

**IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS BEFORE THE
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

Booking.com B.V.)	
Contact Information Redacted)	
)	
Claimant)	
)	
v.)	ICDR Case No. 50-2014-000247
)	
INTERNET CORPORATION FOR)	
ASSIGNED NAMES AND NUMBERS)	
)	
Respondent)	
_____)	

**ADDITIONAL SUBMISSION
BY BOOKING.COM B.V.
REPLY TO ICANN'S RESPONSE**

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1. In its response, ICANN focuses on the following arguments: (i) Booking.com is not challenging any act of the ICANN Board and the IRP process can only be used to challenge such acts;¹ (ii) ICANN has no obligation to accept, reject or otherwise exercise independent judgment in relation to determinations by the String Similarity Review Panel (SSP);² and (iii) Booking.com is seeking to obtain an on the merits review under the IRP process.³

2. In Section I below, Booking.com demonstrates that (i) the purpose of this IRP is indeed to challenge actions of the ICANN Board, (ii) the ICANN Board is responsible for the String Similarity Review process, which forms part of the New gTLD Program, and (iii) the ICANN Board's use of third parties to perform certain tasks within that overall program does not alter that responsibility. In Section II, Booking.com will demonstrate that (i) the ICANN Board failed to prevent, identify and/or remedy violations of ICANN's basic obligations that occurred in the setting up, implementation or review of the String Similarity Review process, (ii) the ICANN Board unjustifiably dismissed Booking.com's request to rectify the situation, and (iii) the ICANN Board deprived Booking.com of its fundamental procedural rights, including its right to be heard. Finally, Booking.com will demonstrate that it is not requesting an on the merits review. Rather, it is seeking a remedy in relation to failures in the setting up, implementation and/or supervision of the application process and in particular the String Similarity Review.

I. THE NATURE AND SCOPE OF THIS IRP

A. An IRP must concern the compatibility of ICANN Board actions with applicable rules

3. In accordance with Article IV(3) of ICANN's Bylaws, an IRP Panel must determine

¹ ICANN's response of 25 April 2014 to the IRP Request (ICANN's Response), paras. 3, 7, 9, 16, 23, 32 and 39.

² ICANN's Response, paras. 7 and 31; *see also* ICANN's Response, paras. 17 and 29.

³ ICANN's Response, paras. 9 and 45.

whether the contested actions of the ICANN Board are consistent with applicable rules.⁴

4. As described in detail in Booking.com’s Request for IRP, the set of rules against which the actions of the ICANN Board must be assessed includes: (i) ICANN’s Articles of Incorporation and Bylaws – both of which must be interpreted in light of ICANN’s Affirmation of Commitments, and both of which require compliance with *inter alia* International law and generally accepted good governance principles – and (ii) secondary rules created by ICANN, such as the Applicant Guidebook. In setting up, implementing and supervising its policies and processes, the Board must comply with the fundamental principles embodied in these rules. That obligation includes a duty to ensure compliance with its obligations to act in good faith, transparently, fairly, and in a manner that is non-discriminatory and ensures due process.⁵

5. The IRP Panel has authority to decide whether or not actions or inactions on the part of the ICANN Board are compatible with these principles. The most recent versions of ICANN’s Bylaws⁶ – which had not been introduced at the time of Booking.com’s submission of its application for .hotels⁷ – also require the IRP Panel to focus on whether the ICANN Board was free from conflicts of interest and exercised an appropriate level of due diligence and independent judgment in its decision making. However, these issues are mentioned by way of example only. The Bylaws nowhere restrict the IRP Panel’s remit to these issues alone.

6. In its Response to the Request for IRP, ICANN submits that its “*Bylaws specify that a deferential standard of review be applied when evaluating the actions of the ICANN Board*”.⁸

⁴ See also ICANN’s Response, para. 24 *in fine*.

⁵ See Booking.com’s Request for IRP, paras. 43-52.

⁶ Adopted on 11 April 2013 and subsequently amended on 7 February 2014. Also see **RM 3**, Article IV(3).

⁷ In 2012.

⁸ ICANN’s Response, para. 24.

This is simply wrong. No such specification is made in ICANN’s Bylaws or elsewhere, and a restrictive interpretation of the standard of review would be inappropriate. It would fail to ensure accountability on the part of ICANN and would be incompatible with ICANN’s commitment to maintain (and improve) robust mechanisms for accountability, as required by Article 9.1 of ICANN’s Affirmation of Commitments (**RM 4**) and ICANN’s core values, which require ICANN to “*remain accountable to the Internet community through mechanisms that enhance ICANN’s effectiveness*” (**RM 2-3**, Article I(2)(10)).

B. This IRP is about the actions of ICANN Board

7. The purpose of this IRP is to challenge the ICANN Board’s handling of Booking.com’s application for the new gTLD .hotels.

8. ICANN acts through its Board. As ICANN expressly recognizes, the Board is ICANN’s decision-making body and it cannot delegate its responsibilities.⁹ It is the only entity that can be held responsible for ICANN’s actions. In relation to the New gTLD Program, the Applicant Guidebook explicitly confirms that “*ICANN’s Board of Directors has ultimate responsibility for the New gTLD Program*” (**RM 5**, Module 5-4).

9. ICANN claims that its Board outsourced the String Similarity Review, and the quality control of that review, to third parties.¹⁰ It then seeks to avoid responsibility for the actions of those third parties, which were at all times acting under its authority. The ICANN Board asserts that it did not supervise or investigate the manner in which the SSP made its determinations or exercise its own independent judgment in relation to those determinations.¹¹

10. Where the Board relies on third parties (or its own staff) to carry out specific tasks, it

⁹ ICANN’s Response, para. 26: “[T]he Board is not permitted to outsource its decision-making authority”.

¹⁰ ICANN’s Response, paras. 17 and 38.

¹¹ ICANN’s Response, para. 7.

remains liable for the actions of those third parties and to exercise quality control in relation to them. That quality control must include the checks necessary to ensure compliance with ICANN's obligations. The fact that the ICANN Board decided to outsource the String Similarity Review, and that an independent SSP carried it out does not relieve the ICANN Board of responsibility for that review. The Applicant Guidebook explicitly provides that *"ICANN reviews every applied-for gTLD string"* and that *"[t]he decision to review, consider and approve an application to establish one or more gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion"* (**RM 5**, Module 2-5, Module 6-2 and 6-3, Terms and Conditions, 3) as well as that *"[t]he Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of [...] the use of an ICANN accountability mechanism"* (**RM 5**, Module 5-4).

C. The binding force of IRP declarations

11. Since ICANN's amendment of its Bylaws on 11 April 2013, IRP declarations have precedential value (**RM 2**, Article IV(3)(21), *in fine*).¹² The precedential value – and binding force – of IRP declarations was recently confirmed in an IRP Panel declaration¹³ that itself has precedential effect. It follows that the IRP declaration requested in this case by

¹² *"The declarations of the IRP Panel [...] are final and have precedential value"*.

¹³ See the declaration of 14 August 2014 by the IRP panel in Case No. 50 2013 001083 where it was decided that *"[v]arious provisions of ICANN's Bylaws and the Supplementary Procedures support the conclusion that the [IRP] Panel's decisions, opinions and declarations are binding"* and that *"[t]here is certainly nothing in the Supplementary Rules that renders the decisions, opinions and declarations of the [IRP] Panel either advisory or non-binding"* (**RM 23**, para. 98). The panel considered that ICANN's Bylaws and the Supplementary Procedures were unambiguous as to the binding nature of an IRP declaration and that *"even if it could be argued that ICANN's Bylaws and Supplementary Procedures are ambiguous on the question of whether or not a decision, opinion or declaration of the IRP Panel is binding, [...] this ambiguity would weigh against ICANN's position"* (**RM 23**, para 108); See also **RM 23**, para 98 and following.

Booking.com would be binding upon ICANN. Any other outcome would effectively grant ICANN arbitrary and unlimited power. It would make ICANN virtually untouchable, something which was never intended¹⁴ and it would be incompatible with ICANN's obligation to maintain and improve robust mechanisms for accountability (E.g., **RM 4**, Article 9.1 and **RM2-3**, Article I(2)(10)).

12. Nor can Booking.com be considered to have waived the rights that ICANN has violated. An applicant cannot waive judicial remedies in relation to its fundamental rights.¹⁵ In particular, a party cannot waive its right to be heard, or to be dealt with fairly and in a non-discriminatory manner.¹⁶

13. Similarly, the fact that the application and evaluation process is governed by a specific set of rules cannot mean that an applicant has waived its (inviolable) fundamental rights. Even if it could, ICANN has warranted on a number of occasions that the application and evaluation process would take fundamental rights into account.¹⁷ However, as set out in Booking.com's Request for IRP (and as further demonstrated below) the reality did not live up to this commitment.

¹⁴ When ICANN was assigned the task of managing the Domain Name System, ICANN's interim Chairman at the time, Esther Dyson, wrote, on behalf of the ICANN Board: "*We must create an organization that can begin to assume responsibility for the administration and policies of the Internet name and address system, and we must do so quickly, openly and effectively. This Board is committed to accomplishing all of these somewhat conflicting objectives*" (**RM 24**).

¹⁵ See also the declaration of 14 August 2014 by the IRP panel in Case No. 50 2013 001083: "*If the waiver of judicial remedies ICANN obtains from applicants is enforceable, and the IRP process is non-binding [...], then that process leaves TLD applicants and the Internet community with no compulsory remedy of any kind. That is, to put it mildly, a highly watered down notion of 'accountability'. Nor is such a process 'independent', as the ultimate decision maker, ICANN, is also a party to the dispute and directly interested in the outcome. Nor is the process 'neutral', as ICANN's 'core values' call for in its Bylaws*" (**RM 23**, para. 111, footnote 62).

¹⁶ Fundamental due process rights include a right to be heard by an independent and impartial tribunal (Art. 14 ICCPR (**RM 30**)); In no circumstances is a deviation from fundamental principles of due process and fair trial permissible (HRCt, *General Comment 29*, UN Doc CCPR/C/21/Rev.1/Add.11, para. 11 (**RM 31**); IACoMHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, para. 245 (**RM 32**)).

¹⁷ E.g., *Infra*, para. 19 and following; Booking.com's Request for IRP, para. 21; **RM 15**; **RM 16**, pp. 21-22.

II. THE NATURE OF THE RELIEF SOUGHT BY BOOKING.COM

A. This case is not about challenging a decision on the merits, but about ICANN's failure to ensure due process

14. This case is about ICANN's failure to respect fundamental rights and principles in handling New gTLD applications, particularly in the context of the String Similarity Review. In administering that process, ICANN disregarded its fundamental obligations, resulting in an arbitrary and discriminatory decision to put .hotels and .hoteis into a contention set.

15. In setting up, implementing and reviewing the String Similarity Review process, the ICANN Board was obliged to ensure due process and to respect its fundamental obligations to ensure good faith, transparency, fairness and non-discrimination.

16. The String Similarity Review process may have been "*the product of years of public debate and deliberation*"¹⁸, but that cannot entitle the ICANN Board to disregard its fundamental obligations. Despite this, ICANN argues that "[d]emonstrated adherence to approved and documented processes cannot provide a basis for an IRP under ICANN's Bylaws".¹⁹ Such reasoning would imply that governments are entitled to enforce legislation that is unconstitutional or in violation of general principles of national or international law, provided that such legislation is the product of years of public debate and deliberation. If it were sufficient for the ICANN Board to demonstrate adherence to the wording of processes, ICANN would effectively have *carte blanche* to violate its obligations under its Bylaws and Articles of Incorporation, provided it engaged in consultation beforehand. It would render ICANN's Bylaws and Articles of Incorporation meaningless.

17. Booking.com does not submit that the Applicant Guidebook – which is only a step in implementing the New gTLDs Program (developed on the basis of a Generic Names

¹⁸ ICANN's Response, para. 8.

¹⁹ ICANN's response, para. 38.

Supporting Organization (GNSO) policy, and approved by the ICANN Board) – sets out a String Similarity Review process that is necessarily flawed and unfair. However, the way in which that process was established, implemented and supervised by (or under the authority of) the ICANN Board was unfair and in violation of various provisions of ICANN’s Bylaws and Articles of Incorporation. The manner in which that process is described in the Applicant Guidebook does not – and could not – alter Booking.com’s right to due process, including the right to be heard in its own case. However, the way in which the ICANN Board allowed the String Similarity Review process to be established, implemented and supervised had exactly that effect. Booking.com had no opportunity to submit arguments to the SSP when it performed its review. Nor did ICANN’s Board hear Booking.com when it challenged that result and the procedure by which it was reached.

B. The ICANN Board failed to establish, implement and supervise a fair and transparent String Similarity Review process in the selection of the SSP

18. In response to the so-called ‘GNSO Recommendation 2’, the ICANN Board decided to review similarities between applied-for gTLD strings. Its purpose was to prevent user confusion and loss of confidence in the DNS resulting from the delegation of similar strings. However, rather than itself performing the string similarity review (and other reviews in the New gTLD Program), the ICANN Board decided to rely on the advice of third party contractors. As a result, the ICANN Board sought third party providers for “Applicant Evaluation Teams (Technical and Financial Evaluation)”, “Geographic Name Evaluation”, “String Similarity Examiners” and a “Comparative Evaluation Panel” (which later became a “Community Priority Evaluation Panel”) (**RM 26**). The ICANN Board made several errors in the resulting SSP selection process.

19. In establishing the selection criteria for evaluation panels and in making selections, the ICANN Board had a duty to ensure compliance with ICANN’s fundamental obligations. As expressly stated in ICANN’s Call for Expressions of Interest (CfEoI) for New gTLD String

Similarity Examiners, the process for selecting the SSP had *inter alia* to “*respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination*” (**RM 15**, p. 6).

20. However, ICANN did not provide transparency in relation to the SSP selection process. ICANN failed to make clear how it would evaluate candidate responses or how it ultimately did so. The only action taken by ICANN in this regard was to state, in the CfEoI, that responses would be evaluated on the basis of criteria defined in the CfEoI and the Applicant Guidebook (**RM 15**, p. 6). At that time, the Applicant Guidebook was still in an early draft form, and neither the Applicant Guidebook nor the CfEoI in fact contained any information as to how responses would be evaluated. In addition, the identities of the unsuccessful candidates (if any) to perform the String Similarity Review remain unknown. Applicants have never been given any information in relation to the candidate responses that were submitted. ICANN has revealed only that, overall, there were 12 candidates for all the different evaluation panel roles, and that InterConnect Communications, in cooperation with University College London, was selected to perform the String Similarity Review (**RM 25**, p. 1). There is no indication that any other candidate expressed an interest in performing the String Similarity Review. No information has been provided as to the steps (if any) taken by ICANN to reach out to other potential candidates. Numerous questions remain: How did ICANN deal with the situation if there was only one (or only a very few) respondent(s) wishing to perform the String Similarity Review? How did this impact on the discussions with InterConnect Communications? What are the terms of ICANN’s contract with InterConnect Communications?

21. It also remains unclear whether the minimum selection criteria were met. ICANN has never demonstrated that any of the following required information was provided by the SSP selected by the ICANN Board:

- a “*plan for ensuring fairness, nondiscrimination and transparency*” (**RM 15**, p. 7);
- a “*plan for ensuring that the examiners [...] consist of qualified individuals and that the candidate will make every effort to ensure a consistently diverse and international panel*” (**RM 15**, p. 7);
- a “*Statement of Suitability that includes a detailed description of the candidate’s ability to perform the work [...] which demonstrates knowledge, experience and expertise, including but not limited to projects, consulting work, research, publications and other relevant information*” (**RM 15**, p. 6);
- a “*curriculum vitae for each person proposed by the candidate to manage or lead work on th[e] project, the candidate’s selection process for persons being proposed to ICANN, and explanation of the role that each named person would play*” (**RM 15**, p. 6);
- an indication of “*the experience and availability of proposed evaluators*” (**RM 15**, p. 6).

22. Furthermore, the many failures in the SSP’s performance of the String Similarity Review, described below²⁰, create a strong presumption that appropriate selection criteria were not met.

C. The ICANN Board failed to establish, implement and supervise a fair and transparent String Similarity Review process in allowing the appointed SSP to develop and perform an unfair and arbitrary review process

23. In view of ICANN’s general obligations and the selection criteria for the SSP established by ICANN, new gTLD applicants could reasonably expect that the SSP would, at a minimum, (i) act in accordance with a plan for “*ensuring fairness, nondiscrimination and transparency*”, (ii) reach conclusions that were “*compelling and defensible*” and (iii) “*document the way in which [the SSP performed evaluations] in each case*” (**RM 15**, pp. 5 and 7). Instead, the ICANN Board allowed the SSP to perform the String Similarity Review (i) without any (documented) plan or methodology (Section II.C.1), (ii) without providing any transparency regarding the evaluators or the evaluation criteria (Section II.C.2), and (iii) without informing applicants of its reasoning (Section II.C.3). This resulted in an opaque and non-transparent evaluation process, leading to unfair and discriminatory results.

²⁰ *Infra*, Section II.C; See also Booking.com’s Request for IRP, paras. 24 to 38.

1. **The String Similarity Review process was unfair, non-transparent and discriminatory due to its lack of methodology**

24. ICANN is unable to show that there was a pre-established methodology for performing the String Similarity Review. *In tempore suspecto*, and long after Booking.com had first complained about the String Similarity Review process, ICANN posted a Process Description that it had received from the SSP (**Annex 8**). The Process Description merely outlines the general workflow and does not include any of the string-specific information requested by Booking.com.²¹ ICANN also posted a letter dated 18 December 2013 from the SSP Manager responding to ICANN's request to provide additional information on the String Similarity Review process (**Annex 11**). The SSP Manager's letter refers to a number of factors that had, in practice, resulted in a finding of confusing similarity (**Annex 11, para. 10**). However, this list of factors was only established in retrospect, after the String Similarity Review process had ended. These are not pre-established criteria, as ICANN claims.²²

25. More importantly, the factors identified are arbitrary and baseless. They are not supported by any methodology capable of producing compelling and defensible conclusions.²³ The lack of a (substantiated) methodology has resulted in an arbitrary and discriminatory outcome. It has allowed applications with at least equally serious visual string similarity concerns – such as .parts/.paris, .maif/.mail, .srt/.srl, .vote/.voto and .date/.data (**Annex 20**, p. 11) – to proceed while singling out .hotels/.hoteis. The approach of ICANN's evaluators failed to take into account measured and demonstrable human performance in distinguishing words and characters in ordinary circumstances.²⁴ The failure to take actual

²¹ Booking.com's Request for IRP, paras. 29 and following.

²² ICANN's Response, paras. 50-51; ICANN states: "*Importantly, .hotels and .hoteis meet every one of these criteria.*" These criteria were only established after .hotels and .hoteis were considered confusingly similar by the SSP. Bringing these up at this stage as if they were pre-established criteria is a *mala fide* self-fulfilling prophecy by ICANN.

²³ See **Annex 20**; Booking.com's Request for IRP, paras. 63-68.

²⁴ See **Annex 20**; Booking.com's Request for IRP, paras. 63-68.

human performance into account is at odds with the standard for assessment, *i.e.*, the likelihood of confusion on the part of the average Internet user. Hence, the approach is directly contrary to ICANN’s own policy.

2. **The String Similarity Review process was unfair and non-transparent due to the use of anonymous evaluators**

26. ICANN’s obligation to safeguard due process rights covers the right to be heard by an independent and impartial adjudicator.²⁵ That right is violated if the adjudicator remains anonymous.²⁶ The right to know the identity of the adjudicator – with a view to knowing whether there might be grounds for challenging or removing them – is a fundamental requirement.²⁷

27. ICANN has never disclosed the reasoning behind the decision to place .hotels and .hoteis in a contention set and has denied Booking.com the opportunity to present its case (that there were no valid reasons for doing so). Even today, it remains unclear who the evaluators that took the decision were, what qualifications they had, how Booking.com’s application for .hotels was evaluated against the other applications, and what criteria were used by the evaluators in reaching their decision. ICANN’s use of faceless evaluators and its failure to disclose the criteria that were used is a blatant violation of Booking.com’s right to due process.

3. **The String Similarity Review process was unfair, non-transparent and arbitrary, because of the lack of rationale**

28. ICANN was obliged to publish an independent report on completion of the String Similarity Review (**RM 16**, p. 22). In addition, the provider of the String Similarity Review was obliged to “*propose a panel that [was] capable of reaching conclusions that are*

²⁵ *E.g.*, Article 14 ICCPR (**RM 31**).

²⁶ IACoMHR, *Lindo et al. v. Peru*, Case 11.182, Report No. 49/00, paras. 115-118 (**RM 33**).

²⁷ *See* IACoMHR, *Lindo et al. v. Peru*, Case 11.182, Report No. 49/00, paras. 116 (**RM 33**).

compelling and defensible, and documenting the way in which it has [made the evaluations] in each case” (RM 15, p. 5). The requirement to document each decision is not a surprising one. Without a well-documented rationale based on a clearly established methodology, there is no basis on which decisions can be evaluated and, where appropriate, challenged. Providing such a rationale constitutes an essential due process requirement. In the context of the Community Priority Evaluation Panel (CPEP), ICANN seems to have understood this. In a recent communication, ICANN informed applicants that the CPEP “*is committed to providing an accurate evaluation and an evaluation report that clearly describes the rationale for the scoring of the applications” (RM 29).* As in the case of the String Similarity Review process, there is no explicit requirement in the Applicant Guidebook for the CPEP to clearly describe its scoring rationales. However, the requirement to state reasons forms part of ICANN’s general obligations and applies regardless of whether or not it is mentioned in a policy or guidebook (*E.g., RM 4, Article 7).*

29. Although ICANN must have been aware of its obligations in relation to the String Similarity Review, it failed to produce the required independent report or the reasoning for determinations.²⁸ Simply publishing the outcome and notifying Booking.com does not constitute either an independent report or a statement of reasons (**Annex 3**). Indeed, there is no evidence that the reasoning in individual cases or the basis on which evaluations were carried out were documented at all.

²⁸ See Booking.com’s request for IRP, paras. 21 and 26; It was (and still is) unclear whether this Process Description had been adopted prior to the start of the string similarity evaluation process or whether it had been adapted over time (**Annexes 8 and 9**).

D. The ICANN Board failed to establish, implement and supervise a fair and transparent String Similarity Review process by blindly accepting the advice of the SSP, without providing effective quality control

1. ICANN was in no position to perform effective quality control

30. Despite the obvious flaws in the String Similarity Review process, the ICANN Board blindly accepted the advice of the SSP without providing effective supervision or quality control. In fact, the ICANN Board was not in a position to provide any quality control.

A precondition of effective quality control is that the methodology used during the review that is subject to quality control has been documented. According to ICANN, “[t]he SSP [was] responsible for the development of its own process documentation and methodology for performing the string similarity review, and [was] also responsible for the maintenance of its own work papers” (**Annex 5**, pp. 1-2). ICANN adds that “[m]any of the items sought from ICANN [...] are **therefore** not in existence **within ICANN**” (**Annex 5**, p. 2, emphasis added). If nobody but the evaluator has any insight into how the evaluation was carried out, no effective quality control can be performed. The many delays in posting a document setting out the SSP’s String Similarity Process and Workflow²⁹ in conjunction with ICANN’s statement that the SSP was “responsible for the development of its own process documentation and methodology for performing the string similarity review” (**Annex 5**, pp. 1-2) further support the conclusion that ICANN blindly accepted the advice of the SSP and that it did not have the documents required to carry out the selection of InterConnect Communications as SSP. Without any insight into the evaluation process, it is unclear how ICANN can claim that it had been “building and implementing a robust training program” and that it was “conducting simulation exercises” (**RM 25**, p. 2). If ICANN had no information about the process of the SSP, it could not build any useful training program.

²⁹ Booking.com’s Request for IRP, para. 30.

2. **ICANN’s claim that quality control in relation to the String Similarity Review process was performed by a third party is of no relevance and unsupported**

31. According to ICANN, a third party, JAS Advisors, performed the quality review of the SSP’s findings.³⁰ Booking.com doubts that this is true. In any event, even if JAS Advisors was asked to perform this review, the basic principle remains that the ICANN Board cannot outsource responsibility for the New gTLD Program, or any part of it, and that processes must be transparent, fair, non-discriminatory and offer an opportunity to be heard.

32. No such process was provided. Moreover, Booking.com is not aware that any selection process was put in place in relation to the appointment of JAS Advisors to perform the String Similarity Review quality control. No criteria for performing the quality control were published. When ICANN was looking for evaluators, no call for expressions of interest or similar document was issued for the selection of quality controllers (**RM26**). When ICANN published the list of selected evaluation panels, ICANN mentioned that it was still “*implementing a Quality Control program to ensure that applications have followed the same evaluation process and have been evaluated consistently*” and that ensuring consistency was a “*critical task*” (**RM 25**, p. 2). But ICANN did not set out the process for performing this critical task. ICANN published only a brief description of the internal quality review process carried out by the SSP, InterConnect Communications, itself (**Annex 11**, para. 13). This cannot, however, be the quality control (allegedly performed by JAS Advisors) to which ICANN refers.

33. JAS Advisors was selected as a provider of technical, operational and financial evaluations (**RM 25**, p. 1). ICANN describes JAS Advisors as a “*sort of a tertiary source for providing the financial and technical evaluation*” (**RM 27**, p. 14) and as having experience in

³⁰ ICANN’s Response, paras. 17, 30 and 38.

“*due diligence, Internet security, and global IT operations*” as well as “*intimate knowledge of ICANN*” (**RM 25**, p. 2). However, these qualifications are of no relevance to the performance of quality control in relation to the SSP’s evaluation. If JAS Advisors was appointed to perform quality control tasks, they must have related to other aspects of the New gTLD Program.

34. JAS Advisors was named by ICANN as a service provider that performed a limited control over a random sample of applications.³¹ This control consisted of a procedural review³² and a review of the technical, operational and financial aspects of new gTLD applications.³³ A quality check on a random sample of applications cannot provide effective quality control of the String Similarity Review. The String Similarity Review involved all applied-for gTLDs and the quality of the review cannot be ensured by randomly reviewing applications. *E.g.*, a random check could reveal that the SSP considered that the (distinctive and unique) .abudhabi string is not confusingly similar to .paris (or any other string applied for). This is a perfectly proper (indeed self-evident) outcome. But, a random review may pick up only such self-evident outcomes and does not give any comfort in relation to the evaluation of other specific applications. Moreover, such a review cannot determine whether evaluators discriminated or not.

35. ICANN admits that the only review performed following the SSP’s evaluation was “*a quality control review over a random sampling of applications*”, performed by JAS Advisors.³⁴ As a result, ICANN explicitly recognizes that it did not perform or provide for

³¹ **RM 27**, p. 14-15; ICANN Response, para. 30.

