 Chief Executive Officer, in consultation with the General Counsel of the Corporation, determines
24 that compliance with any request for records necessarily involves issues of confidentiality,
25 privilege, or privacy of a nature which require limitation of or conditions on the Director's access
26 or use of the requested records, the Chief Executive Officer shall advise the requesting Director
27 of the issues which require the restrictions and the nature of any proposed restrictions on access

28 or use."
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1 6. If a Director disagrees with the arrangements proposed by the Chief Executive
2 Officer, Section 6 of ICANN's Inspection Procedures provides a mechanism for the Audit
3 Committee of the Board of Directors to review the proposed arrangements. Specifically, Section
4 6 of ICANN's procedures provides that "[i]f the Director believes that any restrictions proposed
5 by the Chief Executive Officer are unreasonable, the Chief Executive Officer shall submit the
6 request to the Audit Committee of the Board of Directors of the Corporation for resolution."

7 **Development of Inspection Procedures**

8 7. On March 11, 2001, I attended a meeting of the Audit Committee of ICANN's
9 Board of Directors in Melbourne, Australia. A true and correct copy of the Melbourne Audit
10 Committee minutes is attached hereto as Exhibit 3.

11 8. Between March of 2001 and September of 2001, before ICANN's Inspection
12 Procedures were developed, Mr. Karl Auerbach, one of ICANN's nineteen directors, occasionally
13 inquired of me as to when he would be able to access ICANN's corporate records. In response to
14 each of Mr. Auerbach's inquiries, I informed Mr. Auerbach that the Audit Committee of the
15 Board of Directors was developing procedures for director access to corporate records and that
16 the records Mr. Auerbach requested would be made available to Mr. Auerbach for inspection,
17 pursuant to those procedures, once the procedures had been finalized.

18 9. On August 6, 2001, I contacted Mr. Auerbach to inform him that I believed the
19 Audit Committee would be finalizing the procedures for director access to corporate records
20 before the end of August. A true and correct copy of my August 6, 2001 e-mail to Mr. Auerbach
21 is attached hereto as Exhibit 4.

22 10. On August 22, 2001, I informed Mr. Auerbach of my belief that the records
23 inspection procedures would be completed "in the next few days." A true and correct copy of my
24 August 22, 2001 e-mail to Mr. Auerbach is attached hereto as Exhibit 5.

25 11. On September 2, 2001, I sent an e-mail to the Board of Directors, including Mr.
26 Auerbach. I attached to that e-mail the Inspection Procedures that had been endorsed by the
27 Audit Committee. A true and correct copy of my September 2, 2001, e-mail to the Board is
28 attached hereto as Exhibit 6.

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1 12. The same day, on September 2, 2001, I also sent a separate e-mail to Mr. Auerbach
2 confirming the completion of the Inspection Procedures and inviting Mr. Auerbach to pursue his
3 request for access to the corporate records. A true and correct copy of my September 2, 2001
4 e-mail to Mr. Auerbach is attached hereto as Exhibit 7.

5 13. On September 3, 2001, Mr. Auerbach sent an e-mail to me via the Board list in
6 which he stated "I personally am very happy that there are now clearly specified procedures." A
7 true and correct copy of Mr. Auerbach's September 3, 2001 e-mail is attached hereto as Exhibit 8.

8 **Mr. Auerbach's Inspection Request**

9 14. On September 23, 2001, Mr. Auerbach made a written request to me for access to
10 certain of ICANN's corporate records. A true and correct copy of Mr. Auerbach's September 23,
11 2001 letter to me is attached hereto as Exhibit 9.

12 15. Pursuant to Section 5 of the attached Inspection Procedures, I determined, in
13 consultation with ICANN's General Counsel, that Mr. Auerbach's September 23, 2001 request for
14 access to corporate records necessarily involved issues of confidentiality, privilege, or privacy
15 which required conditions on Mr. Auerbach's access to and use of the requested records. For
16 example, Mr. Auerbach was specifically requesting documentation concerning ICANN's General
17 Ledger, funds, financial obligations, and ICANN's relationship with its lawyers.

18 16. I then advised Mr. Auerbach, pursuant to Section 5 of the Inspection Procedures
19 and by letter dated October 5, 2001, of the proposed arrangements for Mr. Auerbach's access or
20 use. My letter to Mr. Auerbach provided space for Mr. Auerbach to countersign it in
21 acknowledgement of the proposed arrangements. A true and correct copy of my October 5, 2001
22 letter to Mr. Auerbach is attached hereto as Exhibit 10.

23 17. Mr. Auerbach did not countersign the October 5, 2001 letter in acknowledgement
24 of the proposed arrangements for his access or use of ICANN's corporate records and, to my
25 knowledge, he has never agreed to any arrangements for his access or use of ICANN's corporate
26 records.

1 18. In an October 15, 2001 response to my October 5, 2001 letter, Mr. Auerbach
2 objected to the proposed arrangements. A true and correct copy of Mr. Auerbach's October 15,
3 2001 letter is attached hereto as Exhibit 11.

4 19. In an October 21, 2001 letter to Mr. Auerbach, I informed him that based on the
5 objections to the proposed arrangements stated in Mr. Auerbach's October 15, 2001 letter and
6 pursuant to Section 6 of the Inspection Procedures, I was referring Mr. Auerbach's letter to the
7 Audit Committee for its consideration. In the October 21, 2001 letter, I also reiterated my
8 invitation to Mr. Auerbach to come to ICANN to inspect the records according to the proposed
9 arrangements pursuant to section 5 of the Inspection Procedures. A true and correct copy of my
10 October 21, 2001 letter to Mr. Auerbach is attached hereto as Exhibit 12.

11 20. In an October 27, 2001 letter to me, Mr. Auerbach restated his objection to the
12 proposed arrangements. Mr. Auerbach also proposed that he be able to review the corporation's
13 confidential records and then give ICANN seven days advance notice of "any disclosure." A true
14 and correct copy of Mr. Auerbach's October 27, 2001 letter is attached hereto as Exhibit 13.

15 21. In an October 31, 2001 letter, I responded to Mr. Auerbach's proposal as follows:
16 "Your proposal merely to give the corporation notice of a prospective disclosure would require
17 that we be prepared to go to court to prevent unwarranted disclosure. Since you are not entitled to
18 make these determinations in the first place, it seems inappropriate to force ICANN to vindicate
19 its rights, rather than your being obligated to seek permission for disclosures." I also once again
20 invited Mr. Auerbach to inspect ICANN's corporate records according to the proposed
21 arrangements. A true and correct copy of my October 31, 2001 letter is attached hereto as Exhibit
22 14.

23 22. Mr. Auerbach never inspected the corporate records according to the proposed
24 arrangements.

25 23. One category of documents that Mr. Auerbach included in his September 23, 2001
26 request to inspect related to international travel logs for certain ICANN officers. After
27 determining that category did not involve matters that the corporation would wish to claim as
28 confidential, I e-mailed to Mr. Auerbach a copy of the requested travel log on November 10,
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1 2001. A true and correct copy of the e-mail and travel log attachment are attached hereto as
2 Exhibit 15.

3 **Audit Committee Reviews Proposed Arrangements and Informs Auerbach of its Decision**

4 24. On November 17, 2001, I received an e-mail letter from Philip Davidson, then
5 Chair of the Audit Committee of ICANN's Board of Directors. The e-mail was addressed to Mr.
6 Auerbach and I was copied on the e-mail. The letter informed Mr. Auerbach that, on November
7 15, 2001, the Audit Committee had considered the referral of Mr. Auerbach's request for
8 inspection of the corporate records and the lack of agreement on the arrangements for access or
9 use. The letter informed Mr. Auerbach that the Audit Committee, after considering Mr.
10 Auerbach's objections, determined that the arrangements I requested were reasonable and urged
11 Mr. Auerbach to reconsider his refusal to proceed with the inspection according to those
12 arrangements. A true and correct copy of the Audit Committee's November 17, 2001 e-mail letter
13 is attached hereto as Exhibit 16.

14 25. Later that same day, on November 17, 2001, I was copied on Mr. Auerbach's
15 e-mail response to the Audit Committee. A true and correct copy of Mr. Auerbach's e-mail
16 response is attached hereto as Exhibit 17.

17 26. On December 5, 2001, I sent to Dave Farber and Declan McCullagh, for posting to
18 their Internet lists, an e-mail response to postings that Mr. Auerbach made to the Internet lists
19 regarding access to records. In my e-mail I reiterated that "Karl is free to examine ICANN
20 records any time he is ready to comply with established procedures that apply to him and any
21 other Director -- in complete accordance with California law." A true and correct copy of my
22 e-mail posting is attached hereto as Exhibit 18.

23 27. On December 5, 2001, Dave Crocker sent an e-mail to Declan McCullagh's
24 Internet list and copied both Mr. Auerbach and me. In his e-mail, Mr. Crocker stated "Karl is not
25 the first director of a non-profit corporation to have a conflict with the corporation's staff. Such
26 matters are not usually resolved by resorting to public outcry. There are more typical and
27 productive paths." A true and correct copy of the e-mail that Dave Crocker sent me and posted to
28 the Politech Internet list is attached hereto as Exhibit 19.

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1 28. To date, Mr. Auerbach has not exercised his right to inspect ICANN's corporate
2 records pursuant to the Inspection Procedures, despite repeated invitations on ICANN's part to
3 have Mr. Auerbach conduct such an inspection.

4 **Mr. Davidson's Inspection Request**

5 29. Director Davidson exercised his own right to inspect ICANN's corporate records
6 in January 2002. Davidson, who resides in London, England, e-mailed me on January 2, 2002, in
7 advance of one of his trips to the United States and requested to inspect the same ICANN
8 corporate records that Mr. Auerbach had requested to inspect. A true and correct copy of Mr.
9 Davidson's January 2, 2002 e-mail to me is attached hereto as Exhibit 20.

10 30. I responded to Mr. Davidson that ICANN "would be delighted to make the
11 records available for your inspection following the established procedures." A true and correct
12 copy of my January 2, 2002 e-mail to Mr. Davidson is attached hereto as Exhibit 21.

13 31. As with Mr. Auerbach's request, Mr. Davidson's request for access to corporate
14 records necessarily involved issues of confidentiality, privilege, or privacy and required proposed
15 arrangements for Mr. Davidson's access to and use of the requested records. Pursuant to Section
16 5 of the Inspection Procedures, I therefore asked Louis Touton, ICANN's General Counsel, to
17 prepare a letter to Mr. Davidson setting forth the same arrangements for access as proposed for
18 Mr. Auerbach's inspection.

19 32. After Mr. Davidson inspected the requested records on January 31, 2002, pursuant
20 to ICANN's established procedures, Mr. Davidson told me verbally that he had no concerns with
21 either the Inspection Procedures or the records that he had inspected.

22 **The Timing of Mr. Auerbach's Lawsuit**

23 33. Mr. Auerbach is often the lone dissenter in ICANN Board of Director votes.

24 34. At the March 14, 2002, ICANN Board of Directors meeting in Accra, Ghana, the
25 Board voted on ten substantive resolutions (other than resolutions expressing thanks, etc.) All ten
26 resolutions were passed. No Director other than Mr. Auerbach voted against any of the ten
27 resolutions; he cast opposing votes to five of them. Mr. Auerbach abstained on two of the other

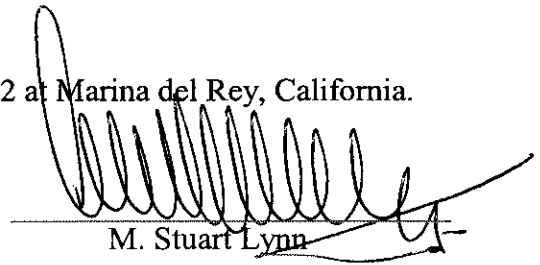
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35. At the March 14, 2002, ICANN Board meeting, after considering lengthy studies sounding reservations about the validity and practicality of global online voting, the Board rejected an effort by Mr. Auerbach and others to establish a process of on-line selections for certain directors of ICANN by a vote of 14-1 (with 2 abstentions). Mr. Auerbach was the only dissenting vote. During the Board debate on the resolution, Mr. Auerbach stated: "What this resolution does very clearly, it says to the world that ICANN is not a democratic public institution but it's a paternalistic oligarchy. We return to the day when we assume the white man's burden." A true and correct copy of this portion (page 9) of the transcript of the March 14, 2002 Board of Directors meeting is attached hereto as Exhibit 22.

36. The Board also rejected an effort to commit to extending the length of the terms on the Board of Mr. Auerbach and the eight other At Large Directors by a 13-3 vote (with 1 abstention), leaving that issue to be decided at a subsequent meeting. Of the five Board members who had been previously selected by on-line selections, three voted in favor of the latter resolution to defer any action on extending At Large Director terms and one other abstained. Mr. Auerbach was the only such Director who voted against the resolution.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This declaration was signed on May 16, 2002 at Marina del Rey, California.