³² **RM 27**, p. 15: “*We’re also doing random procedural reviews to ensure that each evaluator is running the procedures in exactly the procedural way that we’ve specified. This is our approach to quality assurance.*”

³³ See **RM 27**, pp. 14-15: The process to quality control process mentions the need for consistent ‘scoring’ and the ‘rescoring’ of 15% of the applications. The scoring of applications only applies to the evaluation of the technical, operational and financial aspects of the application (**RM 5**, Attachment to Module 2, Evaluation Questions and Criteria, A-3 to A-4) and not to the String Similarity Review.

³⁴ ICANN Response, para. 30.

adequate quality control.

36. ICANN's position in these proceedings is all the more bizarre given ICANN's affirmation that its Board of Directors has the ultimate responsibility for the New gTLD Program (**RM 5**, Module 5-4) and that it reviewed every applied-for gTLD string (**RM 5**, Module 2-5). ICANN's commitment to review evaluations was explicitly reiterated with respect to the String Similarity Review. Indeed, during ICANN's webinar of 9 August 2012, ICANN stated that, after the evaluation by the SSP, "*there [was going to] be some processing time for ICANN [...] to review those results and put it in publishable form*" (**RM 17**, p. 24; emphasis added). ICANN added: "*[N]ow that we've worked with the evaluation panel on how they're going to word the results we will develop a process for reviewing those results [...]*" (**RM 17**, p. 24; emphasis added).

37. These statements post-date the information session in Dakar to which ICANN refers in asserting that JAS Advisors performed the quality control of the String Similarity Review. In fact, ICANN's statements of 9 August 2012 indicate that (1) ICANN (not JAS Advisors) was working with the SSP, (2) ICANN was going to review the results of SSP's string similarity review, and (3) at that time, ICANN had yet to develop a process for reviewing these results. At the very least, ICANN was clearly responsible for performing the quality control of the String Similarity Review.

38. Furthermore, even if a clear, transparent and measurable quality review took place, *quod non*, it did not prevent the arbitrary and discriminatory outcome of the String Similarity Review in relation to .hotels³⁵ and did not undo the various violations of ICANN's Articles of Incorporation and Bylaws.³⁶ Whatever quality control review ICANN may have engaged in, it must therefore have been deficient.

³⁵ Booking.com's Request for IRP, paras. 58-66.

³⁶ Booking.com's Request for IRP, paras. 43-74.

E. The ICANN Board failed to correct the mistakes in the String Similarity Review process and denied Booking.com its right to be heard

39. The ICANN Board should have corrected the mistakes in the String Similarity Review process on its own motion. Since ICANN's Board has ultimate responsibility for the New gTLD Program, it is required to supervise and assure the compliance of that program (and its implementation) with ICANN's fundamental obligations under its Articles of Incorporation and Bylaws. The Applicant Guidebook explicitly calls for the Board to individually consider an application as a result of the use of an ICANN accountability mechanism (**RM 5**, Module 5-4), such as a Request for Reconsideration (**RM 2 and RM 3**, Article IV(2)).

40. Booking.com's DIDP request (**Annex 4**), and the fact that ICANN discovered it had no insight in the String Similarity Review process, should have alerted the ICANN Board to the need to investigate and correct the errors in the process. Instead, ICANN chose, in its own self-interest, to invoke the excuse of confidentiality (**Annex 5**, p.2) and to refuse to offer any insight into the SSP's reasoning.

41. Indeed, when Booking.com filed its Request for Reconsideration with the ICANN Board, it informed the Board of the many errors in the String Similarity Review process, giving the Board ample opportunity to correct those errors. The Board however chose not to do so and not even to investigate the conformity of the String Similarity Review process with its fundamental obligations. The Board contented itself with issuing a statement that the Reconsideration process "*is not available as a mechanism to re-try the decisions of the evaluation panels*" (**Annex 14**, p. 5 *in fine* ; **Annex 15**, Section 2(b)). The ICANN Board's reasoning was based on a fundamental misunderstanding: it believed that Booking.com was seeking to "*supplant what it believes the review methodology for assessing visual similarity should have been as opposed to the methodology set out in [...] the Applicant Guidebook*" (**Annex 15**, Section 2(b)). Booking.com was not, however, seeking to supplant ICANN's policy or the Applicant Guidebook. Booking.com was merely asking that ICANN comply

with its own policies and fundamental obligations in relation to the performance of the String Similarity Review process. Instead of investigating compliance with those policies and principles (*i.e.*, its governing rules), the ICANN Board chose to misinterpret and ignore Booking.com’s Request for Reconsideration. As a result, the ICANN Board denied Booking.com its right to be heard. It even went as far as to say that the String Similarity Review process did not “*allow for additional inputs*” (**Annex 15**, Section 2(b)). Were it true, this statement, which is unsupported by rule or precedent, would represent a clear violation of fundamental due process rights. Even if a published policy or process were to explicitly derogate from fundamental due process rights (which is not the case here), ICANN could not implement that policy or process without violating its Articles of Incorporation and Bylaws.

42. Remarkably, the ICANN Board does not challenge the fact that the process (or its implementation of it) was flawed.³⁷ Indeed, several Board members expressed concerns or abstained during the consideration of Booking.com’s Request.³⁸ The ICANN Board clearly knew, or at least should have known, that the process and the implementation of that process raised serious concerns. Indeed, ICANN reserved almost one third of the Application fees (almost 118M USD) for risk costs, including legal defense costs.³⁹ This too indicates that there was awareness that the process was flawed and that the ICANN Board could not hide behind the fact that it had outsourced the evaluation of applications.

F. Booking.com is entitled to the requested relief

43. ICANN argues that Booking.com’s application for .hotels has not been denied, and that

³⁷ ICANN limits itself to claiming that “*Booking.com’s belief that the [...] process should have included certain requirements [...] does not constitute a Bylaws violation*” (ICANN’s Response, para. 37).

³⁸ Booking.com’s Request for IRP, para. 35.

³⁹ As an example of risks and difficult-to-estimate costs, ICANN mentioned the cost of legal support and costs required to shore up defense against unanticipated events. ICANN also refers to the legal expenses it incurred in a previous round of TLD applications as justification for the application fee in the New gTLD Program (**RM 28**, pp. 3, 6 and 12).

Booking.com could very well be the successful applicant.⁴⁰ This does not change the fact that Booking.com has suffered direct harm as a result of the ICANN Board's violations of its Articles of Incorporation and Bylaws. The result of that violation is that .hotels and .hoteis have been put in a contention set. Without the requested relief, Booking.com can only resolve the contention set through private negotiations with the applicant for .hoteis or through an auction. The first option is of no use, unless Booking.com is willing to buy out the applicant for .hoteis – a direct competitor of Booking.com. The second option would similarly end in a payment, to ICANN, the entity that created the contention set. Both options will generate additional and unnecessary costs for Booking.com while offering no guarantee that Booking.com will obtain the .hotels gTLD. Nor will either option benefit the wider Internet community. As mentioned before, Booking.com has produced a scientific analysis showing that both extensions should be delegated.

44. Evidently, Booking.com's request for relief may have an impact on the outcome of the case on the merits. Booking.com is convinced that .hotels and .hoteis would not have been put into a contention set – and that there would have been a different decision on the merits – if the String Similarity Review process had been organized, implemented and supervised in accordance with ICANN's established policies and ICANN's fundamental obligations. The expert advice submitted by Booking.com shows that a proper implementation of the String Similarity Review process should have led to a different decision on the merits, and that the ICANN Board's decision to put .hotels and .hoteis into a contention set is unfair, arbitrary and discriminatory. This does not, however, make the request for relief a request for a decision on the merits.

45. Any relief ordered must be sufficient to avoid another unfair, arbitrary and

⁴⁰ ICANN's Response, paras. 5 and 19.

discriminatory decision. Any other outcome would leave ICANN in ongoing violation of the fundamental principles that bind it, because, since this case began, ICANN has delegated various strings that are at least as similar to each other as .hotels and .hoteis.⁴¹ ICANN should therefore delegate both .hotels and .hoteis. If the decision to put .hotels and .hoteis in a single contention set is upheld, then ICANN should also revoke the delegation of those gTLDs with at least equal string similarities. Any other outcome would result in Booking.com continuing to suffer discrimination. ICANN would also remain in violation of its contractual obligations and continue to deprive registry operators of legal certainty and their legitimate expectations. The only way in which ICANN can act in accordance with its Articles of Incorporation and Bylaws is to reject the determination that .hotels and .hoteis are confusingly similar and to dissolve the resulting contention set.

46. In light of the foregoing and of Booking.com's request for IRP, Booking.com, reserving all rights, respectfully requests that the Panel issue a declaration:

- Finding that ICANN breached its Articles of Incorporation, its Bylaws, and the gTLD Applicant Guidebook;
- Requiring that ICANN reject the determination that .hotels and .hoteis are confusingly similar and disregard the resulting contention set;
- Awarding Booking.com its costs in this proceeding; and
- Awarding such other relief as the Panel may find appropriate or Booking.com may request.

Respectfully,

Flip Petition

Flip Petition,
Crowell & Moring LLP
Contact Information Redacted

6 October 2014

Counsel for Claimant

⁴¹ As shown in the [Annexes 23 and 24](#), the .paris and .parts gTLDs have both been delegated and allow for the registration of domain names. The .vote and .voto gTLDs have also been delegated ([Annexes 25 and 26](#)).

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Annex 1	Booking.com's application to operate the .hotels gTLD (Application ID 1-1016-75482)	Para 15		Response to question 18(b), para 3
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Annex 2	Despegar's application to operate the .hoteis gTLD (Application ID 1-1249-87712)	Para 17		Response to question 18(b), 18.2.1 and 18.2.2
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Annex 3	ICANN's communication of 26 February 2013	Para 28		Entire document
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Annex 4	Booking.com's DIDP request of 28 March 2013	Para 30		Pages 1 and 2
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Annex 5	ICANN's response of 27 April 2013 to Booking.com's DIDP request	Para 30		Page 2, para 1
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Annex 6	Email from Booking.com to ICANN of 9 May 2013, expressing its concerns about ICANN's response	Para 30		Paras 1 and 2
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Annex 7	Email from ICANN to Booking of 14 May 2013	Para 30		Para 1
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Annex 8	Process description of the String Similarity new gTLD Evaluation Panel as posted by ICANN on 7 June 2013	Para 30		Steps 5a and 10
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Annex #	Description of Annex	Reference in IRP Request	Reference in Additional Submission	Location of quote in the Annex
Annex 9	Booking.com's follow-up request of 26 June 2013 to DIDP request	Para 30		Page 2, para 2
			Para 29 (footnote 28)	Page 2, para 2
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			Not quoted	
Annex 11	Letter by Mr. Mark McFadden to Mr. Russ Weinstein of 18 December 2013, as published by ICANN on 9 January 2014	Para 32		Entire document; Paras 1 and 2
			Para 24	Entire document; Paras 1, 2 and 10
			Para 32	Para 13
Annex 12	Request for Reconsideration 13-5 as filed on 28 March 2013	Para 33		Pages 1 and 2
			Not quoted	
Annex 13	Request for Reconsideration 13-5 as amended on 7 July 2013	Para 33		Entire document
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Annex 14	Board Governance Committee recommendation on Request for Reconsideration 13-5	Para 33		Entire document
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Annex 15	Resolution 2013.09.10.NG02 of the New gTLD Program Committee	Para 34		Section 2(b)
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Annex 16	Minutes of the Meeting of the New gTLD Program Committee on 10 September 2013, published on 30 September 2013	Para 35		Section 2(b)
			Para 42 (footnote 38)	Section 2(b)
Annex 17	Booking.com's request for a Cooperative Engagement Process of 25 September 2013	Para 37		Entire document
			Not quoted	
Annex 18	Application status of the application for .parts on 26 February 2014	Para 63		Entire document
			Not quoted	
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Annex #	Description of Annex	Reference in IRP Request	Reference in Additional Submission	Location of quote in the Annex
	application for .paris on 26 February 2014		Not quoted	
Annex 20	Expert report showing that .hotels and .hoteis cannot be considered confusingly similar	Para 27, 58, 64 and 67		Entire document; Page 11
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Annex 21	Minutes of the Meeting of the Board Governance Committee on 1 August 2013, published on 5 November 2013	Para 35		Para 3
			Not quoted	
Annex 22	Memorandum from Booking.com to ICANN re absence of risks in delegating both the .hotels and .hoteis gTLDs and benefits to ICANN’s mission and purpose	Para 37		Entire document; Pages 7-9
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Annex 23	Application status of the application for .parts on 25 September 2014 and extracts of the .parts Registry Operator’s website	Not quoted		
			Para 45 (footnote 41)	Entire document
Annex 24	Application status of the application for .paris on 25 September 2014 and extracts of the .paris Registry Operator’s website	Not quoted		
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Annex 25	Application status of the application for .vote on 25 September 2014 and extracts of the .vote Registry Operator’s website	Not quoted		
			Para 45 (footnote 41)	Entire document
Annex 26	Application status of the application for .voto on 25 September 2014 and extracts of the .voto Registry Operator’s website	Not quoted		
			Para 45 (footnote 41)	Entire document

List of Reference Material

RM #	Description of RM	Reference in IRP Request	Reference in Additional Submission	Location of quote in the RM
RM 1	ICANN's Articles of Incorporation	Para 11, 39		Article 4
			Para 4	Article 4
RM 2	ICANN's Bylaws of 11 April 2013	Para 13		Article X
		Para 40		Art IV, (1), Art IV, (3)(4)
		Para 44		Art I (2)(9)
		Para 45		Art II (3)
		Para 46		Art I (2)(8)
		Para 48		Art III(1)
		Para 49		Art I (2), Art I (2)(7)
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		Para 52		Art I (2)
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		Para 11	Art I (2)(10); Art IV, (3)(21) <i>in fine</i>	
		Para 39	Art IV (2)	
RM 3	ICANN's Bylaws as amended on 16 March 2012, <i>available at</i> http://www.icann.org/en/about/governance/bylaws/bylaws-16mar12-en.htm	Para 40 (footnote 3)		Art IV (3)(3)
			Para 5 (footnote 6)	Art IV(3)
			Paras 6 and 11	Art I (2)(10)

RM #	Description of RM	Reference in IRP Request	Reference in Additional Submission	Location of quote in the RM
			Para 39	Art IV (2)
RM 4	Affirmation of Commitments	Para 12		Article 9.3
		Para 41		Articles 3 and 9.1
			Paras 6 and 11 Para 28	Article 9.1 Article 7
RM 5	gTLD Applicant Guidebook (v. 2012-06-04)	Para 14		Cover page
		Para 18		Module 2-8
		Para 22		Module 1-9, Module 2-6, Module 2-30, Module 2-31 and Module 2 <i>in fine</i>
		Para 25		Module 2-6
		Para 42		Module 2
			Para 8 Para 10 Para 34 (footnote 33) Para 36	Module 5-4 Module 2-5, Module 5-4, Module 6-2 and 6-3 Attachment to Module 2, Evaluation and Criteria, A-3 to A-4 Module 2-5, Module 5-4

RM #	Description of RM	Reference in IRP Request	Reference in Additional Submission	Location of quote in the RM
			Para 39	Module 5-4
RM 6	Overview of the Internet Root Zone Database on 15 May 2013	Paras 12 and 66		Selected extensions (.gl, .gi, .al, .ai, .it, .lt, .il, .li)
			Not quoted	
RM 7	Public Comment Forum for Terms of Reference for New gTLDs (6 December 2005), http://www.icann.org/en/news/announcements/announcement-06dec05-en.htm#TOR	Para 13		Entire document
			Not quoted	
RM 8	GNSO Issues Report, Introduction of New Top-Level Domains (5 December 2005)	Para 13		Page 3-4 (Summary and Objective)
			Not quoted	
RM 9	ICANN Resolution 2008.06.26.02, http://www.icann.org/en/groups/board/documents/resolutions-26jun08-en.htm	Para 13		Entire document
			Not quoted	
RM 10	ICANN Resolution 2011.06.20.01, http://www.icann.org/en/groups/board/documents/resolutions-20jun11-en.htm	Para 13		Entire document
			Not quoted	
RM 11	ICANN Board Rationales for the Approval of the Launch of the New gTLD Program, http://www.icann.org/en/groups/board/documents/rationale-board-approval-new-gtld-program-launch-20jun11-en.pdf	Para 13		Pages 4 and 7
		Para 14		Pages 11 and 12
RM 12	Information on the Applicant Guidebook as published on http://newgtlds.icann.org/en/ap	Para 14		Introductory text
			Not quoted	

RM #	Description of RM	Reference in IRP Request	Reference in Additional Submission	Location of quote in the RM
	plicants/agb			
RM 13	New gTLD Update (30 May 2012) on the close of the TLD Application system, http://newgtlds.icann.org/en/announcements-and-media/announcement-3-30may12-en	Para 14		Entire document
			Not quoted	
RM 14	New gTLD Draft Applicant Guidebook-Version 2: Analysis of Public Comment, available at http://archive.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf	Paras 19 and 20		Page 149
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RM 15	ICANN's call for expression of interest for new gTLD String Similarity Examiners, http://archive.icann.org/en/topics/new-gtlds/eoi-string-sim-31jul09-en.pdf	Para 20		Page 4, 2 nd paragraph
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			Paras 19 and 20	Page 6
			Para 21	Pages 6 and 7
			Para 23	Pages 5 and 7
			Para 28	Page 5
RM 16	ICANN presentation at the 42 nd meeting of ICANN, http://dakar42.icann.org/meetings/dakar2011/presentation-new-gtld-program-update-26oct11-en.pdf	Para 21		Pages 21 and 22
			Para 13 (footnote 17)	Pages 21 and 22
			Para 28	Page 22
RM 17	Transcript of Applicant Webinar: Start of New gTLD Initial Evaluation of 9 August 2012, available at http://newgtlds.icann.org/en/announcements-and-media/webinars	Para 23		Page 24
			Para 36	Page 24
RM 18	Information Paper for	Para 24		Chart on page 3

RM #	Description of RM	Reference in IRP Request	Reference in Additional Submission	Location of quote in the RM
	Applicants: New gTLD Program Update of 6 September 2012, http://newgtlds.icann.org/en/applicants/update-06sep12-en.pdf		Not quoted	
RM 19	Applicant Update Webinar: Application Evaluation Progress of 6 September 2012 (recording), unofficial transcript of 00:48:10 to 00:48:57	Para 24		Entire document
			Not quoted	
RM 20	Information Paper: new gTLD update (Toronto Session) of 8 October 2012	Para 24		Chart on page 4
			Not quoted	
RM 21	Information Paper : new gTLD update of 14 November 2012	Para 24		Page 2
			Not quoted	
RM 22	Declaration of the Independent Review Panel in ICDR Case No. 50 117 T 00224 08	Para 39		Pages 63-64, para 140
			Para 4	Pages 63-64, para 140
RM 23	Declaration of the Independent Review Panel in ICDR Case No. 50 2013 001083	Not quoted		
			Para 11 (footnote 13) Para 12 (footnote 15)	Para 98 and 108 Para 111, footnote 62
RM 24	Transmittal Letter from Esther Dyson to Becky Burr of 6 November 1998	Not quoted		
			Para 11 (footnote 14)	Penultimate paragraph
RM 25	Michael Sarazar, "Preparing Evaluators for the new gTLD Application Process, 22 November 2011	Not quoted		
			Para 20 Paras 30 and 32	Page 1 Page 2

RM #	Description of RM	Reference in IRP Request	Reference in Additional Submission	Location of quote in the RM
			Para 33	Pages 1 and 2
RM 26	ICANN's Webpage on the Evaluation Panels Selection Process	Not quoted		
			Paras 18 and 32	Entire document
RM 27	New gTLD Program Update, 26 October 2011, Dakar, available at http://dakar42.icann.org/node/26953	Not quoted		
			Paras 33 and 34; Footnotes 31-33	Pages 14-15
RM 28	Update to the Cost Considerations of the New gTLD Program	Not quoted		
			Para 42 (footnote 39)	Pages 3, 6 and 12
RM 29	Letter from Russ Weinstein to Andrew Merriam of 8 September 2014	Not quoted		
			Para 28	Para 3
RM 30	International Covenant on Civil and Political Rights (ICCPR)	Not quoted		
			Para 12 (footnote 16)	Article 14
RM 31	HRcT, <i>General Comment 29</i> , UN Doc CCPR/C/21/Rev.1/Add.11	Not quoted		
			Para 12 (footnote 16)	Para 11
RM 32	IACoMHR, <i>Report on Terrorism and Human Rights</i> , OEA/Ser.L/V/II.116, Chapter III.D	Not quoted		
			Para 12 (footnote 16)	Para 245
RM 33	IACoMHR, <i>Lindo et al. v. Peru</i> , Case 11.182, Report No. 49/00	Not quoted		
			Para 26 (footnotes 26 and 27)	Paras 115-118

**Extracts of Annexes and Reference Material
with indication of reference in the Request for IRP and/or Additional Submission**

Part 1. Extracts of Annexes

Part 2. Extracts of Reference Material

Extracts of Annexes and Reference Material

With a reference to

the Request for IRP and/or the Additional Submission

Part I : Annexes

Annex 1

Booking.com's application to operate the .hotels gTLD (Application ID 1-1016-75482)

Reference in the Request for IRP: § 15
Reference in the Additional Submission: Not quoted

18(b). How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

Booking.com intends to organize the registry operation for the .hotels gTLD in such a manner that it will minimize the likelihood of having multiple applications or registration requests for a particular domain name.

According to the Applicant, Booking.com, this can be achieved in any of the following ways, which likely needs to be further refined following ICANN's award and delegation of the .hotels gTLD to Booking.com:

1. From the Applicant's perspective, .hotels may bring a high degree of recognition and specialization to the currently existing name space. Where in most cases the specific connotation that has been initially given to the gTLDs (or even ccTLDs) has disappeared, the .hotels top-level domain is currently intended to be unambiguous as regards:

- * the identity of Booking.com as the Registry Operator;
- * the source of the content and services offered under the .hotels gTLD, by Booking.com and/or a third party appointed by the latter;
- * the affiliation between the Registry Operator and the .hotels gTLD, as well as the domain names registered in such gTLD; and
- * in term, and at the discretion of Booking.com, the affiliation between the Registry Operator and any third party that may become authorized by Booking.com to register and/or use one or more domain name registrations in the .hotels gTLD, to be delegated and/or using such domain name registrations, providing content under such domain names and/or hotel reservations services.

Annex 2

Despegar's application to operate the .hoteis gTLD (Application ID 1-1249-87712)

Reference in the Request for IRP: § 17
Reference in the Additional Submission: Not quoted

18(b). How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

18.2 How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

Despegar believes that a proposed .HOTEIS gTLD has the potential to offer the following benefits to Internet users and consumers:

- Establish a trusted source of information and an online marketplace for the millions of consumers who make travel reservations through Despegar's websites, as well as serve as a secure point of sale location for numerous global hotel chains, for third parties seeking information, and for the general Internet user population searching for hotel-related content in Portuguese;
- Provide Despegar and its qualified subsidiaries and affiliates with short and memorable Internet addresses; provide increased navigation to products, services, advertising campaigns, public interest content, public awareness initiatives, etc.;
- Minimize the cost and need for defensive registrations because domain names within .HOTEIS will only be allocated internally to Despegar and its qualified subsidiaries and affiliates, at least for the first three years of operation; and
- Develop a potential platform for secure access to, purchase of, and distribution of Despegar's services and information to its Portuguese-speaking consumers, in order to minimize the potential for counterfeit or infringing goods and services.

18.2.1 What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation?

The primary mission and purpose of the .HOTEIS gTLD is to provide a trusted, hierarchical, secure, and intuitive online marketplace to deliver Despegar's content, services, and information relating to hotels and Despegar's other offerings and information to Portuguese-speaking customers, interested parties, and the general Internet population. As Despegar continues to expand, it wishes to pursue and develop opportunities to market and distribute its online content and products to consumers throughout Latin America, the United States, and internationally in numerous languages, including Portuguese, and on various platforms, including the Internet and mobile devices, among others.

The tourism industry and travelers alike increasingly use the Internet as the main portal for making travel reservations. Given the increasing demand to access Despegar's services and products through a variety of channels, including domain names, Despegar believes that a .HOTEIS gTLD has the potential to provide an innovative, virtual avenue to Despegar goods and services that will deepen and broaden its relationship with consumers.

Most importantly, Despegar will be able to provide access to its products and online content in a targeted namespace devoid of piracy, cybersquatting, and other

malicious activities. Providing consumers with a trusted experience is paramount to Despegar, and a .HOTEIS gTLD will be used to further that goal by creating a safe, dedicated marketplace serving Portuguese-speaking consumers and interested parties.

While online travel companies such as Despegar fight a never-ending battle to protect consumers from piracy on the Internet, .HOTEIS would offer consumers a safe and intuitive means to access authorized content from Despegar and its qualified subsidiaries and affiliates, as well as to shop for and make reservations for travel-related services.

18.3.2 What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation?

The primary driving factors of the .HOTEIS gTLD are differentiation and innovation. Additionally, Despegar believes that the creation of a specific space dedicated to Portuguese-speaking individuals that are interested in, and businesses that offer, hotel- and travel-related content will benefit this group of consumers and businesses, as well general Internet users. The number of domain names registered will not measure the success of the gTLD, but rather success will be judged by the level of consumer recognition and trust that is placed in the .HOTEIS gTLD. Using this benchmark, Despegar strives to build consumer recognition and trust through the usage of the .HOTEIS gTLD that rises to the level of that found in the .EDU and .GOV gTLDs.

Annex 3

ICANN's communication of 26 February 2013

Reference in the Request for IRP: § 28
Reference in the Additional Submission: § 29

26 February 2013

Mr. Winston Fuhriman
Contact Information Redacted

RE: String similarity results for application ID 1-1016-75482

Dear Mr. Winston Fuhriman:

The String Similarity Panel has completed its review of the applied-for strings and ICANN would like to inform you of the Panel's findings for application ID 1-1016-75482.

After careful consideration and extensive review performed against criteria in Section 2.2.1.1 of the Applicant Guidebook, the String Similarity Panel has found that the applied-for string (.hotels) is visually similar to another applied-for string (.hoteis), creating a probability of user confusion.

Due to this finding, the following two strings have been placed in a contention set:

<u>String</u>	<u>Application ID</u>	<u>Applicant Name</u>
.hotels	1-1016-75482	Booking.com B.V.
.hoteis	1-1249-87712	Despegar Online SRL

The complete list of contention sets is being published on the ICANN microsite (newgtlds.icann.org). If you have any questions regarding this communication, please contact the Customer Service Center at newgtld@icann.org.

Sincerely,

Annex 4

Booking.com's DIDP request of 28 March 2013

Reference in the Request for IRP: § 30
Reference in the Additional Submission: § 40

28 March 2013

To the attention of Mr. Steve Crocker
Chair, ICANN Board
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292
By regular mail and by e-mail: didp@icann.org

DIDP Request

Dear Sir,

Pursuant to ICANN's Documentary Information Disclosure Policy (DIDP), I hereby request on behalf of Booking.com B.V. the documents described below.

ICANN's Transparency Obligation and DIDP

The Articles of Incorporation establishing ICANN require that it act "through open and transparent processes," and ICANN's Bylaws further reinforce this by establishing that transparency is a core value that should guide the decisions and actions of ICANN. Articles of Incorporation, Art. 4; Bylaws, Art. I, Sec. 2 & Art. III, Sec. 1.

In accordance with this mandate to act transparently, ICANN's DIDP "is intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality." ICANN Documentary Information Disclosure Policy, <http://www.icann.org/en/about/transparency/didp> (emphasis added). ICANN's DIDP therefore provides that, upon request, ICANN must provide certain "information not already publicly available."

Relevant Background

Booking.com is the applicant for the new gTLD ".hotels" (Application ID 1-1016-75482). On February 26, 2013, ICANN informed the applicant's primary contact that "the applied-for string (.hotels) is visually similar[] to another applied-for string (.hoteis), creating a probability of user confusion." Based on this finding of similarity, ".hotels" and ".hoteis" were placed in a contention set.

ICANN has previously made public some information about the String Similarity Review. For instance, the Applicant Guidebook, Module 2, describes in general terms the process by

which the review was conducted, including the fact that the review was to be completed by a String Similarity Panel. However, the previously-published information is incomplete: at no time has ICANN published any information about **the actual standards to be used to determine if strings were confusingly similar**.

Information Requested

Accordingly, Booking.com respectfully requests that ICANN produce all documents directly and indirectly relating to (1) the standard used to determine whether gTLD strings are confusingly similar and (2) the specific determination that “.hotels” and “.hoteis” are confusingly similar, including but not limited to:

1. The report of the String Similarity Panel detailing its findings with regard to all strings deemed to be confusingly similar, and in particular the findings as they relate to the strings “.hotels” and “.hoteis”;
2. The report or reports of the String Similarity Panel detailing its findings with regard to any and all strings that were considered for inclusion in contention sets, and the analysis or reasons leading to the conclusion that they were sufficiently dissimilar;
3. Any report to the ICANN Board regarding the findings of the String Similarity Panel, and in particular any report relating to “.hotels” and “.hoteis”;
4. Any research reports, studies, surveys, polls, or similar material that were created to evaluate whether gTLD strings, and in particular the strings “.hotels” and “.hoteis”, were likely to create confusion;
5. Documentation of any algorithm created to evaluate similarity between gTLD strings;
6. Any instructions, work plan, scope of work description, or similar material created by ICANN or the String Similarity Panel that includes discussion of the standard to be used in evaluating string similarity or potential consumer confusion;
7. Any report describing the selection criteria and/or the composition for the String Similarity Panel.

The information requested herein is not publicly available, and is therefore a proper subject for a DIDP Request.

The information does not meet any of the defined conditions for nondisclosure:

- The information was not provided by or to a government or international organization.
- The information is not likely to compromise the integrity of ICANN’s deliberative or decision-making process. Booking.com is seeking only information and documents that relate to the establishment and implementation of a standard; whatever deliberations may have occurred, the end result—the established standard and its implementation—cannot be confidential. Because ICANN is required by its Articles of Incorporation and

Bylaws to “operate to the maximum extent feasible in an open and transparent manner,” including by “employing open and transparent policy development mechanisms,” and “making decisions by applying documented policies neutrally and objectively,” there can be no justification for refusing to publish the requested documents.

- The information is not likely to compromise the integrity of the deliberative or decision-making process between ICANN and its constituencies or other entities, for the same reasons as noted above.
- The information is unrelated to any personnel, medical, contractual, remuneration, or similar records.
- The information is not likely to impermissibly prejudice any parties commercial, financial, or competitive interests. Additionally, to the extent that any requested document contains such information, and the information is unrelated to the substance of the String Similarity Review (for example, any financial or contract information related to consulting services), such information can be redacted before the publication of the documents.
- The information is not confidential business information or internal policies or procedures.
- The information will not endanger the life, health, or safety of any individual nor prejudice the administration of justice.
- The information is not subject to attorney-client privilege.
- The information is not drafts of communications.
- The information is not related in any way to the security or stability of the Internet.
- The information is not trade secrets or financial information;
- The information request is reasonable, not excessive or overly burdensome, compliance is feasible, and there is no abuse.

Finally, to the extent any of the information does fall into one of the defined conditions for non-disclosure, ICANN should nonetheless disclose the information, as the public interest in disclosing the information outweighs any harm that might be caused by disclosure. Indeed, there can be no harm from disclosing the information, as the ICANN community is entitled to know the standards by which ICANN (together with any consultants) makes decisions that determine what new gTLDs will be added to the Internet. ICANN’s transparency obligation, described by ICANN’s own Bylaws and Articles of Incorporation, require publication of information related to the standard governing what strings are confusingly similar, and the process, facts, and analysis used to implement that standard.

Moreover, unless the requested information is published, the ICANN community will have no way to evaluate whether ICANN has met its obligations to act fairly, for the benefit of the community, and in accord with its own policies. Additionally, the Expert Panels adjudicating String Confusion Objections will not be able to fairly or consistently apply the standards. And future applicants will have no reliable guidance for determining if a string is confusingly similar to an existing string, which will result in significant waste of money and time in the submission of applications with no chance of success.

Conclusion

In short, because there is no “compelling reason for confidentiality” and numerous compelling reasons for publication, and because publication is required by ICANN’s own Bylaws and Articles of Incorporation, Booking.com urges the publication of the requested information, including in particular the specific documents described above.

Yours sincerely,



Flip Petillion
Crowell & Moring LLP
Contact Information Redacted

Annex 5

ICANN's response of 27 April 2013 to Booking.com's DIDP request

Reference in the Request for IRP: § 30, § 67
 Reference in the Additional Submission: § 30, § 40

Pages 1 and 2:

Response to Documentary Information Disclosure Policy Request

To: Mr. Flip Petillion, Crowell & Moring LLP

Date: 27 April 2013

Re: Request No. 20130328-1

Thank you for your Request for Information dated 28 March 2013 (the "Request"), which was submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN) Documentary Information Disclosure Policy (DIDP). For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

In summary, the Request seeks "all documents directly and indirectly relating to (1) the standard used to determine whether gTLD strings are confusingly similar and (2) the specific determination that ".hotels" and ".hoteis" are confusingly similar." The Request identified certain specific categories of documents, including:

- a. Reports of the String Similarity Panel detailing findings related to strings determined to be confusingly similar and considered for inclusion in contention sets, including analysis and reasons for finding of "sufficient[] dissimilar[ity]" or particular findings relating to ".hotels" and ".hoteis." (Items 1, 2)
- b. Reports to the ICANN Board on the findings of the String Similarity Panel. (Item 3)
- c. Research reports, studies, surveys, polls, or similar materials created to evaluate whether gTLD strings were likely to create confusion, as well as instructions, work plans and scope of work descriptions or similar materials that include discussions of standards uses in evaluating string similarity or potential consumer confusion. (Items 4, 6)
- d. Documentation of any algorithm created to evaluate similarity between gTLD strings. (Item 5)
- e. Reports describing the selection criteria and/or the composition for the String Similarity Panel. (Item 7)

Response

An independent String Similarity Panel (SSP), coordinated by InterConnect Communications, in partnership with the University College London, performed the string similarity review specified at Section 2.2.1.1 of the Applicant Guidebook, available at <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>. The Applicant Guidebook sets out detail regarding the string similarity review, including the review methodology. **The SSP is responsible for the development of its own process**

documentation and methodology for performing the string similarity review, and is also responsible for the maintenance of its own work papers. Many of the items that are sought from ICANN within the Request are therefore not in existence within ICANN and cannot be provided in response to the DIDP Request. ICANN will, however, shortly be posting the SSP's String Similarity Process and Workflow on the New gTLD microsite, likely at <http://newgtlds.icann.org/en/announcements-and-media/announcement-26feb13-en>.

The report of the SSP regarding contention sets is already publicly posted at <http://newgtlds.icann.org/en/announcements-and-media/announcement-26feb13-en>. ICANN is not in possession of the SSP's work papers, or other documentation containing further detail regarding findings for the strings at issue in your Request, or "analysis or reasons leading to the conclusion that [strings] were sufficiently dissimilar." To the extent that the New gTLD Program Committee (which stands in the stead of the Board on matters relating to the New gTLD Program) received any reporting regarding the findings of the SSP, those documents have already been evaluated for publication and are provided in the Board Briefing Material accompanying the New gTLD Program Committee minutes, at <http://www.icann.org/en/groups/board/meetings>.

Some of the documents already identified in this DIDP Request also meet the Request for research reports, studies, or other documentation evaluating the potential similarity of strings, or discussing standards for the evaluation of string similarity (item c above). To the extent ICANN has any other documentary information that falls within this category of information, those documents are not appropriate for public disclosure through the DIDP, as set forth below.

ICANN has already publicly announced that it identified the SWORD algorithm, available at <https://icann.sword-group.com/algorithm/>, to assist in evaluation of string similarity. The SWORD algorithm is not proprietary to or defined by ICANN, nor are the details of the SWORD algorithm available from ICANN. It is the work of an external company (SWORD). To the extent that ICANN has details of the SWORD algorithm, ICANN cannot distribute the proprietary information of a third party. In the event that the SSP may have utilized different algorithms in performing its work, ICANN does not maintain documentation related any other algorithms.

ICANN's scope of work and selection criteria for the SSP are set forth in the expressions of interest document that is publicly available at <http://archive.icann.org/en/topics/new-gtlds/eoi-string-sim-31jul09-en.pdf>. InterConnect Communications, in partnership with the University College London, the entities selected to perform the SSP work, were responsible for the compilation of the panel membership. The documentation received by ICANN in response to the expressions of interest, to the extent that it is responsive to your Request, is not appropriate for public disclosure due to the expectations of confidentiality that accompany such proposals.

The following Defined Conditions for Nondisclosure are applicable to this Request:

Annex 6

Email from Booking.com to ICANN of 9 May 2013

Reference in the Request for IRP: § 30
Reference in the Additional Submission: Not quoted

From: Petillion, Flip
Sent: jeudi 9 mai 2013 00:36
To: DIDP
Cc: reconsideration@icann.org
Subject: RE: Response to DIDP Request 20130328-1

Dear Sir,

We have received ICANN's 27 April 2013 Response to DIDP Request No. 20130328-1 sent on behalf of Booking.com.

We note that ICANN's response fails to provide any additional information or address any of Booking.com's concerns as conveyed in its DIDP Request or Request for Reconsideration. Accordingly, Booking.com considers that its Request for Reconsideration (see the attached string of mails) remains valid and pending.

Annex 7

Email from ICANN to Booking of 14 May 2013

Reference in the Request for IRP: § 30
Reference in the Additional Submission: Not quoted

From: ICANN Reconsideration [mailto:reconsideration@icann.org]
Sent: mardi 14 mai 2013 03:39
To: Petillon, Flip
Subject: Re: [reconsideration request] Response to DIDP Request 20130328-1

Dear Mr. Petillon,

Thank you for your patience. ICANN intends to post the string similarity panel process documentation on or before close of business Friday, 17 May 2013 (PDT). Pursuant to your request, ICANN will afford you 30 days from the posting of the process document for the submission of a revised Request for Reconsideration.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, California 90094

Annex 8

Process description of the String Similarity new gTLD Evaluation Panel as posted by ICANN on 7 June 2013

Reference in the Request for IRP: § 30

Reference in the Additional Submission: § 24, § 29 (footnote 28)

Step	Name	Actions	Tracking	Who
5a	Detailed Evaluation for ASCII Strings	<ul style="list-style-type: none"> • Evaluator completes a pairwise comparison of the applied for string and all other applied for strings • Evaluator considers SWORD pair scores as documented in the string evaluation workbook • The results of these two evaluations are documented in the string evaluation workbook • If the string is found to resemble another visually that it is likely to deceive or cause confusion: the tracking record for the string is put into "IN CONTENTION SET – AWAITING CONFIRMATION" state; the string, ticket number and slot ID of the strings in the contention set are documented; the record is assigned to the Operations Manager. • If the string is not found to be similar to any other string: the record is put into "PASSED DETAILED EVALUATION" state; the tracking record is assigned to the Operations Manager. 	<ul style="list-style-type: none"> • Tracking records enter this step in "PASSED INITIAL EVALUATION" state • Records are set with a due date of ten working days • At the end of this step the record is either in the "IN CONTENTION SET – AWAITING CONFIRMATION" state or the "PASSED DETAILED EVALUATION" state • At the end of this step, the record is always owned by the Operations Manager 	<ul style="list-style-type: none"> • Strings are evaluated by ICC/UCL evaluators • Results are returned to the Operations Manager

Step	Name	Actions	Tracking	Who
10	Advice to ICANN	<ul style="list-style-type: none"> • Operations Manager transfers the result of the evaluation to ICANN's TAS • Operations Manager sets tracking record state to "REPORTING TO ICANN COMPLETED" • Operations Manager reports on contention sets in ICANN's TAS • Operations Manager puts the record into "EVALUATION CLOSED" state 	<ul style="list-style-type: none"> • Reporting to ICANN is completed • Tracking record is closed 	

Annex 9

Booking.com's follow-up request of 26 June 2013 to DIDP request

Reference in the Request for IRP: § 30

Reference in the Additional Submission: § 29 (footnote 28)

However, the Process Description gives only a general overview of the process of the String Similarity Review Panel. Even through today, ICANN has not given *any* information on how the string similarity review between the .hotels string and other strings was assessed, using this Process (*e.g.*, What visual assessment did the operations manager make in its initial assessment?, How did ICC/UCL evaluators evaluate the .hotels string?, etc.). In other words, ICANN has not provided any particularized rationale or analysis for putting .hotels and .hotels in a contention set.

Booking.com does not understand why it took ICANN so long to publish a Process Description that merely outlines the general workflow and that does not include any string specific information. This is all the more bizarre given the fact that the Process Description itself indicates that the string similarity evaluation has been documented in so-called evaluation workbooks. Was the string similarity evaluation process designed as specified by the Process Description before the start of the evaluation or has it been adapted over time? If this process was adapted, why was it adapted, how was it adapted and how did it influence the evaluation results? And why was the publication of the Process Description delayed?

Booking.com respectfully requests an answer to these questions along with a detailed overview of how the .hotels string has been evaluated and including a response to the following questions:

- How has the .hotels string been evaluated, according to which criteria (*e.g.*, what was included in the standard checklist to ensure consistency) and by whom?
- What were the qualifications of the project manager, evaluator(s) and core team members that evaluated the .hotels string?
- What did the "evaluation workbook" contain for the .hotels string? Who had access to the "evaluation workbook" for .hotels during the evaluation process?
- What was the advice that the Operations Manager provided to ICANN re .hotels? Did that advice ever change throughout the evaluation process? How and when did ICANN check that the .hotels string evaluation was performed in accordance with the process described in the Process Description?
- The document titled the "String Similarity new gTLD Evaluation Panel -- Process Description" included the heading: "New gTLD Program Evaluation Panels: Geographic Names". Is this the description of the String Similarity Evaluation, or the Geographic Names Evaluation? Is this a mistake, or, were the evaluations combined?

Considering ICANN's obligations of transparency and accountability, there cannot be any "compelling reason for confidentiality." And, as mentioned above, there are numerous compelling reasons for publication of this information. Booking.com cannot appropriately amend its filings until it gains a better understanding of what was decided, why it was decided, by whom it was decided, and in what particular fashion it was decided. Booking.com therefore urges ICANN to publish the requested information.

Annex 10

ICANN's response of 25 July 2013 to Booking.com's follow-up request

<p>Reference in the Request for IRP: § 31 Reference in the Additional Submission: Not quoted</p>
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Response to Documentary Information Disclosure Policy Request

To: Mr. Flip Petillion, Crowell & Moring LLP

Date: 25 July 2013

Re: Follow up to request No. 20130328-1

Thank you for your letter of 26 June 2013, in follow up to your Request for Information dated 28 March 2013 (the “Request”), which was submitted through the Internet Corporation for Assigned Names and Numbers’ (ICANN) Documentary Information Disclosure Policy (DIDP). For reference, a copy of your letter is attached to the email forwarding this follow up Response.

Items Requested

The follow up seeks the following items of information:

“Was the string similarity evaluation process designed as specified by the Process Description before the start of the evaluation or has it been adapted over time? If the process was adapted, why was it adapted, how was it adapted and how did it influence the evaluation results? And why was the publication of the Process Description delayed?”

“Booking.com respectfully requests an answer to these questions along with a detailed overview of how the .hotels string has been evaluated and including a response to the following questions:

- How has the .hotels string been evaluated, according to which criteria (e.g., what was included in the standard checklist to ensure consistency) and by whom?
- What were the qualifications of the project manager, evaluator(s) and core team members that evaluated the .hotels string?
- What did the “evaluation workbook” contain for the .hotels string? Who had access to the “evaluation workbook” for .hotels during the evaluation process?
- What was the advice that the Operations manger provided to ICANN re .hotels? did that advice ever change throughout the evaluation process? How and when did ICANN check that the .hotels string evaluation was performed in accordance with the process described in the Process Description.
- The document titled the “String Similarity new gTLD Evaluation Panel – Process Description” included the heading: “New gTLD Program Evaluation Panels: Geographic Names.” Is this the description of the String Similarity Evaluation, or the geographic Names Evaluation? Is this a mistake, or, were the evaluations combined?

Response

ICANN's DIDP is for requesting documentation within ICANN that is not already publicly available. The DIDP is not for the submission of questions for which narrative responses are sought. ICANN is therefore responding to your Request to the extent that it can be understood to seek documentary information.

As previously explained, an independent String Similarity Panel (SSP), coordinated by InterConnect Communications, in partnership with the University College London, performed the string similarity review specified at Section 2.2.1.1 of the Applicant Guidebook, available at <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>. The Applicant Guidebook sets out detail regarding the string similarity review, including the review methodology.

The evaluation of the .hotels string by the SSP panel was performed according to the SSP process documentation at <http://newgtlds.icann.org/en/program-status/evaluation-panels/geo-names-similarity-process-07jun13-en.pdf>.¹ The report of the SSP regarding contention sets is already publicly posted at <http://newgtlds.icann.org/en/announcements-and-media/announcement-26feb13-en>, and the report of the SSP is the only "advice" that ICANN received in regards to .hotels.

The SSP's work was subjected to quality control review, as has been publicly discussed, for example, at pages 21 and 22 of <http://dakar42.icann.org/meetings/dakar2011/presentation-new-gtld-program-update-26oct11-en.pdf> and page 14 and 15 of <http://dakar42.icann.org/meetings/dakar2011/presentation-new-gtld-program-update-26oct11-en.pdf>. The quality control review is not performed on a string-by-string basis, but over a sampling of applications.

ICANN's scope of work and selection criteria for the SSP are set forth in the expressions of interest document that is publicly available at <http://archive.icann.org/en/topics/new-gtlds/eoi-string-sim-31jul09-en.pdf>. InterConnect Communications, in partnership with the University College London, the entities selected to perform the SSP work, were responsible for the compilation of the panel membership as set forth in that selection criteria.

¹ There is an error in the posted documentation, as the Geographic Names Evaluation is also referenced in the header. However, the referenced documentation is only for the SSP. The Geographic Names Evaluation was performed according to the process available at <http://newgtlds.icann.org/en/program-status/evaluation-panels/geo-names-process-07jun13-en.pdf>. All of the panels performing reviews in the Initial Evaluation stage had process documentation posted at the same time, and the coordination of that posting among multiple panels contributed to a perceived delay in posting the SSP process documentation.

For the further information that you seek regarding the evaluation or findings for the strings at issue in your Request, or the identification of the specific evaluators, and the evaluation workbook requested in your follow up, that information is subject to the following Defined Conditions for Nondisclosure:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Confidential business information and/or internal policies and procedures.

As much of this Request seeks information similar to that requested initially, all Defined Conditions of Nondisclosure identified in ICANN's initial response are also incorporated herein.

About DIDP

ICANN's DIDP is limited to requests for information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, which is contained within the ICANN Accountability & Transparency: Framework and Principles please see <http://www.icann.org/en/about/transparency/didp>. ICANN makes every effort to be as responsive as possible to the entirety of your Request.

We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.

Annex 11

Letter by Mr. Mark McFadden to Mr. Russ Weinstein of 18 December 2013, as published by ICANN on 9 January 2014

Reference in the Request for IRP: § 32
Reference in the Additional Submission: § 24, § 32

Page 1:

18 December 2013

Russ Weinstein
Panel Coordination Manager
ICANN New gTLD Program
ICANN
12025 Waterfront Drive
Suite 300
Los Angeles, CA 90094-2536
USA



Contact Information Redacted

<http://www.icc-uk.com>

RE: String Similarity Process, Quality Control and Non-Exact Contention Sets

ICANN has previously published the Evaluation Panel Process Documentation for String Similarity at <http://newtlds.icann.org/en/program-status/evaluation-panels>

This note provides a summary of the process, quality control mechanisms and some considerations surrounding non-exact contention sets for the string similarity evaluation as requested by ICANN.

1. InterConnect Communications was contracted by ICANN to conduct the string similarity reviewed required by the Applicant Guidebook (AGB). The string similarity reviews were conducted as part of Initial Evaluation (IE) in the new gTLD Program.

Page 3:

10. Non-Exact Match Contention Sets. The evaluators were given the training and the AGB criteria, and it was left to their judgment to apply the test. On reviewing the results, it is seen that when ALL of the following features of a pairwise comparison are evident the evaluators found the string pair to be confusingly similar.

- Strings of similar visual length on the page
- Strings within +/- 1 character of each other
- Strings where the majority of characters are the same and in the same position in each string
- The two strings possess letter combinations that visually appear similar to other letters in the same position in each string
 - For example m~m & l~l

Page 4:

13. As completed workbooks came back to the Core Team for quality control, assessment and reporting, the Core Team made a decision about whether or not the results of the evaluation were ready to report to ICANN. The Core Team had the option, given any concern that they may have, to either defer reporting or request that a further, independent evaluation be done. This additional evaluation was assigned in the same way as those in contention were assigned: the second evaluator did not know that an initial evaluation had been made nor did the second evaluator know the results of the initial evaluation.

Annex 12

Request for Reconsideration 13-5 as filed on 28 March 2013

Reference in the Request for IRP: § 33
Reference in the Additional Submission: Not quoted

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BOOKING.COM B.V.

Request for Reconsideration of the Decision of February 26, 2013

1. Requester Information

Name: Booking.com B.V.
Address: Herengracht 597, Amsterdam, - 1017 CE, NL
Email: Contact Information Redacted
Phone Number (optional):

C/o:

Name: Flip Petillion, Crowell & Moring LLP
Address: Contact Information Redacted
Email: Contact Information Redacted
Phone Number (optional): Contact Information Redacted

2. Request for Reconsideration of (check one only):

Board action/inaction
 Staff action/inaction

3. Description of specific action(s) you are seeking to have reconsidered.

Booking.com B.V. (hereinafter, the 'Requester') seeks reconsideration of ICANN's decision to place the gTLD application for '.hotels' (Application ID 1-1016-75482) and the gTLD application for '.hoteis' (Application ID 1-1249-87712) in a non-exact match contention set (Attachment 1).

Booking.com B.V. also seeks reconsideration of ICANN's decision not to provide a detailed analysis or a reasoned basis for its decision to place the gTLD application for '.hotels' (Application ID 1-1016-75482) and the gTLD application for '.hoteis' (Application ID 1-1249-87712) in a non-exact match contention set.

Both decisions are hereinafter collectively referred to as the 'Decisions'.

4. Date of action/inaction:

The Decisions were published on February 26, 2013 (Attachment 1).

Annex 13

Request for Reconsideration 13-5 as amended on 7 July 2013

Reference in the Request for IRP: § 33
Reference in the Additional Submission: Not quoted

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7 July 2013

To the attention of Mr. Steve Crocker and Mr. Cherine Chalaby
Chair, ICANN Board *resp.* Chair, New gTLD Program Committee

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

By regular mail and by e-mail: reconsideration@icann.org

Request for Reconsideration the Decisions of February 26, 2013 Materially Affecting Booking.com B.V.

Dear Sirs,

Please find attached an amended Reconsideration Request relating to the Decisions of February 26, 2013, submitted on behalf of Booking.com B.V. ("Booking.com")

The original Reconsideration Request was submitted to Mr. Crocker in his capacity as Chair of the ICANN Board, within the 30-day window of opportunity to submit such a request. The amended Reconsideration Request is filed within the 30-day window of opportunity granted by ICANN following the posting of the process description of the String Similarity new gTLD Evaluation Panel on 7 June 2013.

Despite the fact that the origin of the decisions is unclear, this Reconsideration Request is being submitted as a reconsideration of a "Staff action." In the event that the decisions referenced above are determined to be a "Board action," this request may be amended.

Reference is also made to our letters of 9 May 2013 and 26 June 2013, in which we had indicated that ICANN had failed to provide additional information or address any of Booking.com's concerns in a way that allows Booking.com to appropriately amend its Request for Reconsideration.

Because our request to publish additional information remains unanswered and because ICANN did not provide any information that the 30-day window following its communication of 7 June 2013 would be extended, Booking.com has decided to file this amended Reconsideration Request.

Booking.com reserves the right to further amend its Request for Reconsideration upon receipt of the information it previously requested and urges ICANN to publish the requested information as specified in our letter of 26 June 2013.

Yours sincerely,

A handwritten signature in black ink that reads "Flip Petillion". The signature is written in a cursive, slightly slanted style.

Flip Petillion
Crowell & Moring LLP
Contact Information Redacted

BOOKING.COM B.V.

Request for Reconsideration of the Decision of February 26, 2013

1. Requester Information

Name: Booking.com B.V.
Address: Contact Information Redacted
Email: Contact Information Redacted
Phone Number (optional):

C/o:

Name: Flip Petillion, Crowell & Moring LLP
Address: Contact Information Redacted
Email: Contact Information Redacted
Phone Number (optional): Contact Information

2. Request for Reconsideration of (check one only):

Board action/inaction
 Staff action/inaction

3. Description of specific action(s) you are seeking to have reconsidered.

Booking.com B.V. (hereinafter, the "Requester") seeks reconsideration of ICANN's decision to place the gTLD application for ".hotels" (Application ID 1-1016-75482) and the gTLD application for ".hoteis" (Application ID 1-1249-87712) in a non-exact match contention set (**Attachment 1**).