M. Stuart Lynn



Bylaws

*Amended Bylaws
12 February 2002*

**BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS
A California Nonprofit Public-Benefit Corporation
As Amended and Restated on 29 October 1999 and Amended Through 12 February
2002**

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ARTICLE I: OFFICES AND SEAL

Section 1. OFFICES

The principal office for the transaction of the business of this corporation (the "Corporation") will be in the County of Los Angeles, State of California, United States of America. The Corporation may also have an additional office or offices within or outside the United States of America as the Board of Directors (the "Board") 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 II: MEMBERSHIP

Section 1. GENERAL

The Corporation 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 a selection plan adopted by Board resolution, or in any other action of the Board. Instead, the Corporation shall allow individuals (described in these bylaws as "Members") to participate in the activities of the Corporation as described in this Article II and in a selection plan adopted by Board resolution, and only to the extent set forth in this Article II and in a selection plan adopted by Board resolution.

Section 2. PLAN FOR SELECTION OF FIVE "AT LARGE" DIRECTORS IN THE YEAR 2000

Five persons shall be nominated and selected by no later than November 1, 2000, to become "At Large" Directors according to a selection plan adopted by the Board. They shall be seated at the conclusion of the Annual Meeting of the Corporation in 2000.

Section 3. TERMS OF "AT LARGE" DIRECTORS

The five "At Large" Directors seated as described in Section 2 shall serve terms that expire at the conclusion of the Annual Meeting of the Corporation in 2002.

Section 4. TEMPORARY COMMITTEES

There shall be two temporary committees to assist in implementing the selection plan mentioned in Section 2 of this Article. The first Committee, the Nominating Committee, shall consist of four Directors of the Corporation and three other individuals, one of whom shall be the current Chair of the Internet Architecture Board. It shall have the responsibility for nominating individuals for possible selection as "At Large" Directors. Notwithstanding anything to the contrary in Article III, Section 4, its choice of nominees shall not be subject to review or reconsideration by the Board. The second committee, the Election Committee, shall consist of three Directors of the Corporation and four other

individuals, including at least one with significant expertise in monitoring elections to ensure compliance with election procedures. It shall have the responsibility of recommending to the Board procedures for carrying out and overseeing the selection of five "At Large" Directors under the selection plan. Each committee shall serve pursuant to a charter adopted by the Board, and will cease to exist as soon as it has carried out the functions identified in that charter. Each committee will establish its own rules and procedures, which must be consistent with its charter.

Section 5. STUDY OF "AT LARGE" MEMBERSHIP

Beginning immediately following the conclusion of the Annual Meeting of the Corporation in 2000, the Corporation shall initiate a comprehensive study of the concept, structure and processes relating to an "At Large" membership for the Corporation. The study shall be structured so as to allow and encourage the participation of organizations worldwide, and shall be a "clean sheet" study – meaning that previous decisions and conclusions regarding an "At Large" membership will be informative but not determinative, and that the study will start with no preconceptions as to a preferred outcome. The study shall include, but not necessarily be limited to, the following issues, taking into account the limited technical and administrative responsibilities of ICANN:

Whether the ICANN Board should include "At Large" Directors;

If so, how many such Directors there should be;

How any such "At Large" Directors should be selected, including consideration of at least the following options: selection by an "At Large" membership; appointment by the existing Board; selection or appointment by some other entity or entities; and any combination of those options;

If selection by an "At Large" membership is to be used, the processes and procedures by which that selection will take place; and

What the appropriate structure, role and functions of an "At Large" membership should be.

The Board shall establish, by the Annual Meeting in 2000, a process and structure for the study that will enable it to meet the following deadlines:

- a. The results of the study should be presented to the Board no later than the second quarterly meeting of the Corporation in 2001;
- b. The Board shall review the study, and propose for public comment whatever actions it deems appropriate as a result of the study, on a schedule that would permit the Board to take final action on the study no later than the Annual Meeting of the Corporation in 2001; and
- c. Any actions taken by the Board as a result of the study that require the selection of any "At Large" Directors should be implemented on a schedule that will allow any new "At Large" Directors to be seated no later than the conclusion of the Annual Meeting of the Corporation in 2002.

ARTICLE III: TRANSPARENCY AND PROCEDURES

Section 1. GENERAL

The Corporation and its subordinate entities shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

Section 2. ACCESS TO INFORMATION

(a) All minutes of meetings of the Board, Supporting Organizations (and any councils thereof) and Committees shall be approved promptly by the originating body.

(b) No later than five (5) days after each meeting, any actions taken by the Board shall be made publicly available in a preliminary report on a publicly-accessible Internet World Wide Web site maintained by the Corporation (the "Web Site"); provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines is necessary or appropriate to protect the interests of the Corporation), matters that the Corporation 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 voting, are not appropriate for public distribution shall not be included in the preliminary report made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in generic terms in the relevant preliminary report the reason for such nondisclosure.

(c) No later than the day after the date on which they are formally approved by the Board, the minutes shall be made publicly available on the Web Site; provided, however, that any minutes relating to personnel or employment matters, legal matters (to the extent the Board determines is necessary or appropriate to protect the interests of the Corporation), matters that the Corporation 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 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 generic terms in the relevant minutes the reason for such nondisclosure.

Section 3. NOTICE AND COMMENT PROVISIONS

(a) The Board shall post on the Web Site (i) periodically a calendar of scheduled meetings for the upcoming year, and (ii) in advance of each Board meeting, a notice of the fact and time that such meeting will be held and, to the extent known, an agenda for the meeting. If reasonably practicable, the Board shall post notices of special meetings of the Board at least fourteen (14) days prior to the meetings.

(b) 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, the Board will:

- (i) provide public notice on the Web Site explaining what policies are being considered for adoption and why;
- (ii) provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments; and
- (iii) hold a public forum at which the proposed policy would be discussed.

(c) After voting on any policy subject to Section 3(b) of this Article, the Board will 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.

(d) As appropriate, the Corporation will facilitate the translation of final published documents into various appropriate languages.

Section 4. RECONSIDERATION AND REVIEW

(a) Any person affected by an action of the Corporation may request review or reconsideration of that action by the Board. The Board shall adopt policies and procedures governing such review or reconsideration, which may include threshold standards or other requirements to protect against frivolous or non-substantive use of the reconsideration process.

(b) The Initial Board shall, following solicitation of input from the Advisory Committee on Independent Review and other interested parties and consideration of all such suggestions, adopt policies and procedures for independent third-party review of Board actions alleged by an affected party to have violated the Corporation's articles of incorporation or bylaws.

ARTICLE IV: POWERS

Section 1. GENERAL POWERS

(a) Except as otherwise provided in the Articles of Incorporation or these Bylaws (including Section 2(b) of Article VI which sets forth responsibilities of Supporting Organizations), the powers of the Corporation will be exercised, its property controlled and its business and affairs conducted by or under the direction of the Board. With respect to any matters that would fall within the requirements of Article III, Section 3 (b), the Board may act only by a majority vote of all members of the Board; in all other matters unless otherwise provided herein or by law, the Board may act by majority vote of those present at any official meeting. Any references herein to a vote of the Board shall mean the vote of only those members present at the meeting unless otherwise provided herein by reference to "all of the members of the Board."

(b) The Corporation 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 the Corporation. Nothing in this Section 1(b) is intended to prevent the Corporation 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.

(c) The Corporation 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 V: STRUCTURE OF THE BOARD OF DIRECTORS

Section 1. INITIAL BOARD

The initial Board of Directors of the Corporation ("Initial Board") shall be the Board that exists prior to the time of the seating of Directors that have been selected in accordance with these bylaws by any Supporting Organization(s) that exists under Section 3(a) of Article VI, and shall consist of nine At Large members and the President. Five of the "At Large" members of the Initial Board, to be determined by the "At Large" members of the Initial Board, shall serve until the conclusion of the Annual Meeting of the Corporation in 2000. The remaining four "At Large" members of the Initial Board shall serve until the conclusion of the Annual Meeting of the Corporation in 2002. No At Large member of the Initial Board shall be eligible for additional service on the Board until two years have elapsed following the end of his or her term on the Board.

Section 2. ORIGINAL BOARD MEMBERS SELECTED BY THE SUPPORTING ORGANIZATIONS

As soon as feasible after formation of a Supporting Organization pursuant to Section 3(a) of Article VI, the Supporting Organization shall select three persons to be the Original Directors selected by that Supporting Organization and shall designate which of these persons shall serve each of the staggered terms for such Original Directors specified in Section 9(c) of this Article. The Supporting Organization shall notify the Board and Secretary of the Corporation in writing of the selections and designations. The selected persons shall take office seven days after the notification is received by the Secretary. The Supporting Organization Council may by a two-thirds vote revise its designation of which of the selected persons shall serve which of the staggered terms; such revision shall become effective upon the Secretary's receipt, within 180 days of the original notification, of the written consents of each Original Director whose term is affected by the revision.

Section 3. NUMBER OF DIRECTORS AND ELECTION OF CHAIRMAN

(a) The authorized number of Directors shall be no less than nine (9) and no more than nineteen (19).

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

Section 4. QUALIFICATION OF DIRECTORS AFTER THE INITIAL BOARD

Each Board after the Initial Board shall be comprised as follows:

- (i) Three (3) Directors selected by the Address Supporting Organization, as defined in Article VI;
- (ii) Three (3) Directors selected by the Domain Name Supporting Organization, as defined in Article VI;
- (iii) Three (3) Directors selected by the Protocol Supporting Organization, as defined in Article VI;
- (iv) Nine (9) "At Large" members of the Initial Board during their terms of office prescribed in Section 1 of this Article, and any successors; and
- (v) The person who shall be, from time to time, the President of the Corporation.

Section 5. ADDITIONAL QUALIFICATIONS

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 (a) who holds an elective governmental office or (b) 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.

Section 6. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board: (1) at least one citizen of a country located in each of the geographic regions listed in this Section 6 shall serve as an At Large Director on the Board (other than the Initial Board) at all times; and (2) no more than one-half (1/2) of the total number of At Large Directors serving at any given time shall be citizens of countries located in any one Geographic Region. The selection of Directors by each Supporting Organization shall comply with all applicable geographic diversity provisions of these Bylaws or of any Memorandum of Understanding referred to in these Bylaws concerning the Supporting Organization. As used herein, each of the following shall be a "Geographic Region": Europe; Asia/Australia/Pacific; Latin America/Caribbean islands; Africa; 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 7. CONFLICT OF INTEREST

The Board, through a committee designated for that purpose, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations which relate in any way to the business and other affiliations of the Corporation. Each Director shall be responsible for disclosing to the Corporation 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 the Corporation 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 interest that will be affected by the outcome of the vote.

Section 8. DUTIES OF DIRECTORS

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

Section 9. SELECTION AND TERM

(a) "At Large" Directors shall be selected pursuant to the provisions of Article II of these Bylaws.

(b) Prior to October 1 of each year, each Supporting Organization entitled to select a Director (other than an Original Director selected by the Supporting Organization under Section 2 of this Article) shall make its selection according to the procedures specified by Article VI (including Articles VI-A, VI-B, and VI-C). The Supporting Organization shall give the Secretary of the Corporation written notice of the selection within fifteen days after that selection.

(c) The regular term of office of a Director shall be as follows:

1. 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;
2. The term of "At Large" members of the Initial Board shall expire as stated in Section 1 of this Article;
3. The term of the five At Large Directors seated pursuant to Article II, Section 2 of these Bylaws shall expire as stated in Article II, Section 3; and
4. The staggered terms of the Original Directors selected by any Supporting Organization as provided by Section 2 of this Article shall extend until the conclusion of the second, third, and fourth Annual Meeting of the Corporation, respectively, after the Supporting Organization's notification of their selections and designations is received by the Secretary.
5. The term of a Director selected by any Supporting Organization

to succeed a Director previously selected by it (other than a Director selected to fill a vacancy) shall expire at the conclusion of the third Annual Meeting of the Corporation after the one at the conclusion of which the term of the Director's predecessor expired.

Each Director, including a Director selected to fill a vacancy or selected at a special meeting, shall hold office until expiration of the term for which selected and qualified and until a successor has been selected and qualified or until that Director resigns or is removed in accordance with these bylaws, provided that no "At Large" Director selected pursuant to Article II of these Bylaws shall continue to hold office after the expiration of his or her term even if a successor has not been selected and qualified. No Director may serve more than two (2) terms.

(d) Resources of the Corporation will not be expended in support of any campaign of any person seeking to be selected as a member of the Board.

Section 10. RESIGNATION

Subject to Section 5226 of the CNPBCL, any Director 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 the Corporation) or by giving written notice thereof to the President or the Secretary of the Corporation. 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

Any Director may be removed following notice and a three-fourths (3/4) majority vote of all members of the Board; 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 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. A Director selected by a Supporting Organization can be recommended for removal by that Supporting Organization through procedures adopted by that Supporting Organization and ratified by the Board. Upon such recommendation for removal, the Board shall vote to remove such Director. If the Board, without a recommendation by the Supporting Organization, seeks to remove more than one Director selected by a Supporting Organization within a four-month period, the Board must show reasonable cause for its action.

Section 12. VACANCIES

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 involving an "At Large" Director, whether from the Initial Board or seated under Article II, Section 2 of these Bylaws, shall be filled by a vote of the remaining Directors. Any vacancy occurring on the Board of Directors involving a Director selected by a Supporting Organization shall be filled by the Supporting Organization selecting that Director according to the procedures specified by Article VI (including Articles VI-A, VI-B, and VI-C). 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. The replacement need not hold the office, if any, of the removed Director. 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.