Booking.com B.V. also seeks reconsideration of ICANN's decision not to provide a detailed analysis or a reasoned basis for its decision to place the gTLD application for ".hotels" (Application ID 1-1016-75482) and the gTLD application for ".hoteis" (Application ID 1-1249-87712) in a non-exact match contention set.

Both decisions are hereinafter collectively referred to as the "Decisions".

4. Date of action/inaction:

The Decisions were published on February 26, 2013 (**Attachment 1**)

5. On what date did you become aware of the action or that action would not be taken?

The Decisions were communicated to the primary contact of the Requester as specified in the Requester's application for the .hotels gTLD ('Primary Contact') on February 26, 2013 (**Attachment 2**). The Requester became aware of the Decisions on February 27, 2013, when the Primary Contact informed the Requester of the Decisions.

6. Describe how you believe you are materially affected by the action or inaction:

The Requester is the applicant for the '.hotels' gTLD. The Decisions will impact the Requester because ICANN has made it clear in the Applicant Guidebook that it "will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings" (Applicant Guidebook, Module 4-2). ICANN refers to a group of applications for contending strings as a contention set. By placing '.hotels' and '.hoteis' in a non-exact match contention set, ICANN's String Similarity Review Panel apparently determined that these strings would result in user confusion. As a result, ICANN will not approve both the application for '.hotels' and the application for '.hoteis'.

This directly impacts the Requester as follows:

- The Requester will not be allowed to operate a '.hotels' gTLD in the event that the '.hoteis' gTLD is recommended for delegation; and
- If the Requester wants to operate the '.hotels' gTLD, and the '.hoteis' application is not rejected by ICANN, it will need to either negotiate with the Applicant for '.hoteis' or participate in an auction with a view to obtaining the delegation of the '.hotels' gTLD. Both may require additional investments that are not justified given the erroneous decision by ICANN's String Similarity Review Panel

Regarding ICANN's failure to provide a detailed explanation of its decision and the corresponding analysis, Requester is left without actual knowledge of the basis for ICANN's decision to put .hotels into a non-exact match contention set with .hoteis.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

The Requester considers that the Decisions also adversely affect others:

- The Applicant for the '.hoteis' gTLD is adversely affected as it will equally not be allowed to operate a '.hoteis' gTLD if a '.hotels' gTLD is recommended;
- Internet users are adversely affected as there may be less competition at a TLD level as well as fewer TLDs targeted at non-English speaking communities (see response to Question 11 below); and

- Without a detailed explanation of the non-exact match contention set decision, the ICANN community is deprived of an understanding of ICANN’s reasoning, analysis, and standards when evaluating user confusion.

8. If you are complaining of an action, are you seeking a temporary stay of the action? (Check one)

Yes

No

The Requester does not believe that a temporary stay is required. Instead, Requester asks that ICANN’s decision regarding the non-exact match contention set be reversed. In the alternative, Requester asks that ICANN provide the detailed analysis and reasoning regarding the decision to place hotels into a non-exact match contention set.

8a. If Yes, you are seeking a temporary stay, do you believe any harm(s) will occur if the action is not stayed? (Check one)

Not applicable

8b. If you answered Yes to 8.a., please describe the harm(s) that you believe will occur if the action is not stayed:

Not applicable

9. Detail of Board or Staff Action – Required Information

At present, it appears that the String Similarity review was likely conducted by a third party, but was then accepted and implemented by ICANN staff. It is unclear whether or not the decision of February 26, 2013 was reviewed by the ICANN Board, although the publicly available information suggests that it was not. In any event, ICANN Staff published the results of the String Similarity review on the ICANN website and communicated the decision to Requester’s Primary Contact (**Attachment 1**). As a result, ICANN (Staff) has communicated that ICANN endorsed the decision to put the ‘hotels’ and ‘hoteis’ strings in a contention set. This is also confirmed by the process description of the String Similarity new gTLD Evaluation Panel (hereinafter, the ‘Process Description’), which ICANN published on 7 June 2013. Indeed, the last step of the process described in this Process Description, which is entitled “Advice to ICANN”, clearly indicating that the Evaluation Panel only provided advice to ICANN and that ICANN made the ultimate decision. This is confirmed by two recent Resolutions of the New gTLD Program Committee (NGPC):

- In Resolution 2013.06.04.NG01 (**Attachment 6**), the NGPC accepted the GAC Advice to consider whether to allow singular and plural versions of the same string;

- In Resolution 2013.06.25.NG07 (**Attachment 7**), the NGPC determined that no changes were needed to the existing mechanisms in the Applicant Guidebook to address potential consumer confusion resulting from allowing singular and plural versions of the same string.

These Resolutions indicate that ICANN first considered both the advice from the String Similarity new gTLD Evaluation Panel and the advice from the GAC in relation to string similarity and ultimately made the decision to put applied-for strings in a contention set or not.

The decision to put ‘hotels’ and ‘hotels’ in a contention set is contrary to ICANN’s established policy as set out in the Applicant Guidebook; the failure by ICANN to provide reasoning for the decision is contrary to ICANN’s mandate to act transparently and fairly; and it seems likely that the contention set decision was made without all of the material information.

The Applicant Guidebook states:

“similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

[...]

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review [...] is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in direct contention if they are identical or similar to one another.

[...]

Two strings are in indirect contention if they are both in direct contention with a third string, but not with one another.” (Attachment 2, Module 4-2, 4-3)

The Applicant Guidebook also states:

“Standard for String Confusion – String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.” (Attachment 2, Module 2-8)

As a result, two strings should only be placed in a contention set to the extent that they are so similar that they create a probability of user confusion if both strings are delegated into the root zone.

For the following reasons, there is no probability of user confusion if both ‘hotels’

and ‘hoteis’ were delegated as a gTLD string into the root zone:

- The difference between the letter ‘i’ and the letter ‘l’ clearly distinguishes the ‘hotels’ and ‘hoteis’ strings from each other;
- The intended use of the ‘hotels’ gTLD clearly distinguishes this gTLD from the ‘hoteis’ gTLD; and
- The Internet user will not be confused between ‘hotels’ and ‘hoteis’, irrespective of whether or not the Internet user is requesting information or whether the Internet user is receiving information.

This is further explained below under Question 11.

Because there is no probability of user confusion if both ‘hoteis’ and ‘hotels’ were delegated as a gTLD string into the root zone, it is contrary to ICANN’s policy to put them in a contention set.

ICANN’s Articles of Incorporation require it to act “through open and transparent processes,” and its Bylaws further provide that ICANN must “operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness,” (Articles of Incorporation, Art. 4; Bylaws, Art. III, sec. 1) The Bylaws also require that ICANN “mak[e] decisions by applying documented policies neutrally and objectively, with integrity and fairness.” (Bylaws, Art. I, Sec. 2.8). ICANN’s Bylaws also prohibit discriminatory treatment, “ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment.” (Bylaws, Art. II, Sec. 3)

ICANN’s failure to provide any reasoned decision or analysis in support of putting ‘hotels’ and ‘hoteis’ in a contention set is contrary to ICANN’s mandate to act transparently, and prevents the Requester and the ICANN community from determining whether the decision was made fairly and in a non-arbitrary and non-discriminatory fashion.

Additionally, given the lack of a reasoned decision or other public information regarding ICANN’s string contention analysis and decision, it is impossible to know what information ICANN considered in establishing the contention set (or approving the contention set proposed by an independent contractor). In an attempt to determine what information ICANN Staff considered in making the contention set decision, the Requester had separately submitted a request for information under ICANN’s Documentary Information Disclosure Policy. It seems likely that ICANN failed to consider, for example, the information presented in this Request, which is materially related to the contention set decision. At a minimum, the Requester was never given an opportunity to provide information that would refute the mistaken contention that there is likely to be consumer confusion between ‘hotels’ and ‘hoteis’.

In 27 April 2013, ICANN issued a response to the Requester’s DIDP request. ICANN stated that an independent String Similarity Panel (SSP) performed the string similarity review and that the SSP was responsible for the development of its own

process documentation and methodology for performing the string similarity review. ICANN declared that many of the items that are sought from ICANN in the DIDP Request are not in existence within ICANN and cannot be provided in response to the DIDP Request. Nonetheless, ICANN indicated that it would be posting the SSP's String Similarity Process and Workflow shortly.

On 9 May 2013, the Requester wrote to ICANN noting that it had failed to provide any additional information or address any of the Requester's concerns as conveyed in its DIDP Request or Request for Reconsideration. Indeed, as demonstrated above, ICANN received the advice from the SSP on which it based its decision to put ".hotels" and ".hoteis" in a contention set. Stating that ICANN does not have many of the items sought within the DIDP request is not a reason for ICANN to disregard its obligations under ICANN's Articles of Incorporation and Bylaws and to disregard its obligation to provide a reasoned decision or analysis for putting ".hotels" and ".hoteis" in a contention set.

On 14 May 2013, ICANN responded that it intended to post the String Similarity Process and Workflow by 17 May 2013. On 7 June 2013, ICANN finally posted a process description of the String Similarity new gTLD Evaluation Panel (**Attachment 5**, hereinafter, the "Process Description"). ICANN also indicated that, as from the posting of the Process Description, the Requester had a 30-day period to amend its Request for Reconsideration.

On 26 June 2013, the Requester wrote to ICANN that the Process Description did not satisfy its request. On 3 July 2013, ICANN informed the Requester that it received this letter and that it is preparing a response. The Requester has not yet received an answer to its request, as formulated in its letter of 26 June 2013.

As indicated in the Requester's letter of 26 June 2013, the Process Description only gives a general overview of the process of the String Similarity Review Panel. Even through today, ICANN has not given *any* information on how the string similarity review between the .hotels string and other strings was assessed, using this Process (e.g., What visual assessment did the operations manager make in its initial assessment?, How did ICC/UCL evaluators evaluate the .hotels string?, etc.). In other words, ICANN has not provided any particularized rationale or analysis for putting .hotels and .hoteis in a contention set.

The Requester does not understand why it took ICANN so long to publish a Process Description that merely outlines the general workflow and that does not include any string specific information. This is all the more bizarre given the fact that the Process Description itself indicates that the string similarity evaluation has been documented in so-called evaluation workbooks. Was the string similarity evaluation process designed as specified by the Process Description before the start of the evaluation or has it been adapted over time? If this process was adapted, why was it adapted, how was it adapted and how did it influence the evaluation results? And why was the publication of the Process Description delayed?

The Requester requested an answer to these questions along with a detailed overview of how the .hotels string has been evaluated and including a response to the following questions – a request that remains pending – :

- How has the .hotels string been evaluated, according to which criteria (e.g.,

what was included in the standard checklist to ensure consistency) and by whom specifically?

- What were the qualifications of the project manager, evaluator(s) and core team members that evaluated the .hotels string?
- What did the "evaluation workbook" contain for the .hotels string? Who had access to the "evaluation workbook" for .hotels during the evaluation process?
- What was the advice that the Operations Manager provided to ICANN re .hotels? Did that advice ever change throughout the evaluation process? How and when did ICANN check that the .hotels string evaluation was performed in accordance with the process described in the Process Description?
- The document titled the "String Similarity new gTLD Evaluation Panel – Process Description" included the heading, "New gTLD Program Evaluation Panels: Geographic Names". Is this the description of the String Similarity Evaluation, or the Geographic Names Evaluation? Is this a mistake, or, were the evaluations combined?

Considering ICANN's obligations of transparency and accountability, there cannot be any "compelling reason for confidentiality." And, as mentioned above, there are numerous compelling reasons for publication of this information.

As indicated in the Requester's letter of 26 June 2013, the Requester cannot appropriately amend its filings until it gains a better understanding of what was decided, why it was decided, by whom it was decided, and in what particular fashion it was decided.

As ICANN has not yet replied to this request and given the imposed deadline to amend the Request for Reconsideration within 30 days following the posting of the Process Description, the Requester decided filing an amended Request for Reconsideration within this deadline. However, the Requester still urges ICANN to publish the requested information and reserves the right to amend its Request for Reconsideration upon receipt of the requested information.

10. What are you asking ICANN to do now?

The Requester asks ICANN to reverse the decision in which 'hotels' (Application ID 1-1016-75482) and 'hoteis' (Application ID 1-1249-87712) were put in a non-exact match contention set.

ICANN is requested to decide that the 'hotels' gTLD as applied for in the Application with ID 1-1016-75482 can co-exist with the 'hoteis' gTLD as applied for in the Application with ID 1-1249-87712.

In the event that ICANN will not immediately reverse its decision, the Requester asks that ICANN provide its detailed analysis for the decision to include .hotels into a non-exact match contention set and to give the Requester the opportunity to respond to this, before taking a final decision.

11. What grounds or justification support your request?

- a) **The difference between the letter “i” and the letter “l” clearly distinguishes the ‘hotels’ and ‘hoteis’ strings from each other**

The difference between the ‘hotels’ and ‘hoteis’ strings is grounded in the distinction between the character ‘i’ and the character ‘l’. In linguistic terms, the characters ‘i’ and ‘l’ are manifestly distinct.

The Requester asked an independent expert to provide his views on the following questions:

- 1) Regardless of the ICANN framework, would you consider the ‘hotels’ and ‘hoteis’ strings to be confusing?
- 2) Given the ICANN framework, would you consider both strings visually similar to each other creating a probability of user confusion?

The Requester reserves the right to issue requests to additional experts.

The expert to whom this request was addressed, Professor Piet Desmet, is full professor at the University of Leuven in linguistics and language teaching methodology.

Professor Piet Desmet from the University of Leuven has found that the difference between ‘hotels’ and ‘hoteis’ can be reduced to the difference between l and i, which distinguishes both words. The opposition between l and i is clearly distinctive. There are a considerable number of “minimal pairs” in which the l and i alternate, i.e. pairs of words which differ from each other only in the alternation of l and i. These are minimal pairs like candies/candles, eider/elder, fails/falls, mail/mall or wail/wall. So the alternation of l and i in English is distinctive enough to keep words apart solely on the basis of this opposition.

This implies that words that only differ in the alternation of l and i do not confuse the language users visually, as they perfectly distinguish both characters. If this were not the case, the alternation would already have evolved to an alternative that speakers find more distinctive.

Professor Desmet points out that every language consists of a fixed set of phonemes (sounds) and graphemes (letters) that can be combined without limitations. This linguistic reality poses no problems for the language user, who is used to being confronted with words that differ from each other in only one character. This does not prevent the language user from visually distinguishing these words so as to see them as different meaningful entities.

Professor Desmet considers the elements above sufficient to dismiss the idea of string confusion in dealing with minimal pairs that only differ in the alternation of l and i.

Accordingly, ‘hotels’ and ‘hoteis’ are not confusingly similar, and the Decision that they should be placed in a contention set is therefore contrary to established ICANN policy. Requester’s questions and Professor Desmet’s answers are submitted as

Attachment 3 and Attachment 4, respectively

b) The intended use of the ‘hotels’ gTLD clearly distinguishes this gTLD from the ‘hoteis’ gTLD

Both the Applicant for the ‘hotels’ gTLD and the Applicant for the ‘hoteis’ gTLD intend to use the applied-for gTLD in a very controlled and restricted way. Both gTLDs will be operated as single-registrant gTLDs. The Applicant for ‘hotels’ targets different language communities than the Applicant for ‘hoteis’. The ‘hotels’ gTLD is targeted to English-speaking, Dutch-speaking and/or French-speaking communities, whereas the ‘hoteis’ gTLD is targeted to the Portuguese language community.

Given this clear distinction in target groups and the restricted and controlled use in both gTLDs, the ‘hotels’ and ‘hoteis’ gTLDs even become more distinct from each other. As a result, there is no likelihood that the Internet user will be confused, and ICANN’s decision to place them in a contention set is contrary to established ICANN policy.

c) The Internet user will not be confused

As seen above, ‘hotels’ and ‘hoteis’ are clearly distinct from each other. As a result, an Internet user searching for information on hotels in English, French or Dutch would not mix up the search term ‘hotels’ with the Portuguese term ‘hoteis’ because the word ‘hoteis’ does not exist in the English language. The same is true for an Internet user searching for information on hotels in Portuguese. The user would not mix up the search term ‘hoteis’ with the English term ‘hotels’, the word ‘hotels’ being non-existent in Portuguese.

As indicated above, the difference between the ‘hotels’ and ‘hoteis’ strings is grounded in the distinction between the character ‘i’ and the character ‘l’, which are manifestly different from a linguistic point of view.

The Internet user has experience with the difference between the characters ‘i’ and ‘l’, also at a TLD level. Indeed, many TLDs that only differ by the substitution of the character ‘i’ by the character ‘l’ currently coexist, without any problem:

- ‘.gi’ coexists with ‘.gl’
- ‘.ai’ coexists with ‘.al’
- ‘.lt’ coexists with ‘.it’ (**Attachment 8**).

The Internet user also has experience with the coexistence between the TLDs ‘.il’ and ‘.li’, where the characters ‘i’ and ‘l’ are interchanged. There is no reason to assume that the Internet user would be confused by ‘.hotels’ and ‘.hoteis’, especially given the fact that the Internet user is already used to the difference between the characters ‘i’ and ‘l’ at a TLD level for many years.

It is also extremely unlikely that the Internet user would make a typographical error when searching for ‘hotels’, which would replace ‘hotels’ by ‘hoteis’, or *vice versa*.

The letter ‘l’ and the letter ‘i’ are located on a completely different location on a computer keyboard, whether qwerty, azerty or qwertz. Even in the very unlikely event that such error is made by an Internet user searching in English, such Internet user will immediately notice that an error has occurred because the information on ‘hoteis’ would be in Portuguese.

The same would be true for an Internet user looking for ‘hoteis’. First, the word ‘hotels’ is non-existent in the Portuguese language. As a result, an Internet user looking for information on hotels in Portuguese would not confuse ‘hoteis’ with the English word. Second, the Internet user would not make a typographical error when searching for ‘hoteis’, which would replace ‘hoteis’ by ‘hotels’. Finally, in the unlikely event that this typographical error is made, a Portuguese-speaking Internet user would also immediately notice that an error has occurred because the information on ‘hotels’ would not be in Portuguese.

As a result, the Internet user would not be confused; all of the above analysis demonstrates that ICANN’s decision to place ‘.hoteis’ and ‘.hotels’ in contention is contrary to established policy. Nor is it clear whether ICANN considered any of the above material in determining whether ‘.hotels’ and ‘.hoteis’ were confusingly similar. As a result, Requester asks that ICANN reverse the decision to place .hotels in a non-exact match contention set.

12. Do you have any documents you want to provide to ICANN?

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>.

The Requester wishes to submit the following documents in support of its request:

- Attachment 1: Decision to place ‘hotels’ (Application ID 1-1016-75482) and ‘hoteis’ (Application ID 1-1249-87712) in a non-exact match contention set.
- Attachment 2: Applicant Guidebook (Version 2012-06-04).
- Attachment 3: Mail from Flip Petillion to Prof. Dr. Piet Desmet of March 21, 2013.
- Attachment 4: Mail from Prof. Dr. Piet Desmet to Flip Petillion of March 22, 2013.
- Attachment 5: Process description of the String Similarity new gTLD Evaluation Panel as published on June 7, 2013.
- Attachment 6: ICANN Resolution 2013.06.04 NG01, inclusive of its Annex
- Attachment 7: ICANN Resolution 2013.06.25 NG07
- Attachment 8: List of all currently existing TLDs, as delegated by IANA

The Requester also may submit additional documents not yet available, such as other

expert reports and analyses, in relation to the rationale that ICANN is requested to provide concerning its decision to put '.hotels' and '.hoteis' in a contention set. The Requester therefore requests that ICANN allow the submission of these documents when they become available.

*

Annex 14

Board Governance Committee recommendation on Request for Reconsideration 13-5

Reference in the Request for IRP: § 33
Reference in the Additional Submission: § 41

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**RECOMMENDATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUEST 13-5**

1 AUGUST 2013¹

On 7 July 2013, Booking.com B.V. (“Booking.com”), through its counsel, Crowell & Moring, submitted a reconsideration request (“Request”). The Request was revised from Booking.com’s 28 March 2013 submission of a similar reconsideration request, which was put on hold pending the completion of a request pursuant to ICANN’s Documentary Information Disclosure Policy (“DIDP”).

The Request asked the Board to reconsider the ICANN staff action of 26 February 2013, when the results of the String Similarity Panel were posted for the New gTLD Program. Specifically, the Request seeks reconsideration of the placement of the applications for .hotels and .hoteis into a string similarity contention set.

I. Relevant Bylaws

As the Request is deemed filed as of the original 28 March 2013 submission, this Request was submitted and should be evaluated under the Bylaws that were in effect from 20 December 2012 through 10 April 2013. Article IV, Section 2.2 of that version of ICANN’s Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

¹ At its 1 August 2013 meeting, the Board Governance Committee deliberated and reached a decision regarding this Recommendation. During the discussion, however, the BGC noted revisions that were required to the draft Recommendation in order to align with the BGC’s decision. After revision and allowing for the BGC member review, the BGC Recommendation on Request 13-5 was finalized and submitted for posting on 21 August 2013.

(a) one or more staff actions or inactions that contradict established ICANN policy(ies); or

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

A third criteria was added to the Bylaws effective 11 April 2013, following the Board's adoption of expert recommendations for revisions to the Reconsideration process. That third basis for reconsideration, focusing on Board rather than staff conduct, is "one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information." (See <http://www.icann.org/en/about/governance/bylaws#IV>.)

When challenging a staff action or inaction, a request must contain, among other things, a detailed explanation of the facts as presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). See Article IV §2.6(g) of the 20 December 2012 version of Bylaws (<http://www.icann.org/en/about/governance/bylaws/bylaws-20dec12-en.htm#IV>) and the current Reconsideration form effective as of 11 April 2013 (<http://www.icann.org/en/groups/board/governance/reconsideration/request-form-11apr13-en.doc>).

Dismissal of a request for reconsideration is appropriate if the Board Governance Committee ("BGC") finds that the requesting party does not have standing because the party failed to satisfy the criteria set forth in the Bylaws. These standing requirements are intended to protect the reconsideration process from abuse and to ensure that it is not used as a mechanism simply to challenge an action with which someone disagrees, but that it is limited to situations where the staff acted in contravention of established policies.

The Request was originally received on 28 March 2013, which makes it timely under the then effective Bylaws.² Bylaws, Art. IV, § 2.5.

II. Background

Within the New gTLD Program, every applied-for string has been subjected to the String Similarity Review set out at Section 2.2.1.1 of the Applicant Guidebook. The String Similarity Review checks each applied-for string against existing TLDs, reserved names and other applied-for TLD strings (among other items) for “visual string similarities that would create a probability of user confusion.” (Applicant Guidebook, Section 2.2.1.1.1.) If applied-for strings are determined to be visually identical or similar to each other, the strings will be placed in a contention set, which is then resolved pursuant to the contention resolution processes in Module 4 of the Applicant Guidebook. If a contention set is created, only one of the strings within that contention set may ultimately be approved for delegation.

After issuing a request for proposals, ICANN selected InterConnect Communications (“ICC”) to perform the string similarity review called for in the Applicant Guidebook. On 26 February 2013, ICANN posted ICC’s report, which included two non-exact match contention sets (.hotels/.hoteis and .unicorn/.unicom) as well as 230 exact match contention sets. <http://www.icann.org/en/news/announcements/announcement-26feb13-en.htm>. The String Similarity Review was performed in accordance with process documentation posted at <http://newgtlds.icann.org/en/program-status/evaluation-panels/geo-names-similarity-process-07jun13-en.pdf>. As part of ICANN’s acceptance of the ICC’s results, a quality assurance review

² ICANN staff and the requester communicated regarding the holds placed on the Request pending the DIDP Response, and the requester met all agreed-upon deadlines, thereby maintaining the timely status of this Request.

was performed over a random sampling of applications to, among other things, test whether the process referenced above was followed.

Booking.com is an applicant for the .hotels string. As a result of being placed in a contention set, .hotels and .hoteis cannot both proceed to delegation. Booking.com will have to resort to private negotiations with the applicant for .hoteis, or proceed to an auction to resolve the contention issue. Request, page 4.

Although the String Similarity Review was performed by a third party, ICANN has determined that the Reconsideration process can properly be invoked for challenges of the third party's decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision. Because the basis for the Request is not Board conduct, regardless of whether the 20 December 2012 version, or the 11 April 2013 version, of the Reconsideration Bylaws is operative, the BGC's analysis and recommendation below would not change.

III. Analysis of Booking.com's Request for Reconsideration

Booking.com seeks reconsideration and reversal of the decision to place .hotels and .hoteis in a non-exact match contention set. Alternatively, Booking.com requests that an outcome of the Reconsideration process could be to provide "detailed analysis and reasoning regarding the decision to place .hotels into a non-exact match contention set" so that Booking.com may "respond" before ICANN takes a "final decision." (Request, Page 9.)

A. Booking.com's Arguments of Non-Confusability Do Not Demonstrate Process Violations

The main focus of Booking.com's Request is that .hotels and .hoteis can co-exist in the root zone without concern of confusability. (Request, pages 10 – 12.) To support this assertion, Booking.com cites to the opinion of an independent expert that was not part of the string

similarity review panel (Request, pages 10-11), references the intended uses of the .hotels and .hoteis strings (Request, page 11) and the difference in language populations that is expected to be using .hotels and .hoteis (Request, page 11), references ccTLDs that coexist with interchangeable “i”s and “l”s (Request, page 11), notes the keyboard location of “i”s and “l”s (Request, page 12), and contends that potential users who get to the wrong page would understand the error they made to get there (Request, page 12).

Booking.com does not suggest that the process for String Similarity Review set out in the Applicant Guidebook was not followed, or that ICANN staff violated any established ICANN policy in accepting the String Similarity Review Panel (“Panel”) decision on placing .hotels and .hoteis in contention sets. **Instead, Booking.com is supplanting what it believes the review methodology for assessing visual similarity should have been, as opposed to the methodology set out at Section 2.2.1.1.2 of the Applicant Guidebook. In asserting a new review methodology, Booking.com is asking the BGC (and the Board through the New gTLD Program Committee (NGPC)) to make a substantive evaluation of the confusability of the strings and to reverse the decision.** In the context of the New gTLD Program, the Reconsideration process is not however intended for the Board to perform a substantive review of Panel decisions. While Booking.com may have multiple reasons as to why it believes that its application for .hotels should not be in contention set with .hoteis, **Reconsideration is not available as a mechanism to re-try the decisions of the evaluation panels.**³

³ Notably, Booking.com fails to reference one of the key components of the documented String Similarity Review, the use of the SWORD Algorithm, which is part of what informs the Panel in assessing the visual similarity of strings. .hotels and .hoteis score a 99% on the publicly available SWORD algorithm for visual similarity. See <https://icann.sword-group.com/algorithm/>.