Section 13. ANNUAL MEETING OF THE CORPORATION

Annual meetings of the Corporation will be held for the purpose of electing Officers and for the transaction of such other business as may come before the meeting. The first annual meeting will be held the last week of September 1999 or on such other date as may be set by the Board. Subsequent annual meetings shall be held as set by the Board not less than ten (10) nor more than thirteen (13) months after the annual meeting held the prior year. In the absence of designation, the annual meeting will be held at the principal office of the Corporation. The annual meeting will be open to the public. 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 will be held on dates to be determined by the Board. To the extent practicable, regular meetings should be held in different locations around the world on a regular basis. In the absence of other designation, regular meetings will be held at the principal office of the Corporation.

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 will be made by the Secretary of the Corporation. In the absence of designation, special meetings will be held at the principal office of the Corporation.

Section 16. NOTICE OF MEETINGS

Notice of time and place of all meetings will be delivered personally or by telephone or by electronic mail to each Director, or sent by first-class mail (air mail for addresses outside the United States) or facsimile, charges prepaid, addressed to each Director at the Director's address as it is shown on the records of the Corporation. In case the notice is mailed, it will 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 will 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 16 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 and (c) the Corporation 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 are taken or cast only by the Directors and not persons who are not Directors. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting. The Corporation shall be required to make available at the place of any meeting of the Board the telecommunications equipment necessary to permit members of the Board to participate by telephone.

Section 19. ACTION WITHOUT MEETING

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

Section 20. ELECTRONIC MAIL

If permitted under applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. The Corporation 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 the Corporation. The Corporation shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 22. COMPENSATION

The Directors shall receive no compensation for their services as Directors. The Board may, however, authorize the reimbursement of actual and necessary reasonable expenses incurred by Directors performing duties as Directors.

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 the Corporation 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 VI: SUPPORTING ORGANIZATIONS

Section 1. DESCRIPTION

(a) There shall be advisory bodies known as Supporting Organizations. The Supporting Organizations shall be those specified in Article VI, Section 1(b), as it may be amended from time to time according to Article XII.

(b) The Supporting Organizations shall be the following:

1. The Address Supporting Organization ("ASO");
2. The Domain Name Supporting Organization ("DNSO"); and
3. The Protocol Supporting Organization ("PSO").

Section 2. RESPONSIBILITIES AND POWERS

(a) Each Supporting Organization shall select Directors to those seats on the Board designated, pursuant to Section 4 of Article V, to be filled by that Supporting Organization. The selection of Directors by each Supporting Organization shall comply with all applicable geographic diversity provisions of these Bylaws.

(b) The Supporting Organizations shall serve as advisory bodies to the Board, with the primary responsibility for developing and recommending substantive policies regarding those matters falling within their specific responsibilities, as

described in this Article VI (including VI-A, VI-B and VI-C).

(c) The Board shall refer proposals for substantive policies not received from a Supporting Organization to the Supporting Organization, if any, with primary responsibility for the area to which the proposal relates for initial consideration and recommendation to the Board.

(d) Any recommendation forwarded to the Board by a Supporting Organization shall be transmitted to all other Supporting Organizations so that each Supporting Organization may comment to the Board regarding the implications of such a recommendation on activities within their individual scope of primary responsibility.

(e) Subject to the provisions of Article III, Section 3, the Board shall accept the recommendations of a Supporting Organization if the Board finds that the recommended policy (1) furthers the purposes of, and is in the best interest of, the Corporation; (2) is consistent with the Articles and Bylaws; (3) was arrived at through fair and open processes (including participation by representatives of other Supporting Organizations if requested); and (4) is not reasonably opposed by any other Supporting Organization. No recommendation of a Supporting Organization shall be adopted unless the votes in favor of adoption would be sufficient for adoption by the Board without taking account of either the Directors selected by the Supporting Organization or their votes.

(f) If the Board declines to accept any recommendation of a Supporting Organization, it shall return the recommendation to the Supporting Organization for further consideration, along with a statement of the reasons it declines to accept the recommendation. If, after reasonable efforts, the Board does not receive a recommendation from the Supporting Organization that it finds meets the standards of Section 2(e) of this Article VI or, after attempting to mediate any disputes or disagreements between Supporting Organizations, receives conflicting recommendations from Supporting Organizations, and the Board finds there is a justification for prompt action, the Board may initiate, amend or modify and then approve a specific policy recommendation.

(g) Nothing in this Section 2 is intended to limit the powers of the Board or the Corporation to act on matters not within the scope of primary responsibility of a Supporting Organization or to take actions that the Board finds are necessary or appropriate to further the purposes of the Corporation.

Section 3. SUPPORTING ORGANIZATION FORMATION

(a) The initial Supporting Organizations contemplated by Section 1(b) of this Article VI shall be formed through community consensus, as reflected in applications or similar proposals to create an initial Supporting Organization. Provision for specific supporting organizations shall be set forth in Articles added after this Article VI and before Article VII by Bylaw amendments that shall, in the Board's judgment, (1) be consistent with these Bylaws; (2) ensure that the full range of views of all interested parties will be fairly and adequately reflected in the decisions of the Supporting Organization; and (3) serve the

purposes of the Corporation. Upon the adoption of such Bylaw amendments, the Supporting Organization shall be deemed to exist for purposes of these Bylaws. Once accepted by the Board through the amendment of these Bylaws and the failure of the Board to disapprove any subsequent decisions by the Supporting Organizations or their constituent bodies, the procedures of the Supporting Organizations shall prevail in the case of any inconsistency with any other provisions of these Bylaws.

(b) The Board may amend the Bylaws to create additional Supporting Organizations if it determines, by a two-thirds (2/3) vote of all members of the Board, that it would serve the purposes of the Corporation. In the event of a staff recommendation that an additional Supporting Organization should be created, the Board will post the staff recommendation on the Web Site, including a detailed explanation of why such action is necessary or desirable, set a reasonable time for the receipt of public comments, and not make a final decision to seek the consensus development of such additional Supporting Organization until it has taken into account all such comments.

Section 4. ELIGIBILITY

No person shall serve simultaneously as (i) a member of any Supporting Organization Council or other body that is directly responsible for the selection of Directors by that Supporting Organization and (ii) a Director or a member of any other Supporting Organization Council. If a member of any such Supporting Organization Council or such other body accepts a nomination to be considered to serve on the Board, such member shall not, following such acceptance, participate in any discussion of, or vote by, such Supporting Organization Council or other body relating to the selection of Directors by such Council or other body.

ARTICLE VI-A: THE ADDRESS SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

(a) The ASO shall advise the Board with respect to policy issues relating to the operation, assignment and management of Internet addresses.

(b) The ASO shall be the entity established by a Memorandum of Understanding between the Corporation and a group of regional Internet registries ("RIRs").

(c) The ASO shall be considered to exist and to be recognized when the Memorandum of Understanding has been signed by the President pursuant to authorization of the Board.

Section 2. ADDRESS COUNCIL

(a) The ASO shall have a Address Council, consisting of representatives of the RIRs that are signatories to the Memorandum of Understanding. The Address Council shall, at least annually, host a meeting (the "General Assembly"), open to participation by all interested individuals.

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

ARTICLE VI-B: THE DOMAIN NAME SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

(a) The DNSO shall advise the Board with respect to policy issues relating to the Domain Name System.

(b) The DNSO shall consist of (i) a Names Council ("NC"), consisting of representatives of constituencies as described in Section 3 of this Article VI-B ("Constituencies") elected by those Constituencies and (ii) a General Assembly ("GA"), consisting of all interested individuals and entities.

Section 2. THE NAMES COUNCIL

(a) The NC shall consist of representatives, selected in accordance with Section 3(c) of this Article, from each Constituency recognized by the Board pursuant to the criteria set forth in Section 3 of this Article.

(b) The NC is responsible for the management of the consensus building process of the DNSO. It shall adopt such procedures and policies as it sees fit to carry out that responsibility, including the designation of such research or drafting committees, working groups and other bodies of the GA as it determines are appropriate to carry out the substantive work of the DNSO. Each recognized Constituency shall be invited to participate in each of such bodies. Each of such bodies shall provide appropriate means, as determined by the NC, for input and such participation as is practicable under the circumstances by other interested parties. Any reports or recommendations presented to the NC by such bodies shall be posted on a web site accessible by the public for public review and comment; absent clear justification, which shall be publicly stated at the time of any action, the NC shall not act on any report or recommendation until a reasonable time for public comment has passed and the NC has reviewed and evaluated all public comments received. The NC is responsible for ensuring that all responsible views have been heard and considered prior to a decision by the NC.

(c) Constituencies or GA participants may propose that the NC consider domain name policies or recommendations. If the NC undertakes consideration of a domain name topic, or if a Constituency so requests, the NC shall designate one or more research or drafting committees, or working groups of the GA, as appropriate to evaluate the topic, and shall set a time frame for the report of such committee or working group. Following the receipt of a report or recommendation from such a body, the NC may accept the report or recommendation for submission to the Constituencies for comment and consultation, or return the report or recommendation to the body from which it originated for further work. After the report or recommendation is submitted to the Constituencies and the comment period for the Constituencies has expired, the NC shall evaluate the comments to determine

whether there is a basis for a consensus recommendation to the Board.

(d) If two-thirds (2/3) of the members of the NC determine that the DNSO process has produced a community consensus, that consensus position shall be forwarded to the Board as a consensus recommendation, along with all materials or other information that could reasonably be relevant to the Board's review of that determination, including (but not limited to) the dissenting statement(s) of any member(s) of the NC. If more than one-half (1/2) but less than two-thirds (2/3) of the members of the NC determine that the DNSO process has produced a community consensus, that position may be forwarded to the Board as a NC recommendation, along with statements of majority and minority views, and any separate or dissenting statement(s) of any member(s) of the NC. Any proposed recommendation that is not supported by an affirmative vote of one-half (1/2) of the members of the NC may be returned to the body from which it originated, or may be assigned to a new body, for further work. In such a case, the NC may report to the board the lack of a consensus and the steps, if any, it plans to take from this point forward with respect to this particular recommendation. The NC is responsible for ensuring that the Board is informed of any significant implementation or operational concerns expressed by any responsible party.

(e) The NC shall forward to the Board, from among those persons nominated by the GA, its selection(s) for the Director(s) to fill any open Board position(s) reserved for the DNSO. Any such selection(s) must have the affirmative votes of at least one-half (1/2) of all the members of the NC. At any given time, no two Directors serving on the Board selected by the NC shall be citizens of the same country or of countries located in the same Geographic Region.

(f) Unless shortened by the Board in its recognition of a Constituency, the term of office for each member of the NC shall be two years.

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

(h) Meetings of the NC may be held (i) in person or via teleconference, at the discretion of the NC, so long as all members of the NC participating can speak to and hear one another or (ii) via electronic video screen communication or other communication equipment; provided, that (a) all members of the NC participating in such a meeting can speak to and hear one another, (b) all members of the NC are provided the means of fully participating in all matters before the NC and (c) the NC adopts and implements means of verifying that (x) a person participating in such a meeting is a member of the NC or other person entitled to participate in the meeting and (y) all actions of, or votes by, the NC are taken or cast only by the members of the NC or other persons entitled to cast votes. A majority of the total number of NC members then in office shall constitute a quorum for the transaction of business, and the act of a majority of the NC members present at any meeting at which there is a quorum shall be the act of the NC, unless otherwise provided herein. Advance notice of such meetings shall be posted on a web site that is available for

public access and, if reasonably practicable, at least 14 days in advance of the meeting. Except where determined by a majority vote of members of the NC present that a closed session is appropriate, meetings shall be open to physical or electronic attendance by all interested persons. The NC shall post minutes of its meetings to a web site that is available for public access as soon as practicable following the meeting, and no later than 21 days following the meeting.

(i) The NC shall elect the Chairman of the GA annually.

(j) Administrative and operational costs of the DNSO shall be funded by DNSO participants in a manner to be determined by the NC, consistent with Section 4(c) below.

Section 3. THE CONSTITUENCIES

(a) Each Constituency shall self-organize, and shall determine its own criteria for participation, except that no individual or entity shall be excluded from participation in a Constituency merely because of participation in another Constituency, and constituencies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. The Board shall recognize a Constituency (including the initial Constituencies described in (b) below) by a majority vote, whereby the Constituency shall be deemed to exist for purposes of these Bylaws.

(b) The initial Constituencies shall consist of (in alphabetical order):

1. ccTLD registries;
2. commercial and business entities;
3. gTLD registries;
4. ISP and connectivity providers;
5. non-commercial domain name holders;
6. registrars; and
7. trademark, other intellectual property and anti-counterfeiting interests.

(c) Each Constituency shall select up to three individuals to represent that Constituency on the NC, no two of whom may be citizens of the same Geographic Region, as defined in Article V, Section 6, except that, with the consent of the Board, this latter requirement may be suspended for the term of a particular individual upon a showing that it is impracticable for the Constituency to obtain such geographic diversity. Any such waiver shall be

granted only upon a commitment by the constituency to a substantive plan to diversify its membership, thereby minimizing the likelihood of the need for future waivers from the Board. Notwithstanding the foregoing, no Constituency may have more representatives on the NC than there are members of the Constituency.