Booking.com also claims that its assertions regarding the non-confusability of the .hotels and .hoteis strings demonstrate that “it is contrary to ICANN policy⁴ to put them in a contention set.” (Request, pages 6-7.) This is just a differently worded attempt to reverse the decision of the Panel. No actual policy or process is cited by Booking.com, only the suggestion that – according to Booking.com – the standards within the Applicant Guidebook on visual similarity should have resulted in a different outcome for the .hotels string. This is not enough for Reconsideration.

Booking.com argues that the contention set decision was taken without material information, including Booking.com’s linguistic expert’s opinion, or other “information that would refute the mistaken contention that there is likely to be consumer confusion between ‘.hotels’ and ‘.hoteis.’” (Request, page 7.) However, there is *no* process point in the String Similarity Review for applicants to submit additional information. This is in stark contrast to the reviews set out in Section 2.2.2 of the Applicant Guidebook, including the Technical/Operational review and the Financial Review, which allow for the evaluators to seek clarification or additional information through the issuance of clarifying questions. (AGB, Section 2.2.2.3 (Evaluation Methodology).) As ICANN has explained to Booking.com in response to its DIDP requests for documentation regarding the String Similarity Review, the Review was based upon the methodology in the Applicant Guidebook, supplemented by the Panel’s process documentation; the process does not allow for additional inputs.

Just as the process does not call for additional applicant inputs into the visual similarity review, Booking.com’s call for further information on the decision to place .hotels and .hoteis in

⁴ It is clear that when referring to “policy”, Booking.com is referring to the process followed by the String Similarity Review.

a contention set “to give the Requester the opportunity to respond to this, before taking a final decision” is similarly not rooted in any established ICANN process at issue. (Request, page 9.) First, upon notification to the applicants and the posting of the String Similarity Review Panel report of contention sets, the decision was already final. While applicants may avail themselves of accountability mechanism to challenge decisions, the use of an accountability mechanism when there is no proper ground to bring a request for review under the selected mechanism does not then provide opportunity for additional substantive review of decisions already taken.

Second, while we understand the impact that Booking.com faces by being put in a contention set, and that it wishes for more narrative information regarding the Panel’s decision, no such narrative is called for in the process. The Applicant Guidebook sets out the methodology used when evaluating visual similarity of strings. The process documentation provided by the String Similarity Review Panel describes the steps followed by the Panel in applying the methodology set out in the Applicant Guidebook. ICANN then coordinates a quality assurance review over a random selection of Panel’s reviews to gain confidence that the methodology and process were followed. That is the process used for a making and assessing a determination of visual similarity. Booking.com’s disagreement as to whether the methodology should have resulted in a finding of visual similarity does not mean that ICANN (including the third party vendors performing String Similarity Review) violated any policy in reaching the decision (nor does it support a conclusion that the decision was actually wrong).⁵

⁵ In trying to bring forward this Request, Booking.com submitted requests to ICANN under the Documentary Information Disclosure Policy (DIDP). As of 25 July 2013, all requests had been responded to, including the release of the Panel process documentation as requested. See Request 20130238-1 at <http://www.icann.org/en/about/transparency>. Booking.com describes the information it sought through the DIDP at Pages 8 – 9 of its Request. The discussion of those requests, however, has no bearing on the outcome of this Reconsideration.

B. Booking.com’s Suggestion of the “Advisory Status” of the String Similarity Panel Decision Does Not Support Reconsideration

In its Request, Booking.com suggests that the Board has the ability to overturn the Panel’s decision on .hotels/.hoteis because the Panel merely provided “advice to ICANN” and ICANN made the ultimate decision to accept that advice. Booking.com then suggests that the NGPC’s acceptance of GAC advice relating to consideration of allowing singular and plural versions of strings in the New gTLD Program, as well as the NGPC’s later determination that no changes were needed to the Applicant Guidebook regarding the singular/plural issue, shows the ability of the NGPC to override the Panel determinations. (Request, pages 5-6.) Booking.com’s conclusions in these respects are not accurate and do not support Reconsideration.

The Panel reviewed all applied for strings according to the standards and methodology of the visual string similarity review set out in the Applicant Guidebook. The Guidebook clarifies that once contention sets are formed by the Panel, ICANN will notify the applicants and will publish results on its website. (AGB, Section 2.2.1.1.1.) That the Panel considered its output as “advice” to ICANN (as stated in its process documentation) is not the end of the story. Whether the results are transmitted as “advice” or “outcomes” or “reports”, the important query is what ICANN was expected to do with that advice once it was received. ICANN had always made clear that it would rely on the advice of its evaluators in the initial evaluation stage of the New gTLD Program, subject to quality assurance measures. **Therefore, Booking.com is actually proposing a new and *different* process when it suggests that ICANN should perform substantive review (instead of process testing) over the results of the String Similarity Review Panel’s outcomes prior to the finalization of contention sets.**

The subsequent receipt and consideration of GAC advice on singular and plural strings does not change the established process for the development of contention sets based on visual

similarity. The ICANN Bylaws require the ICANN Board to consider GAC advice on issues of public policy (ICANN Bylaws, Art. XI, Sec. 2.1.j); therefore the Board, through the NGPC, was obligated to respond to the GAC advice on singular and plural strings. Ultimately, the NGPC determined that no changes were needed to the Guidebook on this issue. (Resolution 2013.06.25.NG07, at <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm#2.d>.) Notably, neither the GAC advice nor the NGPC resolution focused on the issue of visual similarity (which the String Similarity Review Panel was evaluating), but instead the issue was potential consumer confusion from having singular and plural versions of the same word in the root zone. It is unclear how the NGPC's decision on a separate topic – and a decision that did not in any way alter or amend the work of an evaluation panel – supports reconsideration of the development of the .hotels/.hoteis contention set.

VIII. Recommendation And Conclusion

Based on the foregoing, the BGC concludes that Booking.com has not stated proper grounds for reconsideration and we therefore recommend that Booking.com's request be denied without further consideration. This Request challenges a substantive decision taken by a panel in the New gTLD Program and not the process by which that decision was taken. As stated in our Recommendation on Request 13-2, Reconsideration is not a mechanism for direct, de novo appeal of staff or panel decisions with which the requester disagrees, and seeking such relief is, in fact, in contravention of the established processes within ICANN. See <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-nameshop-01may13-en.pdf>.

The BGC appreciates the impact to an applicant when placed in a contention set and does not take this recommendation lightly. It is important to recall that the applicant still has the

opportunity to proceed through the New gTLD Program subject to the processes set out in the Applicant Guidebook on contention. We further appreciate that applicants, with so much invested and so much at stake within the evaluation process, are interested in seeking any avenue that will allow their applications to proceed easily through evaluation. However, particularly on an issue such as visual similarity, which is related to the security and stability of the domain name system, there is not – nor is it desirable to have – a process for the BGC or the Board (through the NGPC) to supplant its own determination as to the visual similarity of strings over the guidance of an expert panel formed for that particular purpose. As there is no indication that either the Panel or ICANN staff violated any established ICANN policy in reaching or accepting the decision on the placement of .hotels and .hoteis in a non-exact contention set, this Request should not proceed.

If Booking.com thinks that it has been treated *unfairly* in the new gTLD evaluation process, and the NGPC adopts this Recommendation, Booking.com is free to ask the Ombudsman to review this matter. (See ICANN Bylaws the Ombudsman shall “have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN)”.)

Annex 15

Resolution 2013.09.10.NG02 of the New gTLD Program Committee

Reference in the Request for IRP: § 34
Reference in the Additional Submission: § 41

Section 2(b):

————— **INTENTIONALLY LEFT BLANK** —————

b.

BGC recommendation on Reconsideration Request 13-5

Whereas, Booking.com B.V.'s ("Booking.com") Reconsideration Request, Request 13-5, sought reconsideration of the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) staff action of 26 February 2013, when the results of the String Similarity Panel were posted for the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program, placing the applications for .hotels and .hoteis into a string similarity contention set.

Whereas, the BGC considered the issues raised in Reconsideration Request 13-5.

Whereas, the BGC recommended that Reconsideration Request 13-5 be denied because Booking.com has not stated proper grounds for reconsideration.

Resolved (2013.09.10.NG02), the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program Committee adopts the BGC Recommendation on

Reconsideration Request 13-5, which can be found at

<http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.pdf>

(/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.pdf) [PDF, 117 KB].

Rationale for Resolution 2013.09.10.NG02

ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s Bylaws call for the Board Governance Committee to evaluate and make recommendations to the Board with respect to Reconsideration Requests. See Article IV, section 3 of the Bylaws. The New gTLD (generic Top Level Domain) (generic Top Level Domain) Program Committee ("NGPC"), bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Reconsideration Request 13-5 and finds the analysis sound.

Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval positively affects ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s policies, Bylaws, and Articles of Incorporation.

The Request seeks a reversal of the 26 February 2013 decision of the String Similarity Review Panel (the "Panel") to place Booking.com's application for .hotels in the same contention set as .hoteis. Specifically, Booking.com asserted that its applied for string of .hotels can co-exist in the root zone with the applied for string .hoteis without concern of confusability, and therefore, .hotels should not have been placed in the same contention set with .hoteis.

The Request calls into consideration: (1) whether the Panel violated any policy or process in conducting its visual similarity review of Booking.com's application; and (2) whether the NGPC has the ability to overturn the Panel's decision on .hotels/ hoteis on the basis that the decision was provided as an "advice to ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)" and that ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) made the ultimate decision to accept that advice.

The BGC noted that a similar reconsideration request was previously submitted by Booking.com on 28 March 2013 and placed on hold pending the completion of a request pursuant to ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s Documentary Information Disclosure Policy. Therefore, this Request relates back to the date of the original filing and should be evaluated under the Bylaws that were in effect from 20 December 2012 through 10 April 2013.

In consideration of the first issue, the BGC reviewed the grounds stated in the Request, including the attachments, and concluded that Booking.com failed to adequately state a Request for Reconsideration of Staff action because they failed to identify any policy or process that was violated by Staff. The BGC noted that Booking.com does not suggest that the process for String Similarity Review set out in the Applicant Guidebook was not

followed, or that ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) staff violated any established ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) policy in accepting the Panel's decision to place *hotels* and *hoteis* in the same contention set. Rather, Booking.com seeks to supplant what it believes the review methodology for assessing visual similarity should have been as opposed to the methodology set out in Section 2.2.1.1.2 of the Applicant Guidebook and asks that the BGC (and the Board through the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program Committee) retry the 26 February 2013 decision based upon its proposed methodology. The BGC concluded that this is not sufficient ground for Reconsideration because the Reconsideration process is not available as a mechanism to re-try the decisions of the evaluation panels.

With respect to Booking.com's contention that the 26 February 2013 decision was taken without material information, such as that of Booking.com's linguistic expert's opinion or other "information that would refute the mistaken contention that there is likely to be consumer confusion between '*hotels*' and '*hoteis*'", the BGC concluded that there is no process in the String Similarity Review for applicants to submit additional information. As ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) has explained to Booking.com in response to its DIDP requests for documentation regarding the String Similarity Review, the Review was based upon the methodology in the Applicant Guidebook, supplemented by the Panel's process documentation; the process does not allow for additional inputs. The BGC noted that Booking.com's disagreement as to whether the methodology should have resulted in a finding of visual similarity does not mean that ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) (including the third party vendors performing String Similarity Review) violated any policy in reaching the decision (nor does it support a conclusion that the decision was actually wrong).

In consideration of the second issue, the BGC determined that Booking.com's suggestion that the Board (through the NGPC) has the ability to overturn the Panel's decision on *hotels/hoteis* because the Panel merely provided "advice to ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)" and that ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) made the ultimate decision to accept that advice is based upon inaccurate conclusions of the String Similarity Review process. As such, the BGC concluded that Booking.com has not stated sufficient grounds for reconsideration. The BGC noted that all applied for strings are reviewed the Panel according to the standards and methodology of the visual string similarity review set out in the Applicant Guidebook. The Guidebook clarifies that once contention sets are formed by the Panel, ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) will notify the applicants and will publish results on its website. (AGB, Section 2.2.1.1.1.) Whether the results are transmitted as "advice" or "outcomes" or "reports", ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) had always made clear that it would rely on the advice of its evaluators in the initial evaluation stage of the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program, subject to quality assurance measures. The subsequent receipt and consideration of GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice on singular and plural strings does not change the established process for the development of contention sets based on visual similarity as the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Board is required under the Bylaws to consider GAC (Governmental Advisory Committee) (Governmental Advisory Committee) Advice on issues of public policy, such as singular and plural strings. The BGC concluded that Booking.com is actually proposing a new and different process when it suggests that ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) should perform substantive review (instead of process testing) over the results of the String Similarity Review Panel's outcomes prior to the finalization of contention sets.

In addition to the above, the full BGC Recommendation that can be found at <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.pdf>

(/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.pdf) [PDF, 117 KB] and that is attached to the Reference Materials to the Board Submission supporting this resolution, shall also be deemed a part of this Rationale.

Adopting the BGC's recommendation has no financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

Annex 16

Minutes of the Meeting of the New gTLD Program Committee on 10 September 2013, published on 30 September 2013

Reference in the Request for IRP: § 35
Reference in the Additional Submission: § 42 (footnote 38)

Section 2(b):

b.

BGC recommendation on Reconsideration Request 13-5

The Chair introduced the item to the Committee and Amy Stathos presented an overview of Reconsideration Request 13-5, including the Board Governance Committee's (BGC) recommendation to the Committee. Amy noted that the requester argued that the decision of the string similarity review panel should be reversed so that "hotels" and "hoteis" are not in a contention set with each other. Amy also reminded the Committee of the basis in the Bylaws for Reconsideration Requests. The BGC determined that the requester had not stated proper grounds for reconsideration.

George Sadowsky stated that he understood that the BGC did the right thing, but thought the end result that was contrary to ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s and the user's best interests. George noted he intended to abstain from voting as a result.

Olga Madruga-Forti noted that she intended to abstain from the vote because there was not sufficient rationale provided for why the string similarity review panel made its determination.

The Chair noted the party submitting the Reconsideration Request essentially just disagrees with the decision. Because the process was followed, the Chair noted that the Committee should not accept the Reconsideration Request.

Ray Plzak agreed that the process was followed, but noted that the process needs to be reviewed to potentially add a mechanism that would allow persons who don't agree with the outcome to make an objection, other than using a Reconsideration Request. Ray recommended the Committee send a strong signal to the BGC, or adopt a resolution recommending that the BGC consider development of a different mechanism to provide an avenue for the community to appeal the outcome of a decision based on the merits. Olga recommended that in the future, a remand or appeals mechanism may help alleviate the concerns noted.

Bill Graham agreed with Ray's suggestion, and noted that generally, there is a considerable level of discomfort and dissatisfaction with the process as expressed by Committee members. The Chair agreed with Bill's sentiment.

The General Counsel and Secretary noted that ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) has tried to encourage more use of the ombudsman, or other accountability mechanisms for these types of concerns.

The President and CEO moved and Ray Plzak seconded the resolution.

The Committee then took the following action:

Whereas, Booking.com B.V.'s ("Booking.com") Reconsideration Request, Request 13-5, sought reconsideration of the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) staff action of 26 February 2013, when the results of the String Similarity Panel were posted for the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program, placing the applications for .hotels and .hoteis into a string similarity contention set.

Whereas, the BGC considered the issues raised in Reconsideration Request 13-5.

Whereas, the BGC recommended that Reconsideration Request 13-5 be denied because Booking.com has not stated proper grounds for reconsideration.

Resolved (2013.09.10.NG02), the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program Committee adopts the BGC Recommendation on Reconsideration Request 13-5, which can be found at

<http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.pdf>

(/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.pdf) [PDF, 117 KB].

The Chair took a voice vote of Resolution 2013.09.10.NG02. Cherine Chalaby, Fadi Chehadé, Chris Disspain, Bill Graham, and Mike Silber voted in favor of Resolution 2013.09.10.NG02. Olga Madruga-Forti, Ray Plzak, George Sadowsky and Kuo-Wei Wu abstained from voting on Resolution 2013.09.10.NG02. Erika Mann and Gonzalo Navarro were not available to vote on Resolution 2013.09.10.NG02. The Resolution carried.

Rationale for Resolution 2013.09.10.NG02

ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s Bylaws call for the Board Governance Committee to evaluate and make recommendations to the Board with respect to Reconsideration Requests. See Article IV, section 3 of the Bylaws. The New gTLD (generic Top Level Domain) (generic Top Level Domain) Program Committee ("NGPC"), bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Reconsideration Request 13-5 and finds the analysis sound.

Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval positively affects ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s policies, Bylaws, and Articles of Incorporation.

The Request seeks a reversal of the 26 February 2013 decision of the String Similarity Review Panel (the "Panel") to place Booking.com's application for .hotels in the same contention set as .hoteis. Specifically, Booking.com asserted that its applied for string of .hotels can co-exist in the root zone with the applied for string .hoteis without concern of confusability, and therefore, .hotels should not have been placed in the same contention set with .hoteis.

The Request calls into consideration: (1) whether the Panel violated any policy or process in conducting its visual similarity review of Booking.com's application; and (2) whether the NGPC has the ability to overturn the Panel's decision on .hotels/.hoteis on the basis that the decision was provided as an "advice to ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)" and that ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) made the ultimate decision to accept that advice.

The BGC noted that a similar reconsideration request was previously submitted by Booking.com on 28 March 2013 and placed on hold pending the completion of a request pursuant to ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s Documentary Information Disclosure

Policy. Therefore, this Request relates back to the date of the original filing and should be evaluated under the Bylaws that were in effect from 20 December 2012 through 10 April 2013.

In consideration of the first issue, the BGC reviewed the grounds stated in the Request, including the attachments, and concluded that Booking.com failed to adequately state a Request for Reconsideration of Staff action because they failed to identify any policy or process that was violated by Staff. The BGC noted that Booking.com does not suggest that the process for String Similarity Review set out in the Applicant Guidebook was not followed, or that ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) staff violated any established ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) policy in accepting the Panel's decision to place .hotels and .hoteis in the same contention set. Rather, Booking.com seeks to supplant what it believes the review methodology for assessing visual similarity should have been as opposed to the methodology set out in Section 2.2.1.1.2 of the Applicant Guidebook and asks that the BGC (and the Board through the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program Committee) retry the 26 February 2013 decision based upon its proposed methodology. The BGC concluded that this is not sufficient ground for Reconsideration because the Reconsideration process is not available as a mechanism to re-try the decisions of the evaluation panels.

With respect to Booking.com's contention that the 26 February 2013 decision was taken without material information, such as that of Booking.com's linguistic expert's opinion or other "information that would refute the mistaken contention that there is likely to be consumer confusion between '.hotels' and '.hoteis'", the BGC concluded that there is no process in the String Similarity Review for applicants to submit additional information. As ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) has explained to Booking.com in response to its DIDP requests for documentation regarding the String Similarity Review, the Review was based upon the methodology in the Applicant Guidebook, supplemented by the Panel's process documentation; the process does not allow for additional inputs. The BGC noted that Booking.com's disagreement as to whether the methodology should have resulted in a finding of visual similarity does not mean that ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) (including the third party vendors performing String Similarity Review) violated any policy in reaching the decision (nor does it support a conclusion that the decision was actually wrong).

In consideration of the second issue, the BGC determined that Booking.com's suggestion that the Board (through the NGPC) has the ability to overturn the Panel's decision on .hotels/.hoteis because the Panel merely provided "advice to ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)" and that ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) made the ultimate decision to accept that advice is based upon inaccurate conclusions of the String Similarity Review process. As such, the BGC concluded that Booking.com has not stated sufficient grounds for reconsideration. The BGC noted that all applied for strings are reviewed the Panel according to the standards and methodology of the visual string similarity review set out in the Applicant Guidebook. The Guidebook clarifies that once contention sets are formed by the Panel, ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) will notify the applicants and will publish results on its website. (AGB, Section 2.2.1.1.1.) Whether the results are transmitted as "advice" or "outcomes" or "reports", ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) had always made clear that it would rely on the advice of its evaluators in the initial evaluation stage of the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program, subject to quality assurance measures. The subsequent receipt and consideration of GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice on singular and plural strings does not change the established process for the development of contention sets based on visual similarity as the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Board is required under the Bylaws to consider GAC (Governmental Advisory Committee) (Governmental Advisory Committee) Advice on issues of public policy, such as singular and plural strings. The BGC concluded that Booking.com is actually proposing a new and different process when it suggests that ICANN (Internet Corporation for Assigned Names and Numbers)

(Internet Corporation for Assigned Names and Numbers) should perform substantive review (instead of process testing) over the results of the String Similarity Review Panel's outcomes prior to the finalization of contention sets.

In addition to the above, the full BGC Recommendation that can be found at <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.pdf>

(/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.pdf) [PDF, 117 KB] and that is attached to the Reference Materials to the Board Submission supporting this resolution, shall also be deemed a part of this Rationale.

Adopting the BGC's recommendation has no financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

Members of the Committee who abstained from voting offered voting statements. Ray Pizak noted that he abstained from voting because he is disappointed in what is being done to remedy the situation. Ray would like to see more resolve to fix the process.

Olga Madruga-Forti stated that the BGC has done an appropriate job of applying a limited review standard to the application for reconsideration, but unfortunately, in this circumstance, to apply that limited review accompanied by a lack of information regarding the rationale of the string similarity review panel is not possible in a logical and fair manner. The public interest would not be served by applying the limited review standard without proper information on the basis and reasoning for the decision of the panel. In my opinion, the public interest would be better served by abstaining and continuing to explore ways to establish a better record of the rationale of the string similarity review panel in circumstances such as this.

Kuo-Wei Wu agreed with the voting statements of Ray and Olga.

George Sadowsky provided the following voting statement: I have a strong concern regarding the ratification of the BGC recommendation to deny the reconsideration request regarding string contention between .hotels and .hotels, and I therefore have therefore abstained when the vote on this issue was taken.

The reconsideration process is a very narrowly focused instrument, relying solely upon investigating deviations from established and agreed upon process. As such, it can be useful, but it is limited in scope. In particular, it does not address situations where process has in fact been followed, but the results of such process have been regarded, sometimes quite widely, as being contrary to what might be best for significant or all segments of the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) community and/or Internet users in general.

The rationale underlying the rejection of the reconsideration claim is essentially that the string similarity process found that there was likely to be substantial confusion between the two, and that therefore they belonged in a contention set. Furthermore, no process has been identified as having been violated and therefore there is nothing to reconsider.

As a Board member who is aware of ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s Bylaws, I cannot vote against the motion to deny reconsideration. The motion appears to be correct based upon the criteria in the Bylaws that define the reconsideration process and the facts in this particular case.

However, I am increasingly disturbed by the growing sequence of decisions that are based upon a criterion for user confusion that, in my opinion, is not only both incomplete and flawed, but appears to work directly against the concept that users should not be confused. I am persuaded by the argument made by the proponents of reconsideration in this case that users will in fact not be confused by .hotels and .hotels, since if they enter the wrong name, they are very likely to be immediately confronted by information in a language that they did not anticipate.

Confusion is a perceptual issue. String similarity is only one consideration in thinking about perceptual confusion and in fact it is not always an issue. In my opinion, much more perceptual confusion will arise between .hotel and .hotels than between .hotels and .hotels. Yet if we adhere strictly to the Guidebook and whatever instructions have or have not been given to string similarity experts, it is my position that we work against implementing decisions that assist in avoiding user confusion, and we work in favor of decisions that are based upon an incorrect, incomplete and flawed *ex ante* analysis of the real issues with respect to user confusion.

Acronym Help

The goal of the string similarity process is the minimization of user confusion and ensuring user trust in using the DNS (Domain Name System) (Domain Name System).

The string similarity exercise is one of the means in the new gTLD (generic Top Level Domain) (generic Top Level Domain) process to minimize such confusion and to strengthen user trust. In placing our emphasis, and in fact our decisions, on string similarity only, we are unwittingly substituting the means for the goal, and making decisions regarding the goal on the basis of a means test. This is a disservice to the Internet user community.

I cannot and will not vote in favor of a motion that reflects, directly or indirectly, an unwillingness to depart from what I see as such a flawed position and which does not reflect in my opinion an understanding of the current reality of the situation.

The Committee agreed to discuss the process further at its meeting in Los Angeles.

Annex 17

Booking.com's request for a Cooperative Engagement Process of 25 September 2013

Reference in the Request for IRP: § 37
Reference in the Additional Submission: Not quoted

25 September 2013

To the attention of:

Mr. Steve Crocker
Chair, ICANN Board;

Mr. Cherine Chalaby
Chair, New gTLD Program Committee; and

Mr. Fadi Chehade,
President and CEO, ICANN

12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA

By regular mail, fax +1 310 823 8649 and by e-mail: independentreview@icann.org

Re: Cooperative engagement process

Dear Sirs,

I write you on behalf of Booking.com B.V., a Dutch company having its company seat at Herengracht 597, Amsterdam, - 1017 CE, NL (hereinafter, "Booking.com"). Reference is made to New gTLD Program Committee's resolution on Reconsideration Request 13-5, passed on 10 September 2013 and posted on 12 September 2013, known as Resolution 2013.09.10.NG02 and affecting Booking.com.

Booking.com is of the opinion that Resolution 2013.09.10.NG02 violates various provisions of ICANN's Bylaws and Articles of Incorporation. In particular, Booking.com considers that ICANN's adoption of Resolution 2013.09.10.NG02 is in violation of Articles I, II(3), III and IV of the ICANN Bylaws as well as Article 4 of ICANN's Articles of Incorporation. In addition, Booking.com considers that ICANN has acted in violation of Articles 3, 5, 7 and 9 of ICANN's Affirmation of Commitment in adopting Resolution 2013.09.10.NG02.

In view of the above, Booking.com has given me the instruction to file a request for independent review on their behalf. Booking.com remains however committed to cooperate with ICANN in good faith in finding a solution. Therefore, Booking.com elects to proceed with the cooperative engagement process, in which I will act as Booking.com's single point of

contact for the resolution of the issue.

The present letter serves as written notice to ICANN invoking the cooperative engagement process. ICANN is requested to confirm the suspension of the deadline for Booking.com to file a request for Independent Review for the duration of the cooperative engagement process, meaning that Booking.com shall have 17 days to file a request for Independent Review, following notice by ICANN that the cooperative engagement process has ended.

I will send my complete personal contact details to you in a separate email, under the condition that you keep this information confidential.