(d) Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency. Any such petition will be posted for public comment pursuant to Article III, Section 3. The Board may create new Constituencies in response to such a petition, or on its own motion, if it determines that such action would serve the purposes of the Corporation. In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment, and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment, it will notify the names council and will consider any response to that notification prior to taking action.

Section 4. THE GENERAL ASSEMBLY

(a) The GA shall be an open forum for participation in the work of the DNSO, and open to all who are willing to contribute effort to the work of the DNSO. The participants in the GA should be individuals who have a knowledge of and an interest in issues pertaining to the areas for which the DNSO has primary responsibility, and who are willing to contribute time, effort and expertise to the work of the DNSO, including work item proposal and development, discussion of work items, draft document preparation, and participation in research and drafting committees and working groups.

(b) The GA shall meet at least once a year, if possible in conjunction with regularly scheduled meetings of the Board. To the maximum extent practicable, all meetings should be available for online attendance as well as physical attendance.

(c) The costs of GA meetings shall be the responsibility of the DNSO, which may levy an equitable, cost-based fee on GA attendees to recoup those costs. There shall be no other fees required to participate in the GA.

(d) Participants in the GA shall nominate, pursuant to procedures adopted by the NC and approved by the Board, persons to serve on the Board in those seats reserved for the DNSO.

ARTICLE VI-C: THE PROTOCOL SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

(a) The PSO shall advise the Board with respect to policy issues relating to the assignment of parameters for Internet protocols.

(b) The PSO shall be the entity established by a Memorandum of Understanding between the Corporation and a group of open, international, Internet-related standards development organizations ("SDOs").

(c) The PSO shall be considered to exist and to be recognized when the Memorandum of Understanding has been signed by the President and ratified by the Board.

Section 2. PROTOCOL COUNCIL

(a) The PSO shall have a Protocol Council, consisting of representatives of the SDOs that are signatories to the Memorandum of Understanding. The Protocol Council shall, at least annually, host a meeting (the "General Assembly"), open to participation by all interested individuals.

(b) The Protocol Council shall select Directors to those seats on the Board designated to be filled by the PSO.

ARTICLE VII: COMMITTEES

Section 1. COMMITTEES GENERALLY

(a) The Board may establish one or more committees in addition to those set forth in Section 3 of this Article VII. Committees are of two kinds: those having legal authority to act for the Corporation, known as Committees of the Board, and those that do not have that authority, known as Advisory Committees. Except where otherwise stated in these Bylaws, committee members shall be appointed by the Board. 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 if a Director or Directors are the subject of the removal action, such Director or Directors 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. The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

(i) The filling of vacancies on the Board or on any committee;

(ii) The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;

(iii) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;

(iv) The appointment of committees of the Board or the members thereof;

(v) The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CNPBCL;

(vi) The approval of the annual budget required by Section 4 of Article XI; or

(vii) The compensation of any officer described in Sections 4 through 8 of Article VIII.

(b) The Board shall have the power to prescribe the manner in which proceedings of any committee 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 V 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.

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

Section 2. COMMITTEES OF 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. The Board may terminate any Committee of the Board.

Section 3. ADVISORY COMMITTEES

The Board may create one or more Advisory Committees in addition to those set forth in the next paragraph. Advisory Committee membership may consist of Directors only, Directors and nondirectors, or nondirectors only, and may also include nonvoting members and alternate members. Advisory Committees shall have no legal authority to act for the Corporation, but shall report their findings and recommendations to the Board.

There shall be at least the following Advisory Committees:

(a) There shall be a Governmental Advisory Committee. The initial chairman of the Governmental Advisory Committee shall be appointed by the Board and shall hold that position until the election of his or her successor; subsequent chairs shall be elected by the members of the Governmental Advisory Committee pursuant to procedures adopted by such members. Membership of 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, or on invitation of the ICANN Board. Members 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. The Governmental Advisory Committee should consider and provide advice on the activities of the Corporation as they relate to concerns of governments, particularly matters where there may be an interaction between the Corporation's policies and various laws, and international agreements. The Board will notify the chairman of the Governmental Advisory Committee of any proposal for which it seeks comments under Article III, Section 3(b) and will consider any response to that notification prior to taking action.

(b) There shall be a DNS Root Server System Advisory Committee. The initial chairman of the DNS Root Server System Advisory Committee shall be appointed by the Board; subsequent chairs shall be elected by the members of the DNS Root Server System Advisory Committee pursuant to procedures adopted by the members. The responsibility of the Root Server System Advisory Committee shall be to advise the Board about the operation of the root name servers of the domain name system. The Root Server System Advisory Committee should 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 Root Server System Advisory Committee should examine and advise on the security aspects of the root name server system. Further, the Root Server System Advisory Committee should review the number, location, and distribution of root name servers considering the total system performance, robustness, and reliability.

Section 4. TERM OF OFFICE

The chairman 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. QUORUM; MEETINGS

A majority of the members of the committee shall constitute a quorum at any meeting of that committee. Each committee shall meet as often as is necessary to perform its duties.

Section 6. VACANCIES

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

Section 7. 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 VIII: OFFICERS

Section 1. OFFICERS

The officers of the Corporation will be a President (who will serve as Chief Executive Officer), a Secretary, a Chief Financial Officer and a Chief Technical Officer. The Corporation 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 the Corporation.

Section 2. ELECTION OF OFFICERS

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

Section 3. REMOVAL OF OFFICERS

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

Section 4. PRESIDENT

The President will be the Chief Executive Officer (CEO) of the Corporation in charge of all of its activities and business. All other officers and staff shall report to the President or his or her delegate. The President shall serve as a member of the Board, and shall be entitled to attend any meeting of any committee. The President will 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, will see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, and in general 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 the Corporation. 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 the Corporation and shall keep or cause to be kept, in books belonging to the Corporation, full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of the Corporation in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of the Corporation 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 the Corporation. The CFO shall be responsible for the Corporation's financial planning and forecasting and shall assist the President in the preparation of the Corporation's annual budget. The CFO shall coordinate and oversee the Corporation's funding, including any audits or other reviews of the Corporation or its Supporting Organizations. The CFO shall be responsible for all other matters relating to the financial operation of the Corporation.

Section 7. CHIEF TECHNICAL OFFICER

The Chief Technical Officer shall advise the Board and the President on engineering and other technical issues related to the matters which they consider.

Section 8. 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 will be assigned to them by the President or the Board.

Section 9. COMPENSATION AND EXPENSES

The compensation of any Officer of the Corporation 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) or the Board.

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

The Corporation 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 the Corporation. For purposes of this Article, an "agent" of the Corporation includes any person who is or was a Director, Officer, employee or any other agent of the Corporation, including members of any Supporting Organization acting within the scope of his or her responsibility and on behalf of the best interests of the Corporation; or is or was serving at the request of the Corporation 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 the Corporation 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 this Corporation would have the power to indemnify the agent against that liability under the provisions of this Article.

ARTICLE X: 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 the Corporation, 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 the Corporation or to render it liable for any debts or obligations.

Section 2. DEPOSITS

All funds of the Corporation not otherwise employed will be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board 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 the Corporation will be signed by such Officer or Officers, agent or agents, of the Corporation and in such a manner as shall from time to time be determined by resolution of the Board.

Section 4. LOANS

No loans will be made by or to this Corporation and no evidences of indebtedness will 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 will be made by the Corporation to its Directors or Officers.

ARTICLE XI: FISCAL MATTERS

Section 1. ACCOUNTING

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

Section 2. AUDIT

At the end of the fiscal year, the books of the Corporation will be closed and audited by certified public accountants. The appointment of the fiscal auditors will 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 the Corporation to Directors (including reimbursements of expenses). The Corporation 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 the Corporation's fiscal year.

Section 4. ANNUAL BUDGET

The President shall prepare and, at least forty-five (45) days prior to the commencement of each fiscal year, submit to the Board, a proposed annual budget of the Corporation for the next fiscal year. 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 Web Site.

Section 5. FEES AND CHARGES

The Board may, subject to the procedures set forth in Article III, Section 3, set fees and charges for the services and benefits provided by the Corporation, with the goal of fully recovering the reasonable costs of the operation of the Corporation and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of the Corporation. Such fees and charges shall be fair and equitable, and once adopted shall be published on the Web Site in a sufficiently detailed manner so as to be readily accessible.

ARTICLE XII: AMENDMENTS

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

Comments concerning the layout, construction and functionality of this site should be sent to webmaster@icann.org.

Page Updated 16-Feb-2002

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INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Procedures Concerning Director Inspection of Records and Properties

1. Purpose.

These procedures will apply to requests by Directors of the Internet Corporation for Assigned Names and Numbers (the "Corporation") for inspection of records or of the physical properties of the Corporation. These procedures balance the Directors' interest in inspecting records and corporate properties with the legitimate interests of the Corporation in ensuring that requests are addressed in a reasonable fashion without undue burden on management, and with the protection of the security of corporate information against inappropriate disclosure and the protection of privacy interests. These procedures do not diminish a Director's rights to inspect, as reflected in California law and Article V, Section 21 of the Corporation's bylaws:

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 the Corporation. The Corporation shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

2. Requests for Records or Inspection.

Director requests for inspection of records or properties shall be made in writing and submitted to the Chief Executive Officer of the Corporation. The request shall describe any requested records in terms which are sufficiently particular to permit compliance with the request. A Director seeking to inspect an extensive volume of records should exercise restraint by making a series of lesser requests for information over a period of time, where feasible and prudent, rather than a single burdensome request.

3. Responses to Requests for Inspection of Records.

Within 10 business days of receipt of a Director request for inspection of records the Chief Executive Officer will advise the Director as to the time and place at which the records will be available for inspection and any restrictions on access to requested records. Records shall be made available during normal business hours of the Corporation and at a location in the Corporation's offices which is convenient to the conduct of the Corporation's business. Except in the case of a burdensome request for records, records shall be available for inspection not more than 20 days from the request; provided that the actual inspection may occur on a date that is convenient to the Director.

4. Responses to Requests for Inspection of Properties.

Within 10 business days after receipt of a Director request for inspection of properties, the Chief Executive Officer will advise the Director as to the time or times when the Director may inspect the Corporation's properties. Any such inspection shall be made during normal business hours of the Corporation, consistent with the conduct of the Corporation's business.

5. Restrictions on Access or Use.

To the extent that the Chief Executive Officer, in consultation with the General Counsel of the Corporation, determines that compliance with any request for records necessarily involves issues of confidentiality, privilege, or privacy of a nature which require limitation of or conditions on the Director's access or use of the requested records, the Chief Executive Officer shall advise the requesting Director of the issues which require the restrictions and the nature of any proposed restrictions on access or use. Similarly, if permitting an inspection of the Corporation's properties necessarily involves such issues, the Chief Executive Officer shall advise the requesting Director in writing of any restrictions on access to the Corporation's properties. If the Director accepts the restrictions by countersigning the statement concerning limitations, the records shall be made available to the Director or the inspection scheduled as soon as possible.

6. Appeal of Restrictions.

If the Director believes that any restrictions proposed by the Chief Executive Officer are unreasonable, the Chief Executive Officer shall submit the request to the Audit Committee of the Board of Directors of the Corporation for resolution. The Audit Committee shall consider the request and respond to the Director not more than 20 days following submission of the request by the Chief Executive Officer. If the Director disagrees with the resolution of the issue by the Audit Committee, the Director may appeal this decision by notice to the Chairman of the Board of the Corporation, and the entire Board (other than the requesting Director) shall make a final and binding decision concerning the production of the records involved or the timing of any inspection of the Corporation's properties.

7. Violations of Procedures.

If the Chief Executive Officer or the Audit Committee has reasonable cause to believe that a Director has or intends to violate the procedures, he or it shall inform the Director of its belief and afford the Director an opportunity to explain the apparent violation. If after hearing the response of the Director, and making such investigation as may be warranted under the circumstances, the Audit Committee determines that the Director has violated these procedures, it shall recommend to the Board of Directors appropriate disciplinary and corrective action, which may include authorizing a lawsuit to prevent violation of these procedures. A violation of these procedures is a serious matter and may lead to further action by the Board.

Minutes of Meeting of 11 March 2001

The Audit Committee convened at the Centra Hotel in Melbourne, Australia on 11 March 2001 at 1430. Members present were Chairman Phil Davidson, Frank Fitzsimmons and Jun Murai. Staff and guests attending included Mike Roberts, Diane Schroeder and Stuart Lynn. As this was the first meeting of these members of the Audit Committee, the meeting was started by a review of the charter. Committee members agreed that they agreed with the charter as it was drafted.

Diane Schroeder explained ICANN's internal controls. Currently all checks over \$50,000 require Executive Committee or Board approval, but only one signature is required on the checks. A discussion followed as to whether requiring two signatures on large checks would strengthen ICANN's internal controls. Mike Roberts explained that banks do not inspect for two signatures so no additional control would be gained. Diane Schroeder agreed to distribute the internal controls memo to members of the committee for their information.