Yours sincerely,




Flip Petillion
Crowell & Moring LLP
Contact Information Redacted

Annex 18

Application status of the application for .PARTS on 26 February 2014

Reference in the Request for IRP: § 63
Reference in the Additional Submission: Not quoted



APPLICATION DETAILS
[View Application Update History \(/application-result/applicationstatus/applicationdetails/viewapplicationupdatehistory/640?t:ac=640\)](#)

Application ID: 1-1577-85976

String: PARTS (download public portion of application (/application-result/applicationstatus/applicationdetails/downloadapplication/640?t:ac=640))

Applicant: Sea Goodbye, LLC

Prioritization Number: 1714

Address: Contact Information Redacted

Web Site:

Primary Contact: Daniel Schinder

Phone Number: Contact Information Redacted

Email: Contact Information Redacted

Attachments (5):

Caution: these files were prepared and submitted by a party other than ICANN, and ICANN is not responsible for the content. The files could contain scripts or embedded links that might execute or open automatically. You should make sure your operating system and applications (including antivirus definitions if applicable) are fully updated. Proceed at your own risk.

- 24 (A24_1 Attachment A.pdf) (/application-result/applicationstatus/applicationdetails/downloadattachment/33313?t:ac=640)
- 26 (A26_1 Attachment A.pdf) (/application-result/applicationstatus/applicationdetails/downloadattachment/33329?t:ac=640)
- 27 (A27_1 Registration Lifecycle Illustrations.pdf) (/application-result/applicationstatus/applicationdetails/downloadattachment/33338?t:ac=640)
- 29 (A29_1 Attachment A.pdf) (/application-result/applicationstatus/applicationdetails/downloadattachment/33344?t:ac=640)
- 30a (A30a_1 Attachment A.pdf) (/application-result/applicationstatus/applicationdetails/downloadattachment/33352?t:ac=640)

Public Interest Commitments (PICs): 1-1577-85976 Donuts PIC STD Final.pdf (/application-result/applicationstatus/applicationdetails/downloadpicposting/640?t:ac=640)

Application Status: Delegated


Evaluation Result: Pass IE (IE Report (<http://newgflds.icann.org/en/program-status/application-results/ie-1-1577-85976-en.pdf>))

Registry Agreement: <http://www.icann.org/en/about/agreements/registries/PARTS> (<http://www.icann.org/en/about/agreements/registries/PARTS>)

Annex 19

Application status of the application for .PARIS on 26 February 2014

Reference in the Request for IRP: § 63
 Reference in the Additional Submission: Not quoted



APPLICATION DETAILS
[View Application Update History \(/application-result/applicationstatus/applicationdetails.viewapplicationchangehistory/1450?tac=1450\)](#)

Application ID: 1-1087-47153

String: PARIS (download public portion of application (/application-result/applicationstatus/applicationdetails.downloadapplication/1450?tac=1450))

Applicant: City of Paris

Prioritization Number: 200

Address: Contact Information Redacted

Web Site: <http://www.paris.fr/>

Primary Contact: Fabien BETREMEUX

Phone Number: Contact Information Redacted

Email: Contact Information Redacted

Attachments (13):

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- [20f \(Q20-Endorsment-0-VilledeParis.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/109646?tac=1450\)](#)
- [20f \(Q20-Endorsment-1-MAE.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/86840?tac=1450\)](#)
- [23 \(Q23_1_authorisation_code_workflow.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75072?tac=1450\)](#)
- [24 \(Q24_3_srs_architecture_diagram.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75074?tac=1450\)](#)
- [25 \(Q25_2.1_epp_xsd_main_schema.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75077?tac=1450\)](#)
- [25 \(Q25_2.3.2_SRS_authorisation_code.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75080?tac=1450\)](#)
- [25 \(Q25_2.3.2_epp_create_command_example.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/84757?tac=1450\)](#)
- [25 \(Q25_4.1_epp_xsd_dnssec_extension_schema.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75081?tac=1450\)](#)
- [25 \(Q25_4.3_epp_xsd_sunrise_extension_schema.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75082?tac=1450\)](#)
- [26 \(Q26_3_rdds_architecture_diagram.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75084?tac=1450\)](#)
- [27 \(Q27_3_global_lifecycle.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75089?tac=1450\)](#)

- [27 \(Q27_5_transfer_lifecycle.pdf\) \(/application-result/applicationstatus/applicationdetails/downloadattachment/75090?tac=1450\)](#)
- [27 \(Q27_6_grace_period_renew_autorenew.pdf\) \(/application-result/applicationstatus/applicationdetails/downloadattachment/75091?tac=1450\)](#)

Application Status: In PDT

Evaluation Result: Pass IE (IE Report (<http://newgtlds.icann.org/en/program-status/application-results/ie-1-1087-47153-en.pdf>))

Registry Agreement: <http://www.icann.org/en/about/agreements/registries/PARIS> (<http://www.icann.org/en/about/agreements/registries/PARIS>)

Annex 20

Expert report showing that .hotels and .hoteis cannot be considered confusingly similar

Reference in the Request for IRP: § 27, § 58, § 64, § 67
Reference in the Additional Submission: § 25 (footnote 23 and 24)

Page 11:

IV. Conclusion

ICANN did not apply a valid scientific approach in addressing the issue of string similarity. Its decision to put *.hotels* and *.hoteis* in a contention set is based on an undocumented approach that did not take account of empirical behavioral data and linguistic evidence that is essential in assessing string similarity and the likelihood of confusion of the average, reasonable Internet user.

Our multidisciplinary approach, that is based on psycholinguistic experiments and corpuslinguistic analyses shows that there is no reason to believe that the word pair *.hotels* and *.hoteis* will be confusingly similar to the average, reasonable Internet user.

Empirical behavioral data on character confusion shows that several alternations (including the alternations *t/i*, *l/f*, *l/t*, *e/o* and *e/a*) are more likely to cause confusion than the alternation *l/i*. However, while ICANN put *.hotels* and *.hoteis* in a contention set, it did not consider word pairs that were differing from each other only by these more similar alternations to be confusingly similar (*parts/paris*; *maiff/mail*; *srt/srl*; *vote/voto*; and *date/data*). The character alternations in these word pairs are at least as confusing as those in the *.hotels/.hoteis* word pair.

As a result, ICANN's conclusion that it is probable that confusion will arise in the mind of the average, reasonable Internet user when the *.hotels* and *.hoteis* strings are both delegated is both arbitrary, in that character pairs that are at least equally confusing as *l/i* are not considered confusingly similar, and contradicted by our analysis.

Annex 21

Minutes of the Meeting of the Board Governance Committee on 1 August 2013, published on 5 November 2013

<p>Reference in the Request for IRP: § 35 Reference in the Additional Submission: Not quoted</p>
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3. Reconsideration Request 13-5: The BGC received a briefing from Staff regarding Reconsideration Request 13-5 (the "Request"). The Request seeks reconsideration of staff action (based on the String Similarity Review Panel determination) placing the applications for .hotels and .hotelis into a string similarity contention set or alternatively, the requestor asks for a more detailed analysis and reasoning regarding the decision to place .hotels into a contention set. The BGC discussed timing of the request and asked that the recommendation more clearly specify what version of the Bylaws is applicable to the Request. The BGC determined that the requester failed to state the proper grounds for reconsideration because it failed to identify an established policy or process with which staff acted in contravention. The BGC approved a recommendation to the New gTLD (generic Top Level Domain) Program Committee denying the Request, which is to be posted on the ICANN (Internet Corporation for Assigned Names and Numbers)'s website. **Ram Mohan and Mike Silber abstained from consideration of this matter** and two members were not available for voting.
 - o Actions: Staff to facilitate revisions being made to the Recommendation and submit the revised Recommendation to the NGPC for consideration.

Annex 22

Memorandum from Booking.com to ICANN re absence of risks in delegating both the .hotels and .hoteis gTLDs and benefits to ICANN's mission and purpose

Reference in the Request for IRP: § 37
Reference in the Additional Submission: Not quoted

Pages 7 to 9:

V. No impact on the position of other applicants

No other applicants or gTLD operators are impacted by the decision to put .hotels and .hoteis in a contention set or by the reversal of this decision. Reversing the Decision would not impact any applicants other than Booking.com and Despegar. Reversing could only have had an impact on the formation of contention sets and the parties involved in such formation. As demonstrated below, no such impact can exist in relation to .hotels and .hoteis.

¹² New gTLD IDN Program Fact Sheet, <http://www.icann.org/en/resources/idn/idns-fact-sheet-04apr12-en.pdf>

¹³ GNSO Final Report on the Introduction of New Generic Top-Level Domains, 8 August 2007, para. 13 and recommendation I, para. 7

¹⁴ Summary of ICANN Generic Names Supporting Organisation's (GNSO) Final Report on the Introduction of New Generic Top Level Domains (gTLDs) and Related Activity (29 October 2007), p. 10

A. Theoretical impact on contention sets

The only impact on other applicants that could have existed relates to the hypothesis of indirect string contention. Two strings are in indirect contention if they are both in direct contention with a third string, but not with one another (Applicant Guidebook, Module 4-3).

Strings that are in indirect contention will be put in the same contention set as long as the direct contention with the third string continues to exist. For example:

- string A is in direct contention with string B;
- string B is in direct contention with string C;
- string A and string C are not in direct contention, but only in indirect contention, because of the contention of both strings with string B.

If string B is withdrawn (*e.g.* because of a successful objection), strings A and C can both be delegated as they are not in direct contention and the indirect string contention is removed.¹⁵ In this scenario, the applicants for strings A and C may have an interest in joining forces against string B and both file an objection against string B or buy string B out through negotiations.

B. No possible impact in the present case

In the present case .hotels and .hoteis were found in direct contention by the String Similarity Review Panel.

Indirect string contention between .hotels *casu quo* .hoteis on the one hand and a third party string on the other hand could theoretically have existed if either the .hotels or the .hoteis string were considered confusingly similar with third party string X (following an objection invoking string similarity of the third party string X with either .hotels or .hoteis). The third party string X would be either in direct contention with the .hotels string and in indirect contention with the .hoteis string, or in direct contention with the .hoteis string and in indirect contention with the .hotels string.

In our example, a successful objection by the holder of string X against only the .hotels string, would result in:

- direct string contention between string X and the .hotels string; and
- indirect contention between string X and .hoteis.

In this hypothetical example, reversing the Decision would have as a consequence that the indirect string contention between string X and .hoteis ceases to exist. The same would happen if the application for the string in direct contention (.hotels in our hypothetical example) is withdrawn or rejected (*e.g.* following a successful objection on other grounds). In other words, reversing the Decision would only have a relative impact on the objector, as the objector does not control the continued existence of indirect string contention.

¹⁵ See also, Applicant Guidebook, Module 4-7.

Looking at the objections that have been filed against Booking.com's .hotels application and Despegar's .hoteis application, respectively, none of the objectors would be impacted by reversing the Decision.

The following objections were filed against Booking.com's .hotels application:

- String confusion objection by Hotel Top-Level-Domain S.a.r.l. for alleged confusing similarity with .hotel;
- Community objection by HOTREC, Hotels, Restaurants & Cafés in Europe; and
- Community objection by Hotel Consumer Protection Coalition.

The same objections were also filed separately against Despegar's .hoteis application, by the same parties.

This shows that 1) only Hotel Top-Level-Domain S.a.r.l. invoked string similarity with an applied-for gTLD on the one hand and the .hotels and .hoteis strings on the other hand; and 2) Hotel Top-Level-Domain S.a.r.l. was not aiming at indirect string contention between .hotels *casu quo* .hoteis and another gTLD. Had it only objected to one of the two, it would have aimed at indirect contention with the other. However, it objected to both to keep both in the same contention set and at the end attempt to eliminate them, either based on the alleged community priority of its own application, or through negotiation or auction.

The string confusion objections filed by Hotel Top-Level-Domain S.a.r.l. were both dismissed. Hotel Top-Level-Domain S.a.r.l. subsequently tried to reverse the decision that .hotels and .hotel are not confusingly similar and filed a Request for Reconsideration with ICANN (Reconsideration Request 13-6). Hotel Top-Level-Domain S.a.r.l. did not file a Request for Reconsideration against the decision in the .hoteis / .hotel case and the deadline for filing such request has lapsed.

On 5 November 2013, the NGPC issued a resolution rejecting Reconsideration Request 13-6. The Minutes of the relevant NGPC meeting were posted on 21 November 2013. We are not aware of any request for a Cooperative Engagement Process or an Independent Review Process that was filed by Hotel Top-Level-Domain S.a.r.l. As the deadline for filing such requests has now lapsed, the Expert Determinations ruling that .hotel is not in contention with either .hotels or .hoteis are final.

As a result, there is no risk for another applicant to be impacted by a reversal of the Decision.

Annex 23

Application status of the application for .parts on 25 September 2014

Reference in the Request for IRP: Not quoted
Reference in the Additional Submission: § 45 (footnote 41)



APPLICATION DETAILS

[View Application Update History \(/application-result/applicationstatus/applicationdetails:viewapplicationchangehistory/640?t:ac=640\)](#)

Application ID: 1-1577-85976

String: PARTS ([download public portion of application \(/application-result/applicationstatus/applicationdetails:downloadapplication/640?t:ac=640\)](#))

Applicant: Sea Goodbye, LLC

Prioritization Number: 1714

Address: Contact Information Redacted

Web Site:

Primary Contact: Daniel Schindler

Phone Number: Contact Information Redacted

Email: Contact Information Redacted

Attachments (5):

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- [26 \(A26.1 Attachment A.pdf\) \(/application-result/applicationstatus/applicationdetails:downloadattachment/33329?t:ac=640\)](#)
- [27 \(A27.1 Registration Lifecycle Illustrations.pdf\) \(/application-result/applicationstatus/applicationdetails:downloadattachment/33338?t:ac=640\)](#)
- [29 \(A29.1 Attachment A.pdf\) \(/application-result/applicationstatus/applicationdetails:downloadattachment/33344?t:ac=640\)](#)
- [30a \(A30a.1 Attachment A.pdf\) \(/application-result/applicationstatus/applicationdetails:downloadattachment/33352?t:ac=640\)](#)

Public Interest Commitments (PICs): 1-1577-85976_Donuts PIC STD Final.pdf ([/application-result/applicationstatus/applicationdetails:downloadpicposting/640?t:ac=640](#))

Application Status: Delegated

Evaluation Result: Pass IE ([IE Report \(http://newgtlds.icann.org/en/program-status/application-results/ie-1-1577-85976-en.pdf\)](#))

Registry Agreement: <http://www.icann.org/en/about/agreements/registries/PARTS> (<http://www.icann.org/en/about/agreements/registries/PARTS>)



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Donuts and TLDs

Donuts is bringing hundreds of fresh and relevant new TLDs to market, providing variety and choice to anyone establishing a new online identity or refreshing their current one. Because the Internet is now home to over 265-million domain names and climbing, consumers and businesses need better options for their Internet identities. Most domain names currently have non-descript endings such as .com or .net, which tell prospective visitors nothing about you. Now you can choose from specific, relevant, domain name endings that identify your business, your industry, or your passion.

Since the Internet was opened to commercial use almost 20 years ago, the namespace has been artificially constrained to only 22 generic names following the dot (.com, .gov, .net, etc.). As a result, finding a suitable, meaningful, and memorable domain name can be a struggle. There are more than 125 million names in the top five TLDs alone, with three-fourths in .com (meaning good, short, domains are no longer available for purchase on the primary market). Consumers and businesses need new options for short domain names, specific to their individual needs and online identities. The new TLDs will therefore greatly expand the current suite of 22 generic names to include almost any word or name and, for the first time, TLDs in non-Latin scripts such as Arabic, Chinese and Cyrillic characters.

This new taxonomy will allow domain names to be instantly recognizable and understood. You'll start to see—and be able to purchase—domain names like soho.boutique or diva.boutique, instead of divaboutiquesohonyc.com. And you'll know exactly what you're going to find on smiths.plumbing and smiths.dental. These short, specific domain names will offer improved navigation, increased diversity, and expanded choice.

TLD Launch Schedule

Not all the new TLDs will be available at once. They will become live on the internet over the next year.

This table lists the Donuts TLDs as they are scheduled to come out. All launches start at 16:00 UTC.

TLD	Sunrise Opens	Sunrise Closes	Early Access (GA)
.VENTURES	November 26, 2013	January 25, 2014	January 29, 2014
.SINGLES	November 26, 2013	January 25, 2014	January 29, 2014
.BIKE	November 26, 2013	January 25, 2014	January 29, 2014
.HOLDINGS	November 26, 2013	January 25, 2014	January 29, 2014
.PLUMBING	November 26, 2013	January 25, 2014	January 29, 2014
.GURU	November 26, 2013	January 25, 2014	January 29, 2014

.PARTNERS	April 1, 2014	May 31, 2014	June 4, 2014
.PRODUCTIONS	April 1, 2014	May 31, 2014	June 4, 2014
.COMMUNITY	April 8, 2014	June 7, 2014	June 11, 2014
.CATERING	April 8, 2014	June 7, 2014	June 11, 2014
.CARDS	April 8, 2014	June 7, 2014	June 11, 2014
.CLEANING	April 8, 2014	June 7, 2014	June 11, 2014
.TOOLS	April 15, 2014	June 14, 2014	June 18, 2014
.INDUSTRIES	April 15, 2014	June 14, 2014	June 18, 2014
.PARTS	April 15, 2014	June 14, 2014	June 18, 2014
.SUPPLIES	April 15, 2014	June 14, 2014	June 18, 2014
.SUPPLY	April 15, 2014	June 14, 2014	June 18, 2014
.REPORT	April 22, 2014	June 21, 2014	June 25, 2014

All dates are anticipated and may change due to, among other things, ICANN rules and delays. Dates for bolded TLDs have received ICANN approval.

If you are interested in registering a domain name under one of Donuts' TLDs, please contact an accredited registrar who will be able to advise you further and facilitate the registration. A full list of accredited registrars can be found here. Donuts does not sell domains directly to the public.

Donuts Full TLD Application List

[Website Terms of Use](#) [Website Privacy Policy](#)

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All other trademarks are property of their respective owners.

Annex 24

Application status of the application for .paris on 25 September 2014

Reference in the Request for IRP: Not quoted
Reference in the Additional Submission: § 45 (footnote 41)



APPLICATION DETAILS

[View Application Update History \(/application-result/applicationstatus/applicationdetails.viewapplicationchange/history/1450?ac=1450\)](#)

Application ID: 1-1087-47153

String: PARIS (download public portion of application (/application-result/applicationstatus/applicationdetails.downloadapplication/1450?ac=1450))

Applicant: City of Paris

Prioritization Number: 200

Address: Contact Information Redacted

Web Site: <http://www.paris.fr/>

Primary Contact: Fabien BETREMIEUX

Phone Number: Contact Information Redacted

Email: Contact Information Redacted

Attachments (13):

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- [20f \(Q20-Endorsment-0-VilledeParis.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/109846?ac=1450\)](#)
- [20f \(Q20-Endorsment-1-MAE.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/88840?ac=1450\)](#)
- [23 \(Q23_1_authorisation_code_workflow.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75072?ac=1450\)](#)
- [24 \(Q24_3_srs_architecture_diagram.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75074?ac=1450\)](#)
- [25 \(Q25_2.1_epp_xsd_main_schema.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75077?ac=1450\)](#)
- [25 \(Q25_2.3.2_SRS_authorisation_code.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75080?ac=1450\)](#)
- [25 \(Q25_2.3.2_epp_create_command_example.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/84757?ac=1450\)](#)
- [25 \(Q25_4.1_epp_xsd_dnssec_extension_schema.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75081?ac=1450\)](#)
- [25 \(Q25_4.3_epp_xsd_euhrixe_extension_schema.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75082?ac=1450\)](#)
- [26 \(Q26_3_rdds_architecture_diagram.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75084?ac=1450\)](#)
- [27 \(Q27_3_global_lifecycle.pdf\) \(/application-result/applicationstatus/applicationdetails.downloadattachment/75089?ac=1450\)](#)

- [27 \(Q27_5_transfer_lifecycle.pdf\) \(/application-result/applicationstatus/applicationdetails/downloadattachment/75090?i.ac=1450\)](#)
- [27 \(Q27_6_grace_period_renew_autorenew.pdf\) \(/application-result/applicationstatus/applicationdetails/downloadattachment/75091?i.ac=1450\)](#)

Application Status: Delegated

Evaluation Result: Pass IE (IE Report (<http://newgtids.icann.org/en/program-status/application-results/ie-1-1007-47163-en.pdf>))

Registry Agreement: <http://www.icann.org/en/about/agreements/registries/PARIS> (<http://www.icann.org/en/about/agreements/registries/PARIS>)

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Everyone can apply for a .paris domain!

3 09 2014 - Uncategorized

Registrations open for trademarks

After the opening of .paris to the first 100 ambassadors on June 4 2014, the launch of .paris enters a new phase called "Sunrise". This phase allows the holders of a registered trademark (national, community or international and registered in the TMCH database) to reserve their own .paris domain name, starting from September 9 to November 11 2014.


Beyond the trademark holders, all public services, public authorities and companies in the Greater Paris Area can also reserve their own .paris domain name.

Registration is also opened to anyone interested. However domain names requested in this category will yield priority to the trademarks and other claimed rights.

Annex 25

Application status of the application for .vote on 25 September 2014

Reference in the Request for IRP: Not quoted
Reference in the Additional Submission: § 45 (footnote 41)



APPLICATION DETAILS

[View Application Update History \(/application-result/applicationstatus/applicationdetails:viewapplicationchangehistory/1582?tac=1582\)](#)

Application ID: 1-1013-44231

String: VOTE ([download public portion of application \(/application-result/applicationstatus/applicationdetails:downloadapplication/1582?tac=1582\)](#))

Applicant: Monolith Registry LLC

Prioritization Number: 1051

Address: Contact Information Redacted

Web Site: <http://www.MonolithRegistry.org>

Primary Contact: John Kane

Phone Number: Contact Information Redacted

Email: Contact Information Redacted

Attachments (8):

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- [24 \(24 SRS Performance _correct code representation.pdf\) \(/application-result/applicationstatus/applicationdetails:downloadattachment/106417?tac=1582\)](#)
- [24 \(24 figures.pdf\) \(/application-result/applicationstatus/applicationdetails:downloadattachment/91273?tac=1582\)](#)
- [25 \(25 EPP _correct code representation.pdf\) \(/application-result/applicationstatus/applicationdetails:downloadattachment/106428?tac=1582\)](#)
- [25 \(25a XML Request Response.pdf\) \(/application-result/applicationstatus/applicationdetails:downloadattachment/59010?tac=1582\)](#)
- [25 \(25b-INFO EPP RFC QTE criteria v1-6-1.pdf\) \(/application-result/applicationstatus/applicationdetails:downloadattachment/59011?tac=1582\)](#)
- [26 \(26 figures.pdf\) \(/application-result/applicationstatus/applicationdetails:downloadattachment/59162?tac=1582\)](#)
- [27 \(27 Registration Lifecycle _correct code representation.pdf\) \(/application-result/applicationstatus/applicationdetails:downloadattachment/106441?tac=1582\)](#)
- [27 \(27 figures.pdf\) \(/application-result/applicationstatus/applicationdetails:downloadattachment/98461?tac=1582\)](#)

Application Status: Delegated

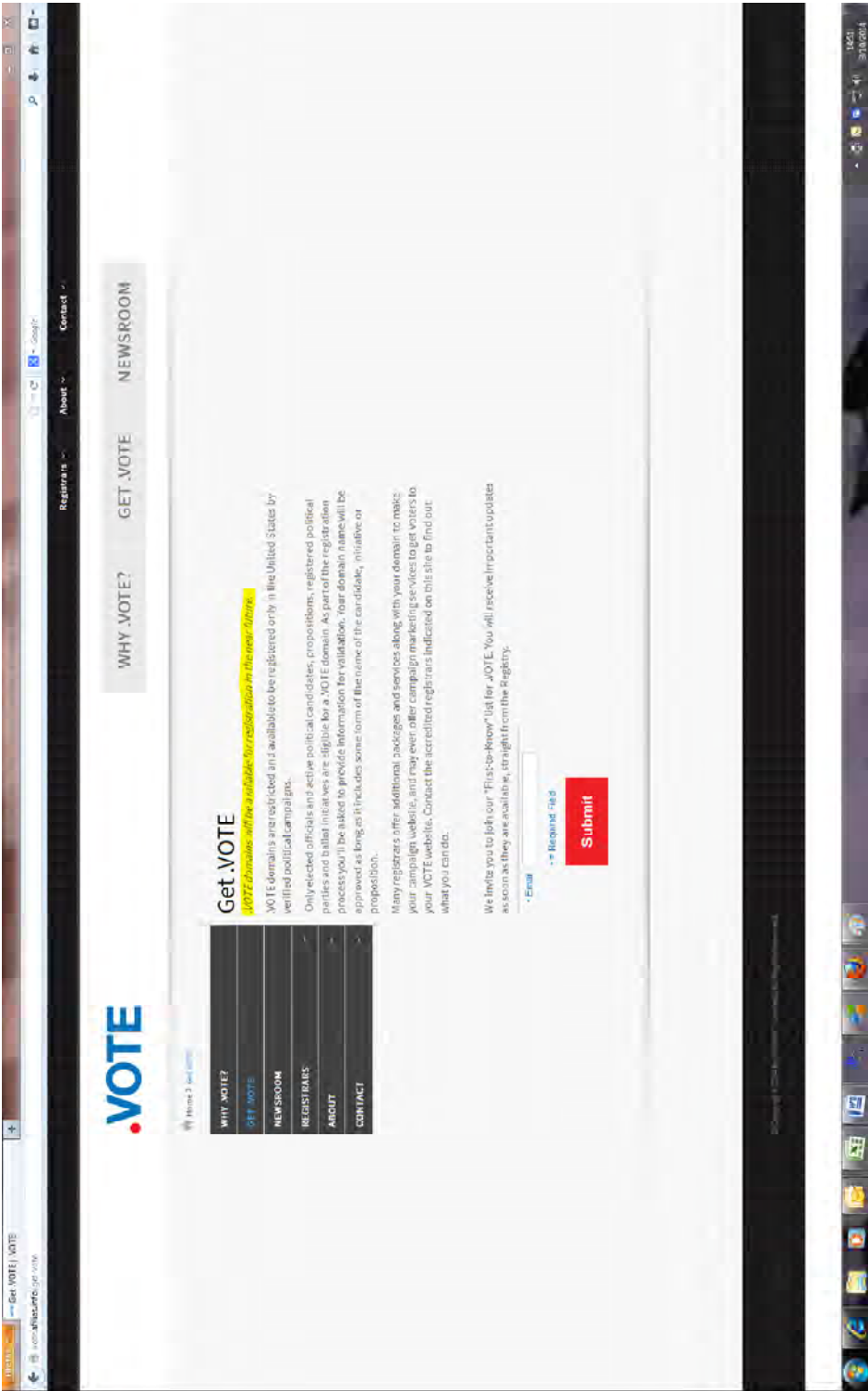
Evaluation Result: Pass IE (IE Report (<http://newgtlds.icann.org/en/program-status/application-results/ie-1-1013-44231-en.pdf>))