The committee asked Mike Roberts about reengaging KPMG for the next audit and his thoughts on their performance during the first audit. Mike felt KPMG needed to make a better effort to meet deadlines. To help accomplish this, Mike suggested putting a schedule in the engagement letter. He felt that during the audit, KPMG had gained valuable knowledge about the financial operation of ICANN, which would make the audit easier for them this year.

The draft audit engagement letter contains language stating that the auditors will review specific items at the request of the committee. The audit committee requested that KPMG offer a fixed price for the basic audit with an additional not to exceed amount to cover any items of special interest, which the Audit Committee might ask the auditors to review. A not-to-exceed fee of \$10,000 was suggested.

The Committee asked that the staff prepare a schedule for the audit and a list of possible special interest items by the Stockholm meeting.

The Committee requested that KPMG be told that ICANN expects them to educate themselves about ICANN before the audit.

Questions regarding receivables and timing of write-offs and reserves for bad debt will be discussed in Stockholm.

The Committee requested that the General Counsel develop a process to grant Directors access to financial records that is in compliance with the California laws and the ICANN by-laws and report back to the Committee.

The Committee adjourned its meeting at 1530.

To: Karl Auerbach <karl@cavebear.com>
From: "M. Stuart Lynn" <lynn@icann.org>
Subject: Documents
Cc:
Bcc:
X-Attachments:

Karl: I thought I would bring you up to date on your request re ICANN documents. As you know, we have been trying to schedule a meeting of the audit committee to finalize the policy. We have finally been able to nail Phil Davidson (he has been on vacation) who has given us some dates towards the end of the month. Now we have to coordinate with the two other members.

Actually, I'm as interested in getting this behind us as you are. I do think we will be there soon.

Stuart

To: Karl Auerbach <karl@cavebear.com>
From: "M. Stuart Lynn" <lynn@icann.org>
Subject: Records inspection
Cc:
Bcc:
X-Attachments:

Karl -- just to bring you up to date, the Audit Committee considered the records inspection procedures and wants a few changes. These should be done and circulated for Committee review within a few days. At which point the Board will be brought up to date, and we will be able to go ahead.

We're almost there!

Stuart

Subject: [icann-board] Directors' Access to Corporate Records

Date: Sun, 2 Sep 2001 17:19:06 -0700

From: "M. Stuart Lynn" <lynn@icann.org>

To: ICANN Board List <icann-board@icann.org>

For the past few months Louis Touton, Diane Schroeder and I have been working with the Audit Committee to develop procedures governing Directors' access to corporate records consistent with Article 21 of ICANN's Bylaws.

The result of these efforts is attached. These are the procedures I shall be following for these purposes. They have the endorsement and support of the Audit Committee.

I would note that these procedures do not diminish a Director's rights to inspect corporate records, as reflected in California law and Article V, Section 21 of the bylaws. Section 21 states:


"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 the Corporation. The Corporation shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information."

I would be pleased to answer any questions.

Stuart

--

Stuart Lynn
President and CEO
ICANN
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292
Tel: 310-823-9358
Fax: 310-823-8649
Email: lynn@icann.org

 Inspection_Procedures-02.doc	Name: Inspection_Procedures-02.doc Type: Microsoft Word Document (application/msword) Encoding: base64
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To: Karl Auerbach <karl@cavebear.com>
From: "M. Stuart Lynn" <lynn@icann.org>
Subject: Inspection procedures
Cc:
Bcc:
X-Attachments: :Macintosh HD:190650:Inspection Procedures-02.doc:

Dear Karl:

You will no doubt be pleased to see from my note to the Board that the procedures for directors to inspect corporate records have now been released.

I think the ball is now in your court with regards to Paragraph 2. I am sure we can now proceed rapidly after Montevideo.

Stuart

--

Stuart Lynn
President and CEO
ICANN
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292
Tel: 310-823-9358
Fax: 310-823-8649
Email: lynn@icann.org

Subject: Re: [icann-board] Directors' Access to Corporate Records

Date: Mon, 3 Sep 2001 14:17:17 -0700 (PDT)

From: Karl Auerbach <karl@cavebear.com>

To: Louis Touton <touton@icann.org>

CC: <icann-board@icann.org>

On Mon, 3 Sep 2001, Louis Touton wrote:

> After reviewing the applicable legal principles, in my opinion both
> California law and Section 21 of ICANN's bylaws permit (in fact,
> encourage) establishment of clear, reasonable procedures regarding
> access and use of items to be inspected.

I personally am very happy that there are now clearly specified procedures. And as I sit here looking at the letter in which I requested to inspect the General ledger, I see that my original request - a request made nearly ten months ago - was quite in conformance with the new procedure.

However, that procedure can only go so far as to specify the "when" and "how" of inspection. The procedure may not constrain the "what" - the procedure may not place any materials off limits.

For example, in my intended inspection of the general ledger, I expect to see every item - including payroll items - without exception.

And it is my present intention to send an agent, as I am entitled to do, to obtain the copies - copies that I am clearly entitled to make - of these materials. The behaviour of that agent and his/her obligation to confidentiality is, of course, my responsibility.

That some of this, perhaps even all of this, is confidential is understood by me. In fact I embrace the thought that there is a clear statement of what such concerns may be so that mistakes may be avoided.

However, the burden of such limitations is upon my shoulders already - as it is with each Director individually - without any agreement that a Director must sign as a pre-condition of access.

I personally find the concept of an agreement to be something that is dangerous - From the Director's point of view it muddies the obligations by creating a duplicate, and perhaps dissonant, definition of what actions are permissible and thus creates a question as to which obligation is controlling. And from the corporation's point of view such an agreement could be construed as a waiver should the Director find a way within the scope of the agreement but that otherwise violates the Director's obligations.

I'd like to add that I do find it somewhat troubling to know that these provisions are being levied on directors yet at the same time we do not have in place a handbook of employee obligations.

I, personally, am far more concerned that our employees have clear and enforceable rules governing their behavior rather than for rules for directors that are at best duplicative of the obligations that Directors are already obliged to follow.

--karl--

KARL AUERBACH
Member, Board of Directors
Internet Corporation for Assigned Names And Numbers
(ICANN)

September 23, 2001

Stuart Lynn
President, ICANN
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Dear Stuart:

As you know a Director of ICANN has both an obligation of due diligence and a right of inspection.

Enclosed is a copy of a letter sent to your predecessor, Mike Roberts, on December 3, 2000 in which I made a request to inspect ICANN's books of account, in particular the general ledger. A follow-up letter was sent two months later.

It is now ten months since the original request and that request has still not been fulfilled.

This letter renews, clarifies, and expands that request.

Please make available the following materials for my inspection and copying.

1. ICANN's General Ledger reports (chart of accounts, transaction journal, and account balances) from corporate inception to the present (or as close to present as is reasonably feasible.)
 - a. These reports should include, at a minimum, the following standard accounting reports.
 - i. Chart of accounts
 - ii. The daily transaction journal showing each transaction on a chronological basis
 - iii. The account journal showing for each account in the chart of accounts all amounts and transactions that have been debited or credited to that account.
 - b. In order to save time and cost and to facilitate my analysis, I'd prefer to get these reports in two distinct forms:
 - i. An electronic image capture of each of the above described reports. This electronic image capture would, for example, use something like a Adobe Acrobat.
 - ii. Some format that can be loaded into Microsoft Excel.
2. Any supplemental accounting ledgers showing all funds or financial obligations held by ICANN but not listed on the General Ledger. This would include, but is not limited to,

accounting ledgers pertaining to entities such as IANA, the Domain Name Supporting Organization (DNSO), and the Government Advisory Committee (GAC).

3. With regard to employee hiring and employee policies:
 - a. The corporate employee handbook, if any.
 - b. All materials, if any, that an employee of ICANN is expected to enter into when he or she is hired. These would include, for example, offer letter forms that are typically used, employment agreements, intellectual property agreements, non-disclosure agreements, and the like.
4. With regard to ICANN's law firm:
 - a. Engagement letters
 - b. Conflict notices and requests for waivers that have been received from the law firm.
 - c. Waivers granted by ICANN to the law firm.
 - d. Detailed invoices from the law firm since the inception of the corporation.
5. Logs of all international travel not directly associated with one of the regular public meetings made by ICANN officers other than the President from January 1, 2001 until the present (or as close to present as is reasonably feasible.)

It is my desire to obtain this information with minimal impact on ICANN's staff. There will, of course, be some, hopefully small, work involved. Please do feel free to make suggestions if you see a way to get me the same information with less effort.

However, given the lengthy delay that my request has already undergone, I believe that expediency is warranted.

It is my intention to exercise my right to make copies and to take them to my offices for examination.

It is also my intention to send an agent to obtain these materials.

Sincerely,

Karl Auerbach
Member, Board of Directors
ICANN

**INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS**

October 5, 2001

Mr. Karl Auerbach
218 Carbonera Drive
Santa Cruz, California 95060-1500

Re: Request for Inspection of Records

Dear Karl:

I have received your request, dated September 23, 2001, to inspect various books and records of Internet Corporation for Assigned Names and Numbers ("ICANN"). As you know, the procedures that I follow for handling such requests are detailed in the Procedures Concerning Director Inspection of Records and Properties (a copy of which you recently received), which were prepared in consultation with, and endorsed by, the Audit Committee of the ICANN Board. In accordance with item 3 of those procedures, this letter is to advise you as to the time and place at which the records will be available for inspection and the arrangements and conditions for your access to the materials.

1. The materials will be made available for your inspection at the ICANN offices in Marina del Rey. We can make the materials available between 8:30 a.m. and 5:00 p.m. on October 18, 19, 22, and 23, 2001. Please let me know in writing which dates you wish to schedule. If these dates are inconvenient to you, please contact me to arrange alternatives that meet your needs. In particular, if more convenient to you, we can arrange instead to have the inspection at the ICANN offices right after the annual meeting in November. (Because of the hectic pace right before the meeting, holding the inspection then would not be feasible without disrupting needed functions.)

2. Much of the material you have requested to review contains non-public and confidential information. In making this information available for inspection, ICANN in no way intends to diminish its confidentiality. As you know, all Directors of ICANN owe a duty of loyalty to ICANN to respect and to strictly maintain this confidentiality. (If during the inspection you have questions regarding the extent of confidentiality of any item disclosed to you, you should direct the questions in writing to me and maintain the utmost confidentiality until receiving a response from me relaxing the confidentiality.) By signing at the bottom of this letter, you acknowledge your duties as Director to preserve confidentiality.

3. Because the inspection is being conducted to assist you with your personal role as a Director of ICANN, you must be present at the inspection. You may be accompanied at such inspection by your counsel or other advisor, provided that you must furnish me, in advance the name of any such person and an explanation of how the presence of counsel or advisor contributes to the discharge of your duties as a Director in assisting in the inspection process. (In this regard, the counsel or advisor must not have any interest in conflict with ICANN or otherwise be so situated that disclosure to her or him of confidential information in the

Mr. Karl Auerbach

October 5, 2001

Page 2

inspection would likely lead to harm to ICANN's interests.) Any individual who accompanies you must agree in writing to reasonable limitations on access to the materials produced as well as such confidentiality restrictions as may be determined appropriate by the General Counsel.

4. I will be pleased to ensure that you will be given access to paper copies of the general ledger reports of ICANN, from the date of its organization through the fiscal year ending June 30, 2001, including chart of accounts, transaction journal and account balances. (This will include any supplemental materials showing funds or financial obligations held by ICANN and pertaining to subsidiary ICANN groups.) As is the case of much of the material you seek to inspect and as noted above, these materials are confidential, and their release or disclosure to anyone other than an officer or Director of ICANN has not been approved by the Board of Directors of ICANN. Provision of these materials in the electronic formats you have requested has been determined to be inconsistent with the preservation of confidentiality of this material, due to the risk of inadvertent dissemination or alteration of the data.

5. You will also be given access to copies of ICANN's employee policies and general forms used in documenting employment relationships at ICANN.

6. You will also be given access to copies of those materials in ICANN's files concerning the engagement of legal counsel, conflict notices and waiver requests, and invoices for services. Please note that, as in the case of the other materials you seek to inspect, these items are confidential and may also contain information as to which ICANN holds a privilege. Again, all ICANN Directors are duty bound to preserve this confidentiality and privilege.

7. Finally, you will be given access to a list of international trips taken by ICANN officers, other than myself, related to ICANN's business (but not including those associated with the regular public meetings), for the period January 1 through September 30, 2001.

8. In accordance with paragraph 5 of the Procedures, I advise you that the only limitations on your access to the materials you have requested are those set forth in this letter. However, to the extent that you require copies of any of the foregoing materials which you intend to retain for purposes of your duties as a Director of ICANN, you should request those copies at the conclusion of the inspection. Your request for copies will be given prompt consideration by me with the advice of the General Counsel of ICANN – acting in consultation with the Board's Audit Committee – as to whether any request you have made implicates confidentiality or privilege concerns which require limitations on the provision of such copies. No request from any counsel or advisor who may accompany you will be considered.

9. In accordance with paragraph 5 of the Procedures, I request that you countersign the enclosed copy of this letter, acknowledging the foregoing terms. If you decline to do so, it would be inconsistent with the Procedures endorsed by the Board's Audit Committee to make these materials available for inspection by Directors.

10. If you feel any of the above is unreasonable, I encourage you to refer the matter to the Audit Committee of the Board as contemplated in paragraph 6 of the Procedures.

Mr. Karl Auerbach
October 5, 2001
Page 3

We look forward to accommodating your requests as provided for in the foregoing to assist you in carrying out your duties as a Director of ICANN.

Sincerely,

M. Stuart Lynn
President

I hereby acknowledge the above terms of the inspection of records, in furtherance of my duties as a Director of ICANN.

Karl Auerbach

Cc: Vint Cerf, Chairman of the ICANN Board of Directors
ICANN Board of Directors Audit Committee

KARL AUERBACH
Member, Board of Directors
Internet Corporation for Assigned Names And Numbers
(ICANN)

October 15, 2001

Stuart Lynn
President, ICANN
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Dear Stuart:

I am in receipt of your letter of October 5, 2001 that you sent to me in response to written requests that I made repeatedly over the past year to inspect and copy certain clearly identified corporate records such as a series of standard financial reports commonly known as the "general ledger".

As you know, the rights of a Director derive from the laws of California and may not be abrogated or limited either by corporate management or by other Directors.

Your letter, and the document entitled "Procedures Concerning Director Inspection of Records and Properties" ("Document") that it cites, contain unacceptable limitations on the rights of Directors and are a significant impediment that blocks a Director from the performance of his or her duties. Consequently, I will not sign your letter, and cannot do so consistently with my duties to the corporation.

I made my initial request within minutes after the end of the last annual meeting. Several letters followed that original oral request, the first of these was sent on December 3, 2000 - nearly 11 months ago. Yet I have not yet been given access to the materials. Instead I have patiently listened to a sequence of excuses and evasions, the latest chapter of which is your October 5 letter.

Management's refusal to make corporate records available for my inspection has made it impossible for me to carry out my duty of oversight, particularly with regard to the financial management of the Corporation, the degree of protection by employees of the property of the corporation and of third parties, and the identification of conflicts of interest.

I have no objection to the Document to the extent that it establishes an understanding regarding what are reasonable times and places for Director inspection. Indeed I am glad that Corporate management has set forth what they believe constitutes reasonable times and places. I have minimized the degree to which my access would inconvenience corporate management in the pursuit of their ordinary duties. I have spent 11 months waiting for corporate management to find a time that is convenient. Corporate management has exhausted its ability to claim further delay.

The Document, and your letter, contain several substantive limitations and attempt to improperly subordinate my right of independent action and judgment to that of Corporate management and to other Directors.

For example, your letter imposes vague obligations of "confidentiality" on my use of whatever it is that I might see. But the decision as what material is confidential, and confidential from whom,

and how I may use such materials, is not in your discretion; it is subject to my own discretion, carefully exercised as a Director, and as defined and limited solely by the laws of California and the United States. I am, of course, very happy to review and will seriously consider a statement from corporate management that describes, with particularity, your concerns for confidentiality in a particular body of information

Similarly, your letter subjects my right to make copies to the ill-defined "consideration" of corporate management and to other Directors. This too is an improper imposition on my rights as a Director. It is perfectly obvious that I cannot review all the materials on site during the inspection periods set aside.

Moreover your letter attempts to control my choice of advisers by requiring my advisors to present credentials to the satisfaction of corporate management. Whom I chose to assist me in my evaluation is my own decision. I am, of course, fully responsible for the behavior of those people who I chose to assist me. I would be happy to provide you basic information on these advisors in advance, as a courtesy.

I do note that your demand that I be present in person, while moot in the present circumstances because I intend to be personally present, unlawfully interferes with the inspection rights of directors who, due to their location elsewhere in the world, are unable to be personally present.

ICANN has delayed and obstructed for too long. The excuse of confidentiality and inconvenience are makeweights, and your letter continues that unacceptable theme.

I require ICANN that make all the materials that I have requested available to me at a place to be determined and at a time sufficiently in advance of the forthcoming annual meeting of the Corporation for me and my advisors to perform a preliminary analysis. This date shall be no later than November 1, 2001.

This letter, signed by me, alleviates any legitimate concerns management may honestly have with respect to my inspection. Please inform me promptly whether I will be permitted to exercise my statutory rights of inspection as demanded here, or not. Unless I hear otherwise in writing, I will be present on Thursday, November 1, 2001 at 11am to conduct the inspection.

Sincerely,

Karl Auerbach
Member, Board of Directors
ICANN

**INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS**

October 21, 2001

Mr. Karl Auerbach
218 Carbonera Drive
Santa Cruz, California 95060-1500

Re: Request for Inspection of Records

Dear Karl:

I have received your letter of October 15, and I am hopeful that there is a basis in it for making progress on your request for inspection of records. Obviously, since you are a lawyer and because this matter involves a number of legal issues, I have consulted with our General Counsel, Louis Touton, and this letter contains our response. Since your letter contains several assertions about legal responsibilities, I will set forth in some detail the corporation's legal position on these points.

Let me first note that we have tried to discuss your request with you in good faith, first informally and then, in response to your formal written request on September 23, by a detailed statement describing the procedures under which all the requested records would be made available. These procedures were presented to you to allow you to inspect the requested materials while ensuring that ICANN's interests are protected.

As you have pointed out in the past, these interests include the need to protect the confidentiality of information. (Indeed, in this connection your October 15 letter identifies "protection by employees of the property of the corporation and third parties" as an area you would especially like to investigate.) The arrangements I offered for the inspection are intended to ensure your ability to inspect the records you requested while protecting the corporation's interest in preserving that confidentiality. You have, after all, acknowledged in connection with your inspection request that "some of this, perhaps even all of this, is confidential." The duty to preserve confidentiality rests not only with ICANN's employees, but with its Directors as well. All Directors of ICANN are "under obligations of trust and confidence to the corporation," Professional Hockey Corporation v. World Hockey Association, 143 Cal. App. 3d 410 (1983). In view of the statements in your letter that you would disregard the corporation's efforts to preserve confidential materials, I have a duty to ICANN to proceed cautiously in order to protect the corporation. Indeed, it is hard for me to imagine that I should be proceeding in any other manner.

Second, I want to be clear that ICANN has never refused to permit your inspection of records. While you have a right to inspect ICANN's records, that right is subject to the overriding duty to act in good faith and in the best interests of the corporation. Hartman v. Hollingsworth, 255 Cal. App. 2d 579, 581-82 (1979) and Hoiles v. Superior Court, 157 Cal. App. 3d 1192 (1984), both hold that the right of inspection is manifestly in aid of the fiduciary duty of directors and should be exercised accordingly. The Professional Hockey Corporation

Mr. Karl Auerbach

October 21, 2001

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case (see above) holds that the "duty of loyalty requires [directors] not act in their own self-interest when the interest of their corporation will be damaged thereby." The assertions in your letter (and similar assertions in other public statements) that you have "discretion" individually to determine "what material is confidential, and confidential from whom, and how [you] may use such materials" and your outright refusal to acknowledge your duties as a Director to preserve confidentiality in connection with the inspection (see paragraph 2 of my October 5 letter) raise legitimate questions about whether this inspection is truly in furtherance of your duties, as opposed to a private agenda. This question is not wholly subjective, as you assert, but is governed by the standard of a prudent individual under California Corporations Code Section 5231(a).

Contrary to your assertion that your rights are absolute and may not be restricted, California courts have concluded that inspection rights are *not* unfettered and must be tempered by reasonable conditions to protect the interests of the corporation. In Havlicek v. Coast to Coast Analytical Services, 39 Cal. App. 4th 1844 (1995), the court held that the word "absolute" in the inspection statute cannot be taken literally, in that "inequitable results would arise if a disgruntled director were allowed to exercise his inspection rights in violation of his fiduciary duty" (emphasis supplied). This is especially true in the context of protecting attorney-client privilege or other interests of the corporation in preserving confidentiality. In fact, California courts have even upheld a *refusal* to permit inspection where the right of inspection may conflict with other protected rights, including the corporation's attorney-client privilege and individual rights to privacy, Bushnell v. Vis Corp, 1996 WL 506914 (N.D. Cal. 1996), Chantiles v. Lake Forest II Master Homeowners Association, 37 Cal. App. 4th 914 (1995). While I have never refused to permit your inspection of ICANN's records, it is not hard to imagine that a refusal might be warranted in this instance. But instead of refusing an inspection, we are merely attempting to make certain that the terms and conditions of your inspection are absolutely clear so that there are no misunderstandings either before or after the inspection.

Your statement that your inspection rights as a Director are not subject to reasonable conditions established by the Board of Directors or its corporate management is simply wrong. As required by California law, ICANN's affairs are conducted under direction of the Board of Directors and those persons to which it delegates management responsibility. Corp. Code § 5210. To suggest that your inherent rights as a Director should supersede the powers of the Board to manage the affairs of the corporation, including to take action to preserve the confidential character of records, is wholly without support. Simply put, the decision as to whether confidentiality of records should be maintained is up to the Board (and the management to which it delegates these matters), and not to an individual Director.

On matters such as what measures should be employed to protect confidentiality, California law indeed does, as your October 15 letter puts it, "subordinate [your] right of independent action and judgment to that of Corporate management and to other Directors." Your claim of *an individual right* to determine what information should be maintained as confidential demonstrates a desire on your part to frustrate the duly authorized corporate decisions because you are unable to convince a majority of the Board to agree with your positions. In an analogous context, the Supreme Court of California has held that an official of an

Mr. Karl Auerbach

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enterprise cannot argue that his rights are superior to those of the other constituents in the entity to make policies through bylaws, otherwise this would vitiate the right of the majority to make policies, Elevator Operators and Starters Union, Local 117 v. Newman, 30 Cal. 2d 799 (1947).

In this case, ICANN's Procedures Concerning Director Inspection of Records and Properties, which have been expressly endorsed by the Audit Committee (to which the Board of Directors delegated responsibility in this area), is intended to respect the right of inspection while providing a reasonable mechanisms to assure that the right is exercised in a manner consistent with the corporation's rights and those of other individuals. This type of restriction is entirely consistent with the cases above. Under those procedures, I set forth specific arrangements for inspection in my letter of October 5. In your letter of October 15, you objected to those arrangements. Accordingly, as required by the Procedures, I am submitting your letter to the Audit Committee for its consideration:

6. Appeal of Restrictions.

If the Director believes that any restrictions proposed by the Chief Executive Officer are unreasonable, the Chief Executive Officer shall submit the request to the Audit Committee of the Board of Directors of the Corporation for resolution. The Audit Committee shall consider the request and respond to the Director not more than 20 days following submission of the request by the Chief Executive Officer. If the Director disagrees with the resolution of the issue by the Audit Committee, the Director may appeal this decision by notice to the Chairman of the Board of the Corporation, and the entire Board (other than the requesting Director) shall make a final and binding decision concerning the production of the records involved or the timing of any inspection of the Corporation's properties.

To assist both you and the Audit Committee in assessing whether the arrangements for inspection are appropriate, I have the following comments on some of the assertions in your October 15 letter:

You have criticized the conditions in my letter concerning confidentiality and review of requests for materials as "vague" and "ill defined." In fact, there is no condition on your inspection rights as such, and the conditions on the copying and use of information do not apply until you have inspected the records and made an actual request for copies of particular materials. In accordance with the Procedures, my letter is merely stating that potential dissemination of some of the materials you have requested implicates reasonable concerns about confidentiality, and requesting a prior documented understanding regarding Directors' duties to maintain information confidential. In doing so, the corporation is preserving the ability to address any of those concerns if and when there is an actual issue, while at the same time permitting your inspection to proceed without further delays due to debate over ground rules that may never be relevant.

As to the individuals who may advise you in the inspection, my letter does not unreasonably restrict those individuals who may serve as your advisors. Rather, we have asked you to provide the corporation with reasonable assurance that these parties are not actively hostile to the interests of the corporation, and that such parties are bound by such confidentiality restrictions as govern your conduct. How can such a request possibly be improper? The right of inspection of records cannot be used in aid of litigation or other actions detrimental to the corporation. In National Football League v. Superior Court, 65 Cal. App. 4th 100 (1998), the court held that a director could not designate a representative to participate in an inspection when that individual was a lawyer representing a party suing the corporation. To similar effect, the Hoiles court cited a leading Delaware case, Henshaw v. American Cement Corporation, 252 A.2d 125 (1969): "it begs common sense and elemental notions of fairness to say that the Corporation must submit its records ... for inspection by a person whose interest in pending litigation is adverse to the corporation." Your offer to take responsibility for the actions of your advisors obviously is not meaningful; if these individuals inappropriately use or disclose information they review, I fail to see what you can do to remedy that situation.

Since I must interpret your letter as disagreeing with the arrangements contained in my letter to you of October 5, I am referring the matter to the Audit Committee under Paragraph 6 of the Procedures Concerning Director Inspection of Records and Properties. The Audit Committee will advise you once it has considered this matter. If, in the interim, you wish to proceed with the inspection according to the arrangements of my October 5 letter, please let me know and we can proceed with the inspection on that basis without the need for action by the Audit Committee. However, since the original dates proposed by me in that letter are now moot, we will now need to set the date to occur after November 15 because of the ICANN meetings in Marina del Rey.