Contention Resolution Status: Resolved ([/application-result/applicationstatus/applicationdetails:viewcontentionsetimage?tac=1582](#))

Contention Resolution Result: Prevailed Contention

Registry Agreement: <http://www.icann.org/en/about/agreements/registries/VOTE> (<http://www.icann.org/en/about/agreements/registries/VOTE>)

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Annex 26

Application status of the application for .voto on 25 September 2014

Reference in the Request for IRP: Not quoted
Reference in the Additional Submission: § 45 (footnote 41)



APPLICATION DETAILS

[View Application Update History \(/application-result/applicationstatus/applicationdetails/viewapplicationchangehistory/1583?ac=1583\)](#)

Application ID: 1-1013-52757

String: VOTO ([download public portion of application \(/application-result/applicationstatus/applicationdetails/downloadapplication/1583?ac=1583\)](#))

Applicant: Monolith Registry LLC

Prioritization Number: 976

Address: Contact Information Redacted

Web Site: <http://www.MonolithRegistry.org>

Primary Contact: John Kane

Phone Number: Contact Information Redacted

Email: Contact Information Redacted

Attachments (8):

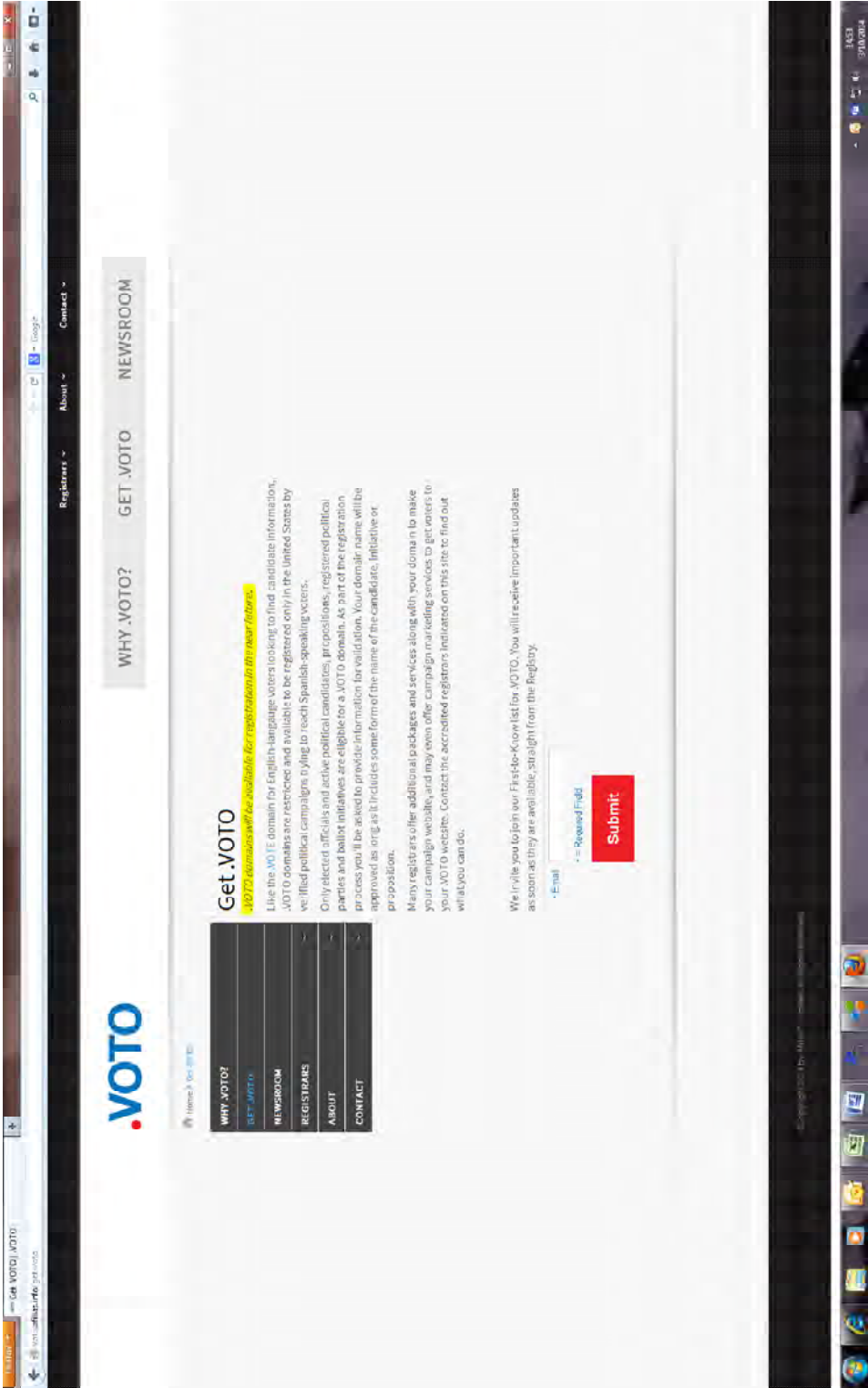
Caution: these files were prepared and submitted by a party other than ICANN, and ICANN is not responsible for the content. The files could contain scripts or embedded links that might execute or open automatically. You should make sure your operating system and applications (including antivirus definitions if applicable) are fully updated. Proceed at your own risk.

- [24 \(24 SR3 Performance - correct code representation.pdf\) \(/application-result/applicationstatus/applicationdetails/downloadattachment/105553?ac=1583\)](#)
- [24 \(24 figures.pdf\) \(/application-result/applicationstatus/applicationdetails/downloadattachment/96964?ac=1583\)](#)
- [25 \(25 EPP - correct code representation.pdf\) \(/application-result/applicationstatus/applicationdetails/downloadattachment/106497?ac=1583\)](#)
- [25 \(25a XML Request Response.pdf\) \(/application-result/applicationstatus/applicationdetails/downloadattachment/159489?ac=1583\)](#)
- [25 \(25b-INFO EPP RFC DTE criteria v1-3-1.pdf\) \(/application-result/applicationstatus/applicationdetails/downloadattachment/59470?ac=1583\)](#)
- [26 \(26 figures.pdf\) \(/application-result/applicationstatus/applicationdetails/downloadattachment/59477?ac=1583\)](#)
- [27 \(27 Registration Lifecycle - correct code representation.pdf\) \(/application-result/applicationstatus/applicationdetails/downloadattachment/105522?ac=1583\)](#)
- [27 \(27 figures.pdf\) \(/application-result/applicationstatus/applicationdetails/downloadattachment/97014?ac=1583\)](#)

Application Status: Delegated

Evaluation Result: Pass IE (IE Report (<http://iewytkis.icann.org/en/program-status/application-results/ie-1-1013-52757-en.pdf>))

Registry Agreement: <http://www.icann.org/en/about/agreements/registries/VOTO> (<http://www.icann.org/en/about/agreements/registries/VOTO>)



Extracts of Annexes and Reference Material

With a reference to

the Request for IRP and/or the Additional Submission

Part II : Reference Material

RM 1

ICANN's Articles of Incorporation

Reference in the Request for IRP: §§ 11, 39
Reference in the Additional Submission: § 4

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

RM 2

ICANN's Bylaws of 11 April 2013

Reference in the Request for IRP: §§ 13, 40, 44, 45, 46, 48, 49, 51, 52
Reference in the Additional submission: §§ 3, 6, 11, 39

ARTICLE I: MISSION AND CORE VALUES

Section 1. MISSION

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

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

Section 2. CORE VALUES

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

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

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

ARTICLE II: POWERS

Section 1. GENERAL POWERS

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

Section 3. NON-DISCRIMINATORY TREATMENT

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

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

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

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 1. PURPOSE

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

Section 2. RECONSIDERATION

1. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board.

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

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

apply a defined standard of review to the IRP request, **focusing on:**

- a. did the Board act without conflict of interest in taking its decision?;
 - b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
 - c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?
5. Requests for independent review shall not exceed 25 pages (double-spaced, 12-point font) of argument. ICANN's response shall not exceed that same length. Parties may submit documentary evidence supporting their positions without limitation. In the event that parties submit expert evidence, such evidence must be provided in writing and there will be a right of reply to the expert evidence.
6. **There shall be an omnibus standing panel of between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN's mission and work from which each specific IRP Panel shall be selected.**
- The panelists shall serve for terms that are staggered to allow for continued review of the size of the panel and the range of expertise. A Chair of the standing panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within the ICANN structure are not eligible to serve on the standing panel. In the event that an omnibus standing panel: (i) is not in place when an IRP Panel must be convened for a given proceeding, the IRP proceeding will be considered by a one- or three-member panel comprised in accordance with the rules of the IRP Provider; or (ii) is in place but does not have the requisite diversity of skill and

experience needed for a particular proceeding, the IRP Provider shall identify one or more panelists, as required, from outside the omnibus standing panel to augment the panel members for that proceeding.

11. The IRP Panel shall have the authority to:
 - a. summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious;
 - b. request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties;
 - c. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and
 - d. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP;
 - e. consolidate requests for independent review if the facts and circumstances are sufficiently similar; and
 - f. determine the timing for each proceeding.

21. Where feasible, the Board shall consider the IRP

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

ARTICLE X: GENERIC NAMES SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

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

RM 3

ICANN's Bylaws as amended on 16 March 2012, available at <http://www.icann.org/en/about/governance/bylaws/bylaws-16mar12-en.htm>

Reference in the Request for IRP: § 40 (footnote 3)
Reference in the Additional submission: §§ 6, 11, 39

ARTICLE I: MISSION AND CORE VALUES

Section 2. CORE VALUES

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

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

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

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 2. RECONSIDERATION

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

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

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

2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action.

3. Requests for such independent review shall be referred to an Independent Review Panel ("IRP"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws.

4. The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN (Internet Corporation for Assigned Names and Numbers) ("the IRP Provider") using arbitrators under contract with or nominated by that provider.

5. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this Section 3.

6. Either party may elect that the request for independent review be considered by a three-member panel; in the absence of any such election, the issue shall be considered by a one-member panel.

7. The IRP Provider shall determine a procedure for assigning members to individual panels; provided that if ICANN (Internet Corporation for Assigned Names and Numbers) so directs, the IRP Provider shall establish a standing panel to hear such claims.

8. The IRP shall have the authority to:

- a. request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties;
- b. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and
- c. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP.

9. Individuals holding an official position or office within the ICANN (Internet Corporation for Assigned Names and Numbers) structure are not eligible to serve on the IRP.

10. In order to keep the costs and burdens of independent review as low as possible, the IRP should conduct its proceedings by e-mail and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP may hold meetings by telephone.

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

12. Declarations of the IRP shall be in writing. The IRP shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.

13. The IRP operating procedures, and all petitions, claims, and declarations, shall be posted on the Website when they become available.

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

15. Where feasible, the Board shall consider the IRP declaration at the Board's next meeting.

RM 4

Affirmation of Commitments

Reference in the Request for IRP: §§ 12, 41
Reference in the Additional submission: §§ 6, 11, 28

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

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

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

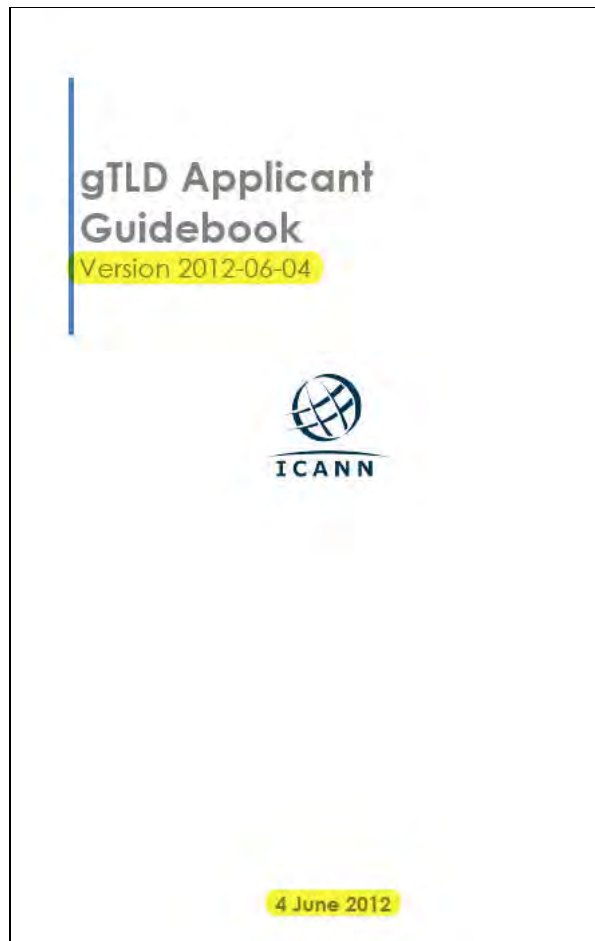
(e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development. ICANN will organize a review of its execution of the above commitments no less frequently than every three years, with the first such review concluding no later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

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

RM 5

gTLD Applicant Guidebook (v. 2012-06-04)

Reference in the Request for IRP: § 14
Reference in the Additional Submission: Not quoted



Module 1

Reference in the Request for IRP: §§ 22, 42
Reference in the Additional Submission: Not quoted

Module 1-9:

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

Module 2

Reference in the Request for IRP: §§ 18, 22, 25, 42
Reference in the Additional submission: §§ 10, 36

Module 2-5 to 2-9 and 2-30 to 2-35:

2.2.1 String Reviews

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

2.2.1.1 String Similarity Review

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

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

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

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

2.2.1.1.1 Reviews Performed

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

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

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

Module 2
Evaluation Procedures

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

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

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

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

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

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

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

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

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

Module 2
Evaluation Procedures

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

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

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

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

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

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

2.2.1.2 Review Methodology

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

Module 2
Evaluation Procedures

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

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

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

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

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

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

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

2.2.1.1.3 Outcomes of the String Similarity Review

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

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

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

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

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

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

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

2.1.1.3 Reserved Names and Other Unavailable Strings

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

2.1.1.3.1 Reserved Names

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

Top-Level Reserved Names List

AFRNIC	IANA-SERVERS	NRO
ALAC	ICANN	RFC-EDITOR
APNIC	IESG	RIPE
ARIN	IETF	ROOT-SERVERS
ASO	INTERNIC	RSSAC
CONSO	INVALID	SSAC
EXAMPLE*	IRTF	TEST*
GAC	ISTF	TLD

3.4.1 Panels and Roles

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

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

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

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

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

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

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

2.4.2 Panel Selection Process

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

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

2.4.3 Code of Conduct Guidelines for Panelists

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

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

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

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

Bias -- Panelists shall:

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

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

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

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

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

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

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

2.4.3.1 Conflict of Interest Guidelines for Panelists

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

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

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

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

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

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

Evaluation Panelists and Immediate Family Members:

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

Definitions--

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

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Evaluation Procedures

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

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

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

2.A.3.2 Code of Conduct Violations

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

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

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

2.A.4 Communication Channels

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

Attachment to Module 2

Reference in the Request for IRP: Not quoted
Reference in the Additional Submission: § 34 (footnote 33)

A-3 and A-4:

III. Scoring

Evaluation

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

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

Scoring

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

A-3

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

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

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

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

Module 5

Reference in the Request for IRP: Not quoted
 Reference in the Additional submission: §§ 8, 10, 36, 39

Module 5-4:

ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.

Module 6

Reference in the Request for IRP: Not quoted
 Reference in the Additional submission: § 10

Module 6-2 and 6-3:

Top-Level Domain Application – Terms and Conditions

3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

RM 6

Overview of the Internet Root Zone Database on 15 May 2013

<p>Reference in the Request for IRP: §§ 12, 66 Reference in the Additional Submission: Not quoted</p>

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Root Zone Database

The Root Zone Database represents the delegation details of top-level domains, including gTLDs such as .com, and country-code TLDs such as .uk. As the manager of the DNS root zone, IANA is responsible for coordinating these delegations in accordance with its policies and procedures.

Much of this data is also available via the WHOIS protocol at whois.iana.org.

Domain	Type	Sponsoring Organisation
.ac	country-code	Network Information Center (AC Domain Registry) c/o Cable and Wireless (Ascension Island)
.ad	country-code	Andorra Telecom
.ae	country-code	Telecommunication Regulatory Authority (TRA)
.aero	sponsored	Societe Internationale de Telecommunications Aeronautique (SITA INC USA)
.af	country-code	Ministry of Communications and IT
.ag	country-code	UHSA School of Medicine
.ai	country-code	Government of Anguilla
.aj	country-code	Electronic and Postal Communications Authority - AKEP
.am	country-code	Internet Society
.an	country-code	University of The Netherlands Antilles
.ao	country-code	Faculdade de Engenharia da Universidade Agostinho Neto
.aq	country-code	Mott and Associates
.ar	country-code	Presidencia de la Nación – Secretaría Legal y Técnica
.arpa	infrastructure	Internet Assigned Numbers Authority
.as	country-code	AS Domain Registry
.asia	sponsored	DotAsia Organisation Ltd.
.at	country-code	nic.at GmbH
.au	country-code	.au Domain Administration (auDA)
.aw	country-code	SETAR
.ax	country-code	Ålands landskapsregering
.az	country-code	IntraNS
.ba	country-code	Universtiy Telemformatic Centre (UTIC)
.bb	country-code	Government of Barbados Ministry of Economic Affairs and Development Telecommunications Unit
.bd	country-code	Ministry of Post & Telecommunications Bangladesh Secretariat
.be	country-code	DNS BE vzw/asbl
.bf	country-code	ARCE-Autorité de Régulation des Communications Electroniques
.bg	country-code	Register BG
.bh	country-code	Telecommunications Regulatory Authority (TRA)
.bi	country-code	Centre National de l'Informatique
.bj	generic-restricted	NeuStar, Inc.
.bm	country-code	Benin Telecoms S.A.
.bn	country-code	Not assigned
.bo	country-code	Registry General Ministry of Labour and Immigration
.br	country-code	Telekom Brunei Berhad
.bs	country-code	Agencia para el Desarrollo de la Información de la Sociedad en Bolivia
.bt	country-code	Not assigned
.bv	country-code	Comite Gestor da Internet no Brasil
.bz	country-code	The College of the Bahamas
.ca	country-code	Ministry of Information and Communications
.cb	country-code	UNINETT Nord A/S
.cc	country-code	University of Botswana
.cd	country-code	Reliable Software Inc.
.ce	country-code	University of Belize
.cat	sponsored	Canadian Internet Registration Authority (CIRA) Autorite Canadienne pour les Enregistrements Internet (ACEI)
.cf	country-code	Fundacio puntCAT
.cg	country-code	eNIC Cocos (Keeling) Islands Pty. Ltd. d/b/a Island Internet Services
.ch	country-code	Office Congolais des Postes et Télécommunications - OCPT
.ci	country-code	Societe Centrafricaine de Telecommunications (SOCATEL)
.ck	country-code	ONPT Congo and Interpoint Switzerland
.cl	country-code	SWITCH The Swiss Education & Research Network
.cm	country-code	INP-HB Institut National Polytechnique Felix Houphouet Boigny
.cn	country-code	Telecom Cook Islands Ltd.
.co	country-code	NIC Chile (University of Chile)
.com	generic	Cameroon Telecommunications (CAMTEL)
.coop	sponsored	Computer Network Information Center, Chinese Academy of Sciences
.cr	country-code	.CO Internet S.A.S.
.cu	country-code	VerSign Global Registry Services
.cv	country-code	DotCooperation LLC
.cw	country-code	National Academy of Sciences Academia Nacional de Ciencias
.cx	country-code	CENIAInternet Industria y San Jose Capitolio Nacional
.cy	country-code	Agência Nacional das Comunicações (ANAC)
.cz	country-code	University of the Netherlands Antilles
.de	country-code	Christmas Island Internet Administration Limited
.dj	country-code	University of Cyprus
.dk	country-code	CZ.NIC, z.s.p.o
.dm	country-code	DENIC eG
.do	country-code	Djibouti Telecom S.A
.dz	country-code	Danak Internet Forum
.ec	country-code	DotDM Corporation
.ee	sponsored	Pontificia Universidad Catolica Madre y Maestra Recinto Santo Tomas de Aquino
	country-code	CERIST
	country-code	NIC.EC (NICEC) S.A.
	country-code	EDUCAUSE
	country-code	National Institute of Chemical Physics and Biophysics

Domain	Type	Sponsoring Organisation
.eg	country-code	Egyptian Universities Network (EUN) Supreme Council of Universities
.er	country-code	Not assigned
.er	country-code	Eritrea Telecommunication Services Corporation (ErTel)
.es	country-code	Red.es
.et	country-code	Ethio telecom
.eu	country-code	EURid vzw/asbl
.fi	country-code	Finnish Communications Regulatory Authority
.fj	country-code	The University of the South Pacific IT Services
.fk	country-code	Falkland Islands Government
.fm	country-code	FSM Telecommunications Corporation
.fo	country-code	FO Council
.fr	country-code	AFNIC (NIC France) - Immeuble International
.ga	country-code	Agence Nationale des Infrastructures Numériques et des Fréquences (ANINF)
.gd	country-code	Reserved Domain - IANA
.ge	country-code	The National Telecommunications Regulatory Commission (NTRC)
.ge	country-code	Caucasus Online
.gf	country-code	Net Plus
.gg	country-code	Island Networks Ltd.
.gh	country-code	Network Computer Systems Limited
.gi	country-code	Sapphire Networks
.gl	country-code	TELE Greenland A/S
.gm	country-code	GM-NIC
.gn	country-code	Centre National des Sciences Halieutiques de Boussoira
.gov	sponsored	General Services Administration Attn: QTDC, 2E08 (.gov Domain Registration)
.gp	country-code	Networking Technologies Group
.gr	country-code	GETESA
.gr	country-code	ICS-FORTH GR
.gs	country-code	Government of South Georgia and South Sandwich Islands (GSGSSI)
.gt	country-code	Universidad del Valle de Guatemala
.gu	country-code	University of Guam Computer Center
.gw	country-code	Fundação IT & MEDIA Universidade de Bissau
.gy	country-code	University of Guyana
.hk	country-code	Hong Kong Internet Registration Corporation Ltd.
.hm	country-code	HM Domain Registry
.hn	country-code	Red de Desarrollo Sostenible Honduras
.hr	country-code	CARNet - Croatian Academic and Research Network
.ht	country-code	Consortium FDS/RDDH
.hu	country-code	Council of Hungarian Internet Providers (CHIP)
.id	country-code	IDNIC-PPAU Mikroelektronika
.ie	country-code	University College Dublin Computing Services Computer Centre
.il	country-code	Internet Society of Israel
.im	country-code	Isle of Man Government
.in	country-code	National Internet Exchange of India
.info	generic	Afilias Limited
.int	sponsored	Internet Assigned Numbers Authority
.io	country-code	IO Top Level Domain Registry Cable and Wireless
.iq	country-code	Communications and Media Commission (CMC)
.ir	country-code	Institute for Research in Fundamental Sciences
.is	country-code	ISNIC - Internet Iceland Ltd.
.it	country-code	IT - CNR
.je	country-code	Island Networks (Jersey) Ltd.
.jm	country-code	University of West Indies
.jo	country-code	National Information Technology Center (NITC)
.jobs	sponsored	Employ Media LLC
.jp	country-code	Japan Registry Services Co., Ltd.
.ke	country-code	Kenya Network Information Center (KaNIC)
.kg	country-code	AsiaInfo Telecommunication Enterprise
.kh	country-code	Ministry of Post and Telecommunications
.ki	country-code	Ministry of Communications, Transport, and Tourism Development
.km	country-code	Comores Telecom
.kn	country-code	Ministry of Finance, Sustainable Development Information & Technology
.kp	country-code	Star Joint Venture Company
.kr	country-code	Korea Internet & Security Agency (KISA)
.kw	country-code	Ministry of Communications
.ky	country-code	The Information and Communications Technology Authority
.kz	country-code	Association of IT Companies of Kazakhstan
.la	country-code	Lao National Internet Committee (LANIC), Ministry of Posts and Telecommunications
.lb	country-code	American University of Beirut Computing and Networking Services
.lc	country-code	University of Puerto Rico
.li	country-code	Universitaet Liechtenstein
.lk	country-code	Council for Information Technology LK Domain Registrar
.lr	country-code	Data Technology Solutions, Inc.
.ls	country-code	National University of Lesotho
.lt	country-code	Kaunas University of Technology Information Technology Development Institute

RM 7

Public Comment Forum for Terms of Reference for New gTLDs (6 December 2005),

<http://www.icann.org/en/news/announcements/announcement-06dec05-en.htm#TOR>

Reference in the Request for IRP: § 13
Reference in the Additional Submission: Not quoted

Public Comment Forum for Terms of Reference for New gTLDs



Updated 22 December 2005

The ICANN bylaws require a public comment period of 20 days following [the initiation of a gNSO Policy-Development Process \(PDP\)](#). < <http://www.icann.org/general/archive-bylaws/bylaws-08apr05.htm#AnnexA>>

ICANN has opened a Public Comment Forum for the below [Terms of Reference for New gTLDs](#). The "Issues Report" for [this PDP](#) is available at <<http://gnso.icann.org/issues/new-gtlds/gnso-issues-rpt-gtlds-05dec05.pdf>>.

The public comment period is from 6 December 2005 to 31 January 2005. Comments may be submitted to the email address < new-gtlds-pdp-comments@icann.org>.

Comments submitted may be viewed at < <http://forum.icann.org/lists/new-gtlds-pdp-comments>>

[gNSO Home Page](#)
[Call for comments on gNSO web site](#)

RM 8

GNSO Issues Report, Introduction of New Top-Level Domains (5 December 2005)

Reference in the Request for IRP: § 13
Reference in the Additional Submission: Not quoted

Page 3:

Summary

1. As requested by the GNSO Council at its 22 September 2005 teleconference (<http://gns0.icann.org/meetings/minutes-gns0-22sep05.shtml>), this document sets out past decisions on the policy for implementing new top-level domains, provides relevant references and sets out other considerations in four issue areas. These issue areas are whether to introduce new gTLDs, selection criteria, allocation methods and contractual conditions.
2. It is recommended that the GNSO launch a focused policy development process, in close consultation with the broader ICANN community including the Government Advisory Committee (on the public policy aspects of new top-level domains) and the ccNSO (on internationalized domain names). The report proposes draft Terms of Reference for this work.

Page 4:

B. Objective

1. This report is designed to give the GNSO Council the information necessary to make a decision about whether to proceed with a policy development process on a new top-level domain strategy. It should be read in conjunction with the Background Report on Internationalized Domain Names which is being prepared for a separate process to be undertaken in conjunction with the ccNSO.
2. The GNSO Guidelines for Issues Reports have been used to frame this document. In particular, the Issues Report describes the key issues, provides directly relevant background and links; recommends whether to proceed with the policy development process and proposes Terms of Reference for a GNSO Working Group.