Sincerely,

M. Stuart Lynn
President

Cc: Louis Touton, ICANN Vice President and General Counsel

KARL AUERBACH
Member, Board of Directors
Internet Corporation for Assigned Names And Numbers
(ICANN)

October 27, 2001

Stuart Lynn
President, ICANN
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Dear Stuart:

I am in receipt of your e-mail letter of October 21, 2001.

I understand your letter to be a refusal to allow me to inspect and copy the corporate materials by November 1, 2001, the latest date at which I would be able to perform even a cursory analysis of that material before the Annual Meeting of the Corporation.

Your letter requires me to make yet another entreaty to corporate management, following any inspection, for permission to make copies. Let me clarify my request: It is my intention to make copies of every document that I have requested and take those copies with me. My request to inspect corporate records is also a request to make copies. The rationale is obvious; but you have deliberately misconstrued it, and so I set it out again below.

Your letter accuses me of intending to violate my duties as a Director of ICANN, and implies I am not acting in good faith. Both accusations are personally insulting; and both are false. Indeed, it appears that these accusations misrepresent and misconstrue my prior statements for the purpose of preventing me from fulfilling my duties as a Director of the Corporation. Management has delayed my inspections for nearly a year, in an apparent effort to continue this delay until my term as Director is complete. That is improper.

I am a Director of the corporation ICANN. Part of my duty is to oversee the behavior of corporate management. To that end directors are granted powers by the State of California to engage in such oversight. It would be a violation of my duties to allow corporate management to dictate to me the terms and conditions under which I exercise my rights to oversee that very same corporate management.

I cannot allow my rights and duties as a Director to become subject to the vague, arbitrary, and capricious whims of corporate management.

Management's argument – that my rejection of management's demands that I submit to their constraints on my access to corporate records constitutes proof that it is necessary for management to constrain my access to corporate records – is nothing more than self-serving circular logic. And I cannot help but contrast management's putative concern about confidentiality when a Director wishes to exercise the right to inspect corporate records with management's failure to take even initial steps – despite three years of corporate existence – to define the confidentiality obligations of corporate employees or contractors.

You have suggested in your letter that you have never blocked my ability to inspect the records. This is not true. Management has spent much of the last year providing excuses, asking me to wait on a variety of events to occur, insisting on agreements that give corporate management veto powers over my advisors or over what copies I may make and even over how I may use the information that I may discover. Such conditions permit nothing but cursory glances at the records and reduce the substance of my Director's right of access to nothing more than an empty charade. My rights as a Director go further than being merely able to take an occasional fleeting peek at corporate records - I have to be able to digest and analyze those records. Those conditions that you seek to impose have the effect of eviscerating my rights to deal with the records in a way that allows me to understand and evaluate their contents to the degree necessary to carry out my Director's duty to act in the best interests of the corporation.

As I have stated more than once my actions are governed by my duty of loyalty to the Corporation. I have never violated those duties and I have no intention of doing so now or in the future, including maintaining the confidentiality of appropriate records. Your statement that I "would disregard the corporation's efforts to preserve confidential materials" is simply untrue. I have expressed my willingness to receive from corporate management statements that describe with precision and particularity any concerns they may have about the sensitivity or confidentiality of any information that I may inspect or copy. I would, of course, take those statements into consideration. But I cannot, consistent with my duties, allow corporate management to bind me in advance in the performance of my duties, particularly my duty to exercise my own independent judgment.

I have noticed your list of case citations. I find them all in agreement with the position that I have taken in all of my prior letters: that in the exercise of my role as Director I am subject to obligations of loyalty to the Corporation. Not one of your citations supports your claim that corporate management, or even a committee composed of other Directors, can block or limit a Director from the pursuance of his or her rights to inspect and copy corporate documents. Those authorities that you do cite involve situations that simply do not exist here. And, as you know, the relevant statute gives me the absolute right to inspect and copy at any reasonable time. Corporations Code § 6334.

I will undertake the following as a matter of courtesy: I am willing to give ICANN seven calendar days advance written or e-mail notice of any disclosure of data that I learn solely from the corporate materials I have inspected to parties beyond my inner circle of advisors. (My inner circle consists of my attorney, Curtis Karnow of Sonnenschein Nath & Rosenthal, Sheila Joyce Kellerman, CPA, and the members and employees of their respective firms.) This will give you ample opportunity to suggest alternatives, to offer constructive advice, or, to take other actions if you feel that I am violating my rights and duties as a Director.

I am still willing and able to come to ICANN at 11am on November 1, 2001 to inspect the records described in my prior letters and under the terms of those prior letters. I shall consider your non-response to be a refusal.

Sincerely,

Karl Auerbach
Member, Board of Directors
ICANN

**INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS**

October 31, 2001

Mr. Karl Auerbach
218 Carbonera Drive
Santa Cruz, California 95060-1500

Re: Request for Inspection of Records

Dear Karl:

I have received your letter of October 27. Rather than engage in unproductive repetition of positions, I would prefer to focus on the manner in which your request has been addressed, and that your letter indicates your substantial agreement with most of the proposed arrangements for your inspection, set forth in my letter to you of October 5. While I think we have narrowed the issues in dispute, your letter indicates continuing dissatisfaction with the present state of affairs, and accordingly, we have referred this matter to the Audit Committee, which has until November 12, 2001 to act.

You continue incorrectly to characterize my correspondence to you as refusals to permit your inspection and the discharge of your duties as a director of ICANN. In fact my letter of October 5, 2001 did not deny access to any of the requested information, and provided a series of dates on which the information was to be available for your inspection. The letter did not deny to you the right to make copies, but rather contemplated a procedure for addressing requests for copying materials which is intended to ensure the continued confidentiality of materials in the possession of ICANN which you choose to copy. The letter did not contain vague, arbitrary or capricious standards on this point. It was not intuitively obvious to me, contrary to what your October 21 letter states, that you would want or need to copy every document you have requested, and my letter properly deferred this issue until such time as you made an actual request. As I previously noted, it is sensible to deal with actual requests for information which may require specific treatment rather than becoming needlessly engaged in hypothetical controversies.

My letter did ask that you acknowledge the confidentiality and sensitivity of much of the information requested. In your letter of October 27, you acknowledge that confidential material is involved, but you continue to assert that you rather than the Corporation have the right to determine what is and what is not confidential. My letter requested that you be present personally to conduct the inspection. You have agreed. My letter asked that you identify those advisers who would accompany you. You have done so, and we have no objection to their presence. My letter requested your affirmation that the inspection be conducted in furtherance of your duties and not for some other purpose. You have stated that your actions are governed by your duty of loyalty to the corporation, and of course we accept your representation of this at face value. I did not intend for my letter of October 5 to create any insurmountable barriers to your conduct of the inspection, and in the course of our exchange we are approaching a point of mutual accommodation and understanding.

Mr. Karl Auerbach

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In my view our remaining differences are really limited to our proposal to protect the confidentiality of non-public information and the timing of the inspection. As to the former, I must reiterate that you do not have the unilateral right to determine whether or not information provided to you requires protection against breaches of privilege or confidentiality. This is a fundamentally different issue from providing you with access to the information. Your position here, unfortunately, is consistent with your perspective that in all matters relating to your inspection, you have the final word. I have previously noted that determination of issues of confidentiality and privilege are the province of the Board of Directors, not an individual Director, and the Director's rights are accordingly limited, Bushnell v. Vis Corp., 1996 WL 506914 (N.D.Cal. 1996); Chantiles v. Lake Forest II Master Homeowners Association, 37 Cal. App. 4th 914 (1995). This principle is entirely consistent with the obligation of the Board to protect the corporation from potential exposure to third parties. From our perspective the only acceptable solution would be your agreement to abide by determinations made by the Board of Directors as to confidentiality, with the understanding that you may seek consent of the Board to make disclosure of particular information. Your proposal merely to give the corporation notice of a prospective disclosure would require that we be prepared to go to court to prevent unwarranted disclosure. Since you are not entitled to make these determinations in the first place, it seems inappropriate to force ICANN to vindicate its rights, rather than your being obligated to seek permission for disclosures.

With respect to the timing of your inspection, we provided five different dates in October, which would have provided you with flexibility and sufficient time to complete your review. You rejected these dates without explanation, and rather than conducting your inspection and trying to work things out, you have chosen to spend three weeks debating your "rights" as a director. You have now fixed on November 1, 2001 as the only date that will meet your needs prior to the Annual Meeting. Your demand ignores the fact that those of us in management also have responsibilities related to the Annual Meeting, and the requirement that we be available to deal with any issues arising from your inspection would be a significant distraction of the attention of management at a critical time. This was the reason we suggested dates well in advance of the Annual Meeting.

I invite you once again to conduct your inspection at a mutually convenient time in accordance with the procedures set forth in my October 5, 2001 letter. Alternatively you may follow the course set forth in paragraph 6 of the Procedures Concerning Director Inspection of Records and Properties, and await resolution of outstanding issues by the Audit Committee or the entire Board of Directors. I have made sincere efforts to deal reasonably and in good faith with a situation made difficult by your resistance to our efforts to resolve issues. In spite of our disagreements I remain committed to the observance of your rights as a Director and the policies established by the Board..

Sincerely,

Mr. Karl Auerbach
October 21, 2001
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M. Stuart Lynn
President

Cc: Louis Touton, ICANN Vice President and General Counsel


Date: Sat, 10 Nov 2001 22:06:05 -0800
From: "M. Stuart Lynn" <lynn@icann.org>
To: Karl Auerbach <karl@cavebear.com>
CC: ICANN Audit Committee, ";Louis Touton" <touton@icann.org>

Dear Karl:

In reviewing your request for access to corporate records contained in your letter of September 23, 2001, I have determined that the records contained in your item No. 5 raise no issues of confidentiality. I am pleased therefore to send you the information you requested. The information is in the attached document.

With regards
Stuart
--

Stuart Lynn
President and CEO
ICANN
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292
Tel: 310-823-9358
Fax: 310-823-8649
Email: lynn@icann.org

 Auerbach_Response_Item_5.pdf	Name: Auerbach_Response_Item_5.pdf Type: Acrobat (application/pdf) Encoding: base64
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The Internet Corporation for
Assigned Names and Numbers

November 9, 2001

Response to Director Karl Auerbach's request for access to ICANN records as formulated in Question 5 in his letter of September 23, 2001 to ICANN President Stuart Lynn.

Request: "5. Logs of all international travel not directly associated with one of the regular public meetings made by ICANN officers other than the President from January 1, 2001 until the present (or as close to present as is reasonably feasible)."

Response:

Arrive	Depart	Location	Officer
1/9/01	1/31/01	Beijing	McLaughlin
1/13/01	1/17/01	Seoul	McLaughlin
1/17/01	1/20/01	Taipei	McLaughlin
1/21/01	1/24/01	Geneva	McLaughlin
1/24/01	1/27/01	Amsterdam	McLaughlin
1/27/01	1/28/01	Zurich	McLaughlin
2/2/01	2/5/01	Zurich	McLaughlin
2/18/01	2/21/01	Geneva	McLaughlin
4/21/01	4/23/01	Amsterdam	McLaughlin
4/23/01	4/24/01	Brussels	McLaughlin
4/24/01	4/25/01	Paris	McLaughlin
4/26/01	4/27/01	Geneva	McLaughlin
4/27/01	5/1/01	Dublin	McLaughlin
5/1/01	5/4/01	Bologna	McLaughlin
5/5/01	5/6/01	Frankfurt	McLaughlin
5/6/01	5/10/01	London	McLaughlin
5/10/01	5/16/01	Accra	McLaughlin
6/9/01	6/12/01	Warsaw	McLaughlin
6/12/01	6/15/01	Madrid	McLaughlin
6/15/01	6/17/01	Dubai	McLaughlin
8/5/01	8/6/01	London	Touton
8/30/01	9/3/01	Geneva	McLaughlin

Provided by:

M. Stuart Lynn
ICANN President/CEO
November 10, 2001

From: phil.davidson@bt.com
To: karl@cavebear.com
Cc: audit-comm@icann.org, lynn@icann.org
Subject: Access to ICANN records
Date: Sat, 17 Nov 2001 11:25:22 -0000

Dear Karl

At its meeting on 15 November 2001 the Audit Committee considered the referral by the CEO, of the request for inspection of the Corporations records by Director Karl Auerbach and the lack of agreement on the arrangements for access or use. This consideration was in accordance with the process endorsed by the Audit Committee and sent to the Board as the process for progressing the Procedures Concerning Director Inspection of Records and Properties issued 03 September 2001. The material considered was the e-mail and letter attachments sent by the CEO to Director Karl Auerbach on 22 October 2001.

The Audit Committee considered that the arrangements requested by the CEO in his letter dated 5 October 2001 provided reasonable safeguards for the confidentiality of ICANN information. The Audit Committee requests the CEO to ensure that these arrangements were made generally applicable to all Directors seeking similar access to the Corporation Records.

The Audit Committee urged Director Karl Auerbach to reconsider his refusal to accept the arrangements in the letter dated 5 October 2001 and to sign and return the letter so that he might proceed with the inspection of the records he had requested.

It was noted that some of the material requested, where confidentiality was not an issue, had already been provided.

Please accept my apology for the slight delay in communicating with you in the timescale outlined in the Procedures but this was caused by my unavailability through travelling and other commitments

Yours sincerely

Phil Davidson
Chair of the Audit Committee

> Phil Davidson
> Strategic Technology Enablers
> CTO
> BText Technologies
> BT
>
>

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Date: Sat, 17 Nov 2001 07:46:45 -0800 (PST)
From: Karl Auerbach <karl@cavebear.com>
Reply-To: Karl Auerbach <karl@cavebear.com>
To: <phil.davidson@bt.com>
cc: <audit-comm@icann.org>
Subject: [audit-comm] Re: Access to ICANN records
Sender: owner-audit-comm@icann.org

On Sat, 17 Nov 2001 phil.davidson@bt.com wrote:

> At its meeting on 15 November 2001 the Audit Committee considered the
> referral by the CEO, of the request for inspection of the Corporations
> records by Director Karl Auerbach and the lack of agreement on the
> arrangements for access or use.

Too bad we could not have spoken on this in LA. As you know, each director has an *independent* duty and *independent* right of judgement that is imposed as a matter of law

The access policy imposes substantive restrictions that are in conflict with those rights and duties.

I'm sure that you realize that with regard to time and place restrictions - restrictions which may be quite properly imposed - I have been far more than reasonable: My year of waiting is far more than reasonable under any interpretation of events.

As you know, Stuart's duty of confidentiality is no greater than my own, or of yours. That duty of loyalty to the corporation, whether it be mine, yours, or Stuart's, exists apart from any written policy or agreement. As I presume is true for both yourself and Stuart, I have absolutely no intention of violating that duty.

One may ask "so what is the harm of signing an agreement that is merely in parallel to the pre-existing duty?" The answer is that the harm exists on both sides: On the Director's side, since no agreement can fully encompass the rights and obligations of a Director's rights and duties (large books have been written on the subject) such an agreement imposes prior constraints that could place a director in a situation in which the agreement imposes a limitation or obligation that has points of dissonance with the Director's rights or duties imposed by the law. And on the Corporation's side, such an agreement could end up acting as a waiver of the corporation's rights should a director engage in an improper act.

I'm sure that you can also understand the implicit conflict that exists in limitations defined and imposed by corporate management over a Director's review of the behaviour of that selfsame management.

> The Audit Committee considered that the arrangements requested by the CEO in
> his letter dated 5 October 2001 provided reasonable safeguards for the
> confidentiality of ICANN information. The Audit Committee requests the CEO
> to ensure that these arrangements were made generally applicable to all
> Directors seeking similar access to the Corporation Records.

Because ICANN's directors are spread among many nations of the world, the access policy as embodied in the combination of the generally written policy plus Stuart's elaborations on that policy as contained in his letters to me, amounts to an effective denial of access rights to those Directors who are far from Los Angeles. It is not difficult for me to travel to ICANN's offices, but the requirement of physical presence amounts to an effective ban on access to those directors who may have to travel across oceans.

There seems to be a creeping expansion of the constraints that ICANN's management is attempting to impose. Stuart's letters add several major constraints above and beyond those contained in the written policy published to the entire board. Those same letters also contain several allegations against my personal integrity; those allegations are unfounded, unsubstantiated, and false.

It would be improper for me as a Director to surrender my rights to corporate management.

And it would be improper for me as a person to quietly accept the false and denigrating assertions that have been made against my personal integrity.

--karl--

To: David Farber <dave@farber.net>, "Declan McUllough" <declan@well.com>
From: "M. Stuart Lynn" <lynn@icann.org>
Subject: Response to Karl Auerbach's note
Cc:
Bcc:
X-Attachments:

The postings from Karl Auerbach to your lists regarding access to records were forwarded to me. I thought each of you might be interested in my response below. Feel free to post or not, of course, as you see fit.

Many thanks
Stuart

Karl is free to examine ICANN records any time he is ready to comply with established procedures that apply to him and any other Director -- in complete accordance with California law. Karl is not being singled out. Among other reasonable provisions, these procedures are designed to protect confidential records, such as personnel files. Karl wishes to set himself above the direct or delegated authority of the ICANN Board of Directors, in declaring himself as the sole determinant of what is confidential and what is not. That is not his prerogative according to California law or ICANN bylaws.

The procedures to which he objects were endorsed by the Audit Committee of the ICANN Board, to whom the Board has delegated responsibility for this general area. He is always welcome to take his objections to the full Board should he wish. So far, he has not chosen to do so.

--

Stuart Lynn
President and CEO
ICANN
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292
Tel: 310-823-9358
Fax: 310-823-8649
Email: lynn@icann.org

>X-Authentication-Warning: joy.songbird.com: [12.234.191.225] didn't
>use HELO protocol
>X-Sender: dcrocker@brandenburg.com
>Date: Wed, 05 Dec 2001 21:50:06 -0800
>To: declan@well.com
>From: Dave Crocker <dcrocker@brandenburg.com>
>Subject: Re: FC: ICANN director replies: Tell me how to obtain
> financial info!
>Cc: politech@politechbot.com, lynn@icann.org, karl@cavebear.com,
> farber@cis.upenn.edu
>
>At 12:03 AM 12/6/2001 -0500, Declan McCullagh wrote:
>>If ICANN would like to send along what it requires that its
>>directors sign, I'd be happy to forward the documents (or any other
>>response).
>
>Or Karl could use the standard procedure of bringing the matter to
>the full ICANN board, as Stuart Lynn noted.
>
>Karl is not the first director of a non-profit corporation to have a
>conflict with the corporation's staff. Such matters are not usually
>resolved by resorting to public outcry. There are more typical and
>productive paths.
>
>But no, rather than pursue the matter along such a path, he insists
>on playing in a public sandbox, where he can have fun without doing
>anything productive.
>
>d/
>
>
>-----
>Dave Crocker <<mailto:dcrocker@brandenburg.com>>
>Brandenburg InternetWorking <<http://www.brandenburg.com>>
>tel +1.408.246.8253; fax +1.408.273.6464

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Stuart Lynn
President and CEO
ICANN
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292
Tel: 310-823-9358
Fax: 310-823-8649
Email: lynn@icann.org

From: phil.davidson@bt.com
To: lynn@icann.org
Cc: schroeder@icann.org, audit-comm@icann.org
Subject: RE: Update to Audit Report
Date: Wed, 2 Jan 2002 13:05:10 -0000

Dear Stuart

REDACTED

When visiting you I would also like access to the financial records that have been subject to debate with Karl. This would be either just before or after the meeting with the Auditors. Please let me have details of the arrangements you will make so the I can examine the documents and have copies to take away.

-----Original Message-----

From: M. Stuart Lynn [<mailto:lynn@icann.org>]
Sent: 31 December 2001 19:09
To: phil.davidson@bt.com
Cc: Schroeder
Subject: Update to Audit Report

Dear Phil:

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Printed for "M. Stuart Lynn" <lynn@icann.org>

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EXHIBIT 20

From: phil.davidson@bt.com
To: lynn@icann.org
Subject: RE: Update to Audit Report
Date: Fri, 4 Jan 2002 09:23:31 -0000

Stuart

The dates 30th, 31st January and 1 February are all OK for me and I hope the availability of the auditors could fit in this slot. Lets go for 31st January and you know my flexibility should you need to adjust the dates to meet the needs of others.

Regards

Phil

-----Original Message-----

From: M. Stuart Lynn [mailto:lynn@icann.org]
Sent: 02 January 2002 23:56
To: phil.davidson@bt.com
Cc: schroeder@icann.org; audit-comm@icann.org; Louis Touton
Subject: RE: Update to Audit Report

REDACTED

It would be a pleasure to host you on any of the dates you propose. I think you should choose the one that is most convenient to you, and we will adjust to fit. And we will make every attempt to schedule the auditors and a committee teleconference on that date.

And of course we would be delighted to make the records available for your inspection following the established procedures. I have asked Louis to prepare a letter for your consideration that will be essentially the same as the one sent to Karl for the same purpose.

We will look forward to your visit.

With all best wishes
Stuart

At 1:05 PM +0000 1/2/02, phil.davidson@bt.com wrote:

>Dear Stuart

>May I wish you all a very happy and healthy New Year.

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- The board passes a resolution answering to a message from UN Secretary General Kofi Annan, with all members of the board voting in favor. [chat log](#)
- The board passes the "Thanks, etc." resolution, with all in favor, Nii Quaynor abstaining. [chat log](#)
- The board passes a resolution thanking Paul Twomey and the Australian government by acclamation. [chat log](#)
- The board passes a resolution thanking Agence de la Francophonie for simultaneous translations to French by acclamation. [chat log](#)
- The board unanimously passed a resolution concerning dot-org. [chat log](#)
- The board passed a resolution concerning dot-org with all in favor, Karl abstaining. [chat log](#)
- The board passed a resolution on .info country names, with 14 in favor, Karl opposed, Amadeu and Andy abstaining. [chat log](#)
- The board unanimously passed a resolution on the Redemption Grace Period proposal. During the discussion, it was apparently discussed to refer this topic to the DNSO. It's not clear at this point of time to the author of these lines whether the text of the resolution was changed. [chat log](#)
- The board passed a resolution on the Independent Review Process, with 12 in favour, Helmut Schink and Andy Müller-Maguhn abstaining, Karl Auerbach opposed. Rob Blokzijl was out of the room. [chat log](#)
- The board passed a resolution on the retention of auditors (KPMG) with 14 in favour, 1 opposed (Karl), and 2 abstentions (Andy and Stuart). [chat log](#)

The Chat Log

Time stamps are one hour ahead of Accra local time (GMT).

Time stamp: *Wed Mar 13 19:43:07 2002*
 <tlr> A short explanation of the time stamps in the web log may be in order: Time stamps are added upon users joining the channel, or public messages. There are always _at_ _least_ ten minutes between two time stamp entries.
 <tlr> Also, whenever a time stamp is logged, the following notice is sent to the channel, but not logged to the web page:
 <tlr> "Notice: Everything that's said on this channel is logged to <http://does-not-exist.org/icann-log.html>"
 <tlr> I hope that the web version of the log turns out to be helpful.
Time stamp: *Thu Mar 14 04:50:06 2002*
 <adam[]> icann sucks.
 <adam[]> iana stinks,
 <adam[]> w00t.
 <adam[]> bleh.
 <adam[]> I wish there were some ICANN experts in here that I could talk to.
 <adam[]> But alas, there are none
Time stamp: *Thu Mar 14 07:42:22 2002*
Time stamp: *Thu Mar 14 08:16:30 2002*
Time stamp: *Thu Mar 14 08:33:38 2002*

<alexandersvensson> Karl Auerbach: My prediction then that there will not be an ICANN in 18 to 24 months.

<alexandersvensson> Linda Wilson: Could not quite hear.

<joop> Three years of work down the drain

<alexandersvensson> Linda Wilson: Much has been said by Kato-san and Stuart.

<dpf> Oh dear just read archive and 12-5 vote. Looks to be all over for at large.

<karl-a> Don't forget that I said that this resolution transforms ICANN into an a paternalistic oligarchy, a return to imperialism, a resurrection of the concept of "the white mans burden".

<alexandersvensson> Linda Wilson: As I read this resolution, take serious parts of it that indicate that Board wishes to move forward with informed participation of the full range.

<alexandersvensson> Linda Wilson: Problem whether we are on the same page on ICANN's mission.

<alexandersvensson> Linda Wilson: Mission must be accepted and a process for modifying the mission. Cannot run organization without mission change as the world changes.

<alexandersvensson> Linda Wilson: Trying to create an organization out of whole cloth.

<alexandersvensson> Linda Wilson: In favour of this resolution.

<alexandersvensson> Linda Wilson: Come to it from four years of working as an initial At Large member.

Time stamp: Thu Mar 14 10:58:28 2002

<tlr> ah, there's audio feed.

<asvensson> Ivan Moura Campos: Different views and boundaries of mission depending on people you talk to

<asvensson> Ivan Moura Campos: We should clean this up once and for all

<asvensson> Ivan Moura Campos: Some consistency in the words of people who believe that it should be very, very, very strictly technical.

<asvensson> Ivan Moura Campos: Inserting a new domain takes 12 seconds, but the consequences are enormouse. Boundaries are not easy.

<asvensson> Ivan Moura Campos: For some people whose energy, good will, they should do it in some other organization.

<asvensson> Ivan Moura Campos: ICANN is a technical organization. As such, it is arguable whether ot not it should have elections.

<asvensson> Nii Quaynor: Sensitivity to coupling with broader reform.

<asvensson> Nii Quaynor: Prefer that At Large does not appear to be subsumed by the new proposal for the reform.

<asvensson> Sang-Hyon Kyong: As resolution stands, it creates one uncertainty.

<asvensson> Sang-Hyon Kyong: Up until this time, there was the possibility of having an election this year to select/elect At Large directors whose terms are expiring this fall.

<asvensson> Sang-Hyon Kyong: The wording of this particular resolution -- I refer to the last whereas clause.

<asvensson> Sang-Hyon Kyong: This possibility of having an election this year is virtually eliminated.

<asvensson> Sang-Hyon Kyong: Uncertainty the elimination creates is what will happen to those seats that are presently held by the At Large directors.