RM 9

ICANN Resolution 2008.06.26.02,
<http://www.icann.org/en/groups/board/documents/resolutions-26jun08-en.htm>

Reference in the Request for IRP: § 13
Reference in the Additional Submission: Not quoted

GNSO Recommendations on New gTLDs

Whereas, the GNSO initiated a policy development process on the introduction of New gTLDs in December 2005.

<<http://gns0.icann.org/issues/new-gtlds/>>

Whereas, the GNSO Committee on the Introduction of New gTLDs addressed a range of difficult technical, operational, legal, economic, and policy questions, and facilitated widespread participation and public comment throughout the process.

Whereas, the GNSO successfully completed its policy development process on the Introduction of New gTLDs and on 7 September 2007, and achieved a Supermajority vote on its **19 policy recommendations.**

<<http://gns0.icann.org/meetings/minutes-gns0-06sep07.shtml>>

Resolved (2008.06.26.02), based on both the support of the community for New gTLDs and the advice of staff that the introduction of new gTLDs is capable of implementation, **the Board adopts the GNSO (Generic Names Supporting Organization) policy recommendations for the introduction of new gTLDs** <<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part08aug07.htm> (<<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part08aug07.htm>)>.

RM 10

ICANN Resolution 2011.06.20.01,
<http://www.icann.org/en/groups/board/documents/resolutions-20jun11-en.htm>

Reference in the Request for IRP: § 13
Reference in the Additional Submission: Not quoted

Resolved (2011.06.20.01), the Board authorizes the President and CEO to implement the new gTLD (generic Top Level Domain) program which includes the following elements:

1. the 30 May 2011 version of the Applicant Guidebook <<http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>> ([/en/topics/new-gtlds/comments-7-en.htm](http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm)), subject to the revisions agreed to with the GAC (Governmental Advisory Committee) on 19 June 2011, including: (a) deletion of text in Module 3 concerning GAC (Governmental Advisory Committee) advice to remove references indicating that future Early Warnings or Advice must contain particular information or take specified forms; (b) incorporation of text concerning protection for specific requested Red Cross and IOC names for the top level only during the initial application round, until the GNSO (Generic Names Supporting Organization) and GAC (Governmental Advisory Committee) develop policy advice based on the global public interest, and (c) modification of the "loser pays" provision in the URS to apply to complaints involving 15 (instead of 26) or more domain names with the same registrant; the Board authorizes staff to make further updates and changes to the Applicant Guidebook as necessary and appropriate, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process, and to prominently publish notice of such changes;

RM 11

ICANN Board Rationales for the Approval of the Launch of the New gTLD Program,

<http://www.icann.org/en/groups/board/documents/rationale-board-approval-new-gtld-program-launch-20jun11-en.pdf>

Reference in the Request for IRP: §§ 13, 14
Reference in the Additional Submission: Not quoted

Page 4:

I. WHY NEW gTLDs ARE BEING INTRODUCED

New gTLDs are being introduced because the community has asked for them. The launch of the new generic top-level domain (gTLD) program will allow for more innovation, choice and change to the Internet's addressing system, now constrained by only 22 gTLDs. In a world with over 2 billion Internet users – and growing – diversity, choice and competition are key to the continued success and reach of the global network. New gTLDs will bring new protections to consumers (as well as brand holders and others) that do not exist today in the Domain Name System (DNS). Within this safer environment, community and cultural groups are already anticipating how they can bring their groups together in new and innovative ways. Companies and consumers that do not use the Latin alphabet will be brought online in their own scripts and languages. Industries and companies will have the opportunity to explore new ways to reach customers. The years of community work in planning have produced a robust implementation plan, and it is time to see that plan through to fruition.

Page 7:

VI. CONCLUSION

The launch of the new gTLD program is in fulfillment of a core part of ICANN's Bylaws: the introduction of competition and consumer choice in the DNS. After the ICANN community created a policy recommendation on the expansion of the number of gTLDs, the community and ICANN have worked tirelessly to form an implementation plan. The program approved for launch today is robust and will provide new protections and opportunities within the DNS.

Pages 11 and 12:

III. Analysis and Consideration of the Evaluation Process

A. Policy Development Guidance

The GNSO's advice included the following:

- The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.
- All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.
- Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.
- Applicants must be able to demonstrate their financial and organisational operational capability.
- There must be a clear and pre-published application process using objective and measurable criteria.

B. Implementation of Policy Principles

Publication of the Applicant Guidebook has included a process flowchart which maps out the different phases an application must go through, or may encounter, during the evaluation process. There are six major components to the process: (1) Application Submission/Background Screening; (2) Initial Evaluation; (3) Extended Evaluation; (4) Dispute Resolution; (5) String Contention and (6) Transition to Delegation. All applications must pass the Initial Evaluation to be eligible for approval.

RM 12

**Information on the Applicant Guidebook as published on
<http://newgtlds.icann.org/en/applicants/agb>**

Reference in the Request for IRP: § 14
Reference in the Additional Submission: Not quoted

— Applicant Guidebook

The Applicant Guidebook provides a step-by-step procedure for new gTLD applicants.

It specifies what documents and information are required to apply, the financial and legal commitments of operating a new gTLD, and what to expect during the application and evaluation periods.

RM 13

New gTLD Update (30 May 2012) on the close of the TLD Application system, <http://newgtlds.icann.org/en/announcements-and-media/announcement-3-30may12-en>

Reference in the Request for IRP: § 14
Reference in the Additional Submission: Not quoted

NEW GTLD UPDATE (30 MAY 2012)

New gTLD Update by Akram Atallah, COO

The TLD Application System, or TAS, has now closed.

As of 23.00 GMT/UTC today, with one hour remaining before the system closed, just over 1900 applications had been submitted in TAS.

We will reconcile all payments and submitted applications, and will release the final numbers when the applied-for domain names are published. As we said yesterday, our target date for publishing the list of applied-for domain names is 13 June 2012.

We thank all applicants and the ICANN community for their support throughout the application process.

RM 14

New gTLD Draft Applicant Guidebook-Version 2: Analysis of Public Comment, available at <http://archive.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf>

Reference in the Request for IRP: §§ 19, 20 Reference in the Additional Submission: Not quoted

Page 149:

III. Analysis and Proposed Position

While there were many comments regarding string similarity, this comment referred to the dispute resolution process particularly and was categorized here. The comment suggests that the string confusion objection not be allowed for cases of similar meaning, as that objection would serve to limit competition. The new gTLD implementation follows the GNSO recommendation that implies that string confusion should be tested in all ways: visual, meaning and aural confusion. After all, if harm to consumers would result due to the introduction of two TLDs into the root zone because they sounded but did not look alike, then both TLDs should not be delegated. Having said that, **the standard indicates that confusion must be probable, not merely possible, in order for this sort of harm to arise. Consumers also benefit from competition. For new gTLDs, the similarity test is a high bar, as indicated by the wording of the standard.** A TLD string that is a dictionary word will not automatically exclude all synonyms of that word (and most TLD strings today are not dictionary words and have no real synonyms).

Therefore, while the objection and dispute resolution process is intended to address all types of similarity, the process is not intended to hobble competition or reserve a broad set of string for a first mover.

RM 15

ICANN’s call for expression of interest for new gTLD String Similarity Examiners, <http://archive.icann.org/en/topics/new-gtlds/eoi-string-sim-31jul09-en.pdf>

Reference in the Request for IRP: § 20

Reference in the Additional Submission: §§ 13 (footnote 17), 19-21, 23, 28

Pages 4 to 7:

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3 String similarity

The strings proposed by applicants for new gTLDs could be either identical or similar within the meaning of the standard in the previous section to (a) existing TLDs, (b) reserved words, or (c) strings proposed by other applicants in the same round. Strings that are identical to existing TLDs or reserved words are easily identified, and will be rejected during the application process. Strings that are identical to other applied-for strings during the same round are also easily identified, and are automatically placed into contention sets to be handled by the contention resolution process. The design of the DNS makes it impossible to insert more than one instance of the same string into the root, so the importance of detecting and rejecting identical strings is both obvious and uncontroversial.

Less easily identified, and potentially more controversial, are strings that are similar⁴, but not identical, to (a), (b), or (c). Both the GNSO (Recommendation 2: "Strings must not be confusingly similar to an existing top-level domain or a Reserved Name") and the GAC (Principle 2.4: "In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs") have identified "confusing similarity" as a reason to reject an applied-for new gTLD string. Policy discussions indicate that the most important reason to disallow similar strings as top-level domain names is to protect Internet users from the increased exposure to fraud and other risks that could ensue from confusion of one string for another. This reasoning must be balanced against unreasonable exclusion of top-level labels and denial of applications where considerable investment has all ready been made. As the top-level grows in number of registrations, drawing too large a circle of "similarity protection" around each existing string will quickly result in the unnecessary depletion of available names. The unnecessary exclusion of names would also tend to stifle the opportunity of community representation at the top-level and innovation.

An algorithm will score visual similarities between strings for each pair of applications, as a partial guidance for determination of the likelihood of string confusion. The String Similarity Algorithm ("algorithm") is available in several character sets. The algorithm is a tool the examiners use to provide one objective measure as part of the process of identifying strings likely to result in confusion. The algorithm is also available to applicants for testing and informational purposes. The algorithm, user guidelines, and additional background information are available at <http://icann.sword-group.com/icann-algorithm/>.

The algorithm calculates scores for visual similarity between any two strings, using factors such as letters in sequence, number of similar letters, number of dissimilar letters, common prefixes, common suffixes, hyphenation, and string length. The algorithm will provide rank ordered visual similarity scores for each combination (pair) of applied-for and existing TLDs. The algorithm will help the evaluators sort potential cases of similarity and provide some evidence of the degree of similarity between pairs of strings. It is not a determinative tool.

During the Evaluation of applications, String Similarity Examiners will review all applied-for strings and decide whether the strings proposed in any pair of applications are so similar to another applied-for string (based on the standard above) that they should be placed into direct string contention as part of a contention set. (Applied for strings that are found to be so similar to an existing TLD or Reserved Word that the standard is met will be rejected.) Such a determination, based on human judgment assisted by criteria and algorithm outcomes, is performed for each pair of applications. When all applications have been checked in this way, the outcome is a matrix of direct string contentions between pairs of applications. Applications

⁴ Although two strings might be "similar" in appearance, sound, or meaning, for the purposes of this RFI, only visual similarity (appearance) is relevant.

without any string contention can proceed without further action, but contention must be resolved for all others.

4 Criteria

ICANN anticipates expressions of interest (i.e., answers to questions posed in section 5 below) from providers to conduct the string similarity examination of applications must meet the following criteria:

1. The provider must be an internationally recognized firm or organization with significant demonstrated expertise in the evaluation and assessment of this type of similarity. The provider must demonstrate experience in making decisions of this level of importance; balancing the potential for exposing Internet users to increased risks of fraud and other harms versus unnecessary exclusion of Internet labels and denial of applications where considerable investment has been made.
2. The provider must be competent to assess (or be able to call upon experts who are competent to assess) the way in which changes to the top level (root zone) of the DNS might increase the exposure of Internet users to fraud or other harms.
3. The provider must be able to convene (either in advance or rapidly on-demand) a linguistically and culturally diverse panel capable, in the aggregate, of evaluating Applications from a wide variety of different communities, which may:
 - be local or global in scope;
 - be based on geography, political affiliation, common interests, or other factors;
 - involve either commercial or non-commercial interests (or both); and
 - be either objectively defined or self-defining.²
4. The provider must propose a structure and plan for the string similarity panel that is viable for a varying number of Applications, and how that process will scale if 100, 250, 500, 700 or 900 applications are received. There should be a statement describing how 2000 applications would be processed (even though this is thought to be highly unlikely). The number of comparisons will increase exponentially with increase in the number of applications and, as the number of Applications increases, the number of those that will present string similarity issues may also increase but this number will not be known in advance.
5. Considering the string similarity criteria defined in Module 4 of the Applicant Guidebook and described in Section 3 of this document, the provider must propose a panel that is capable of:
 - exercising subjective judgment in making its evaluations,
 - **reaching conclusions that are compelling and defensible,** and
 - **documenting the way in which it has done so in each case.**

² An example of an objectively defined community is “the registered voters in the city of Perth, Australia”; an example of a self-defining community is “people who are interested in dogs.”

6. The provider must convene and operate the string similarity panel so as to prevent communication between the panel (or any of its members) and any party with an interest in the Applications being evaluated, except as may be explicitly permitted by the process as defined in the Applicant Guidebook and to avoid conflicts of interest. The provider selected and each of its evaluators (including any additional experts) will execute a confidentiality agreement with regard to material contained in the applications under review.
7. The provider should be comfortable that the Applicant Guidebook is comprehensive and satisfactorily expresses all selection criteria, but understand that it is not finalized. It is possible, that the provider will be selected before the Applicant Guidebook is finalized, it will have the opportunity to review the text to ensure that the basis for the evaluation is clear. The criteria must be objective, measurable, publicly available at the outset of the evaluation process, and described fully in the Applicant Guidebook. All applications will be evaluated against these criteria.
8. The evaluation process for selection of new gTLDs will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination.

5 Response to EOI Requirements

Interested parties should respond to each of the eight subject areas below. Responses will be gauged on the basis of the criteria defined in this document and Applicant Guidebook. Candidates desiring to express their interest to ICANN in the comparative evaluation role in the new gTLD program should provide the following:

1. A Statement of Suitability that includes a detailed description of the candidate's ability to perform the work described in the previous section which demonstrates knowledge, experience and expertise, including but not limited to projects, consulting work, research, publications and other relevant information.
2. Evidence of the candidate's knowledge of and familiarity with ICANN, its role, structure and processes, including the Internet's Domain Name System (DNS) and past gTLD application and evaluation rounds.
3. The *curriculum vitae* for each person proposed by the candidate to manage or lead work on this project, the candidate's selection process for persons being proposed to ICANN, and explanation of the role that each named person would play. Also indicate the experience and availability of proposed evaluators. ICANN will consider the professional background of available and proposed panelists prior to selecting a provider in order to assess their areas and level of expertise and to identify any conflicts that would prevent them from making an objective evaluation of any application.
4. A warrant that the candidate, if selected, will operate under ICANN's non-disclosure agreement and standard consulting agreement, and that neither the candidate nor any individual who might be engaged to work on this project (whether or not declared pursuant to (4) above) has a known conflict of interest.

5. A statement of the candidate's plan for ensuring fairness, nondiscrimination and transparency.
6. Considering the nature of the expertise necessary for evaluating strings for user confusion on a global scale, a statement of the candidate's plan for ensuring that the examiners will consist of qualified individuals and that the candidate will make every effort to ensure a consistently diverse and international panel.
7. Project and operational timelines.
 - a. A proposed work schedule for planning and starting panel operations including key milestone dates, consistent with but more detailed than those specified in this document.
 - b. Projected targets for the time frame necessary for it to complete a thorough and careful evaluation of all applications. Identification of volumes of applications that can be processed in those timeframes and at what volumes batch processing of applications might be necessary.
8. Costs. The candidate should provide a detailed statement of the proposed fee structure, including any variable provisions that may be based on the number of string similarity examinations conducted, the number of examinations that involve IDNs, or other factors. See attached, Exhibit A Cost Template.

6 Deadline

Interested providers must submit expressions of interest by email to string-sim-eoi@icann.org by 15 September, 2009 23:59 UTC. A confirmation email will be sent for each response received.

Also send queries regarding this request to string-sim-eoi@icann.org will be accepted until 24 August, 2009, 23:59 UTC. Queries and answers will be posted to a page on the ICANN web site dedicated to this purpose.

If selected, the successful candidate is expected to be ready to assist ICANN with finalization of the Applicant Guidebook, prepare for the evaluation phase, and be ready to start the evaluation within four months after release of the final Applicant Guidebook.

Thank you for your interest.

RM 16

ICANN presentation at the 42nd meeting of ICANN,
<http://dakar42.icann.org/meetings/dakar2011/presentation-new-gtld-program-update-26oct11-en.pdf>

Reference in the Request for IRP: § 21

Reference in the Additional Submission: §§ 13 (footnote 17), 28

Pages 21 and 22:

Quality Control Objectives

- Consistency
- Accountability
- Improvement
- Transparency

ICANN
Dakar
SÉNÉGAL
N°42 25 - 28 October 2011

21

Quality Control Components

- Performing simulation exercises
- Initial sampling
- Blind re-evaluation (~15%)
- Random procedural reviews
- **Independent report will be published**

RM 17

Transcript of Applicant Webinar: Start of New gTLD Initial Evaluation of 9 August 2012, available at <http://newgtlds.icann.org/en/announcements-and-media/webinars>

Reference in the Request for IRP: § 23
Reference in the Additional Submission: § 36

Page 24:

Kurt Pritz:

Thank you for those. We think the string similarity, the publication of strings that are identical is evident on its face. The string similarity panel will publish its results, and it is scheduled to publish its results four-and-a-half months after they had the strings, and they had the strings the day after the reveal date; and so four-and-a-half months from June 13th. And then there'll be some processing time for ICANN to put that, to review those results and put it in publishable form. So it'll be sometime after that four-and-a-half month period – not too long, and now that we've worked with the evaluation panel on how they're going to word the results we will develop a process for reviewing those results and get back with a more specific date, but sometime after that four-and-a-half month period.

RM 18

Information Paper for Applicants: New gTLD Program Update of 6 September 2012, <http://newgtlds.icann.org/en/applicants/update-06sep12-en.pdf>

Reference in the Request for IRP: § 24
Reference in the Additional Submission: Not quoted

Page 3:

Panel	Target Completion	Apps Assigned	Apps in Evaluation	Preliminary App Results¹
Financial	Jun-13	602	461	141
Technical and Operations	Jun-13	602	475	127
Geographic Names	Nov-12 ²	all	476	65
String Similarity ³	Oct-12	all	824	585
Registry Services	Jan-13	all	all	0
DNS Stability	Oct-12	all	all	0

RM 19

Applicant Update Webinar: Application Evaluation Progress of 6 September 2012 (recording), unofficial transcript of 00:48:10 to 00:48:57 (recording available at <http://newgtlds.icann.org/en/announcements-and-media/webinars>)

Reference in the Request for IRP: § 24 Reference in the Additional Submission: Not quoted
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[Start of transcript: 00:48:13]

ICANN Staff: When will ICANN post the results of the string similarity evaluations?

Kurt Pritz²: So we, (euhm) the string similarity evaluations were on an earlier slide. We expect to receive them middle or late October and we will take probably two to three weeks after that in order to get the results and do analyses, get the results in publishable form and, get them out. So I would say late October, early November as we are able to nail down the date with the panel. We've developed our process for taking evaluation results and getting them out to you. We'll give you a very specific date.

[End of transcript: 00:48:57]

RM 20**Information Paper: new gTLD update (Toronto Session) of 8 October 2012**

Reference in the Request for IRP: § 24
 Reference in the Additional Submission: Not quoted

Page 4 :

Panel	Target Completion	Apps Assigned	Apps in Evaluation	Preliminary App Results ¹
Financial	Jun-13	864	636	228
Technical and Operations	Jun-13	864	630	234
Geographic Names	Nov-12 ²	1916	159	1757
String Similarity ³	Nov-1 ⁴	1407	588	819
Registry Services	Jan-13	all	1865	59
DNS Stability	Oct-12	all	all	0

¹ These numbers represent completed applications or applications with queued clarifying questions. They are subject to change due to application comments and/or change requests.

² Geographic Name evaluation is targeted to be completed by Nov-12, but applicants will receive more time to supply the letters of support.

³ String Similarity statistics are based on unique string counts, not total applications.

⁴ Revised date provided by panel from previous date of Oct-12

RM 21

Information Paper : new gTLD update of 14 November 2012

<p>Reference in the Request for IRP: § 24 Reference in the Additional Submission: Not quoted</p>
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Page 2:

Evaluation Progress

The string similarity review has been completed. The secondary review will commence soon. After the secondary review completes, ICANN will require some time to process and post the results.

RM 22

**Declaration of the Independent Review Panel in ICDR Case No. 50 117 T
00224 08**

Reference in the Request for IRP: § 39
Reference in the Additional Submission: § 4

Pages 63-64:

140. In the view of the Panel, ICANN, in carrying out its activities “in conformity with the relevant principles of international law,” is charged with acting consistently with relevant principles of international law, including the general principles of law recognized as a source of international law.

That follows from the terms of Article 4 of its Articles of Incorporation and from the intentions that animated their inclusion in the Articles, an intention that the Panel understands to have been to subject ICANN to relevant international legal principles because of its governance of an intrinsically international resource of immense importance to global communications and economies. Those intentions might not be realized were Article 4 interpreted to exclude the applicability of general principles of law.

RM 23

**Declaration of the Independent Review Panel in ICDR Case No. 50 2013
001083**

Reference in the Request for IRP: Not quoted
Reference in the Additional Submission: §§ 11 (footnote 13), 12 (footnote 15)

Pages 25, 27 and 28:

**The Panel's Decision on Binding or Advisory nature of IRP decisions,
opinions and declarations**

98) Various provisions of ICANN's Bylaws and the Supplementary Procedures support the conclusion that the Panel's decisions, opinions and declarations are binding. There is certainly nothing in the Supplementary Rules that renders the decisions, opinions and declarations of the Panel either advisory or non-binding.⁵⁹

99) In paragraph 1, the Supplementary Procedures define "Declaration" as the "decisions and/or opinions of the IRP Panel". In paragraph 9, the Supplementary Procedures require any Declaration of a three-member IRP Panel to be signed by the majority and in paragraph 10, under the heading "Form and Effect of an IRP Declaration", they require Declarations to be in writing, based on documentation, supporting materials and arguments submitted by the parties. The Supplementary Procedures also require the Declaration to "specifically designate the prevailing party".⁶⁰

⁵⁶ ICANN letter of 2 June 2014 addressed to the Panel.

⁵⁷ *Ibid.* Italics are from the original decision.

⁵⁸ *Ibid.*

⁵⁹ The Reconsideration process established in the Bylaws expressly provides that ICANN's "Board shall not be bound to follow the recommendations" of the BGC for action on requests for reconsideration. No similar language in the Bylaws or Supplementary Procedures limits the effect of the Panel's IRP decisions, opinions and declarations to an advisory or non-binding effect. It would have been easy for ICANN to clearly state somewhere that the IRP's decisions, opinions or declarations are "advisory"—this word appears in the Reconsideration Process.

⁶⁰ Moreover, the word "Declaration" in the common law legal tradition is often synonymous with a binding decision. According to Black's Law Dictionary (7th Edition 1999) at page 846, a "declaratory

108) Moreover, even if it could be argued that ICANN's Bylaws and Supplementary Procedures are ambiguous on the question of whether or not a decision, opinion or declaration of the IRP Panel is binding, in the Panel's view, this ambiguity would weigh against ICANN's position. The relationship between ICANN and the applicant is clearly an adhesive one. There is no evidence that the terms of the application are negotiable, or that applicants are able to negotiate changes in the IRP.

111) The force of the foregoing textual and construction considerations as pointing to the binding effect of the Panel's decisions and declarations are reinforced by two factors: 1) the exclusive nature of the IRP whereby the non-binding argument would be clearly in contradiction with such a factor⁶²;

⁶² If the waiver of judicial remedies ICANN obtains from applicants is enforceable, and the IRP process is non-binding, as ICANN contends, then that process leaves TLD applicants and the Internet community with no compulsory remedy of any kind. This is, to put it mildly, a highly watered down notion of "accountability". Nor is such a process "independent", as the ultimate decision maker,

ICANN, is also a party to the dispute and directly interested in the outcome. Nor is the process "neutral," as ICANN's "core values" call for in its Bylaws.

RM 24

Transmittal Letter from Esther Dyson to Becky Burr of 6 November 1998

Reference in the Request for IRP: Not quoted
Reference in the Additional Submission: § 11 (footnote 14)

Our goal, as the Initial Board, is to complete the organizational work as quickly as possible, and to hand over a fully functioning, properly representative ICANN to its first elected Board as soon as possible. We must create an organization that can begin to assume responsibility for the administration and policies of the Internet name and address system, and we must do so quickly, openly and effectively. This Board is committed to accomplishing all of these somewhat conflicting objectives.

RM 25

Michael Sarazar, “Preparing Evaluators for the new gTLD Application Process”, 22 November 2011

Reference in the Request for IRP: Not quoted
Reference in the Additional Submission: §§ 20, 30, 32, 33

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日本語

PREPARING EVALUATORS FOR THE NEW GTLD APPLICATION PROCESS

by Michael Salazar | 22 November 2011

The names of the global firms that will serve as the evaluation panels for new generic Top Level Domain (gTLD) applications were recently announced during the ICANN 42 Dakar meeting.

As Program Director for the [New gTLD Program](http://newgtlds.icann.org/) (<http://newgtlds.icann.org/>) responsible for the design and deployment of the New gTLD Application Processing Program and managing the process as it takes flight, I am extremely proud of the selections we have made. All of the organizations chosen are highly qualified, global, and are respected experts in the areas for which they have been selected.

Whom did we select?

We followed a thorough, fair, detailed process to select the evaluation panels. The process, which is described on our website under "[Call for Applicant Evaluation Panel Expressions of Interest](#)" (<http://www.icann.org/en/press/announcements/25feb09-en.htm>) began in February of 2009. When I came on board in July 2009 I quickly understood the heightened level of interest in providing services for this relatively new Program. In all, [twelve global firms formally submitted responses](#). Out of that pool, we selected: [The Economist Intelligence Unit](http://www.eiu.com) (<http://www.eiu.com>), [Ernst & Young](http://www.ey.com) (<http://www.ey.com>), [InterConnect Communications](http://www.icc-uk.com) (<http://www.icc-uk.com>) (partnering with the [University College London](http://www.ucl.ac.uk) (<http://www.ucl.ac.uk>)), [Interisle Consulting Group](http://www.internisale.net) (<http://www.internisale.net>), [JAS Global Advisors](http://www.jasadvisors.com) (<http://www.jasadvisors.com>), and [KPMG](http://www.kpmg.com) (<http://www.kpmg.com>).

These firms will work together in various combinations to evaluate applications during the process as follows:

String Reviews

- **String Similarity** - InterConnect Communications/University College London
- **DNS Stability** - Interisle Consulting Group
- **Geographic Names** - The Economist Intelligence Unit and InterConnect Communications/University College London

Applicant Reviews

- **Technical and Operational** - Ernst & Young, JAS Global Advisors, and KPMG
- **Financial Capability** - Ernst & Young, JAS Global Advisors, and KPMG
- **Registry Services** - Interisle Consulting Group
- **Community Priority** - The Economist Intelligence Unit and InterConnect Communications

Why is there more than one firm for each of the evaluation types? Three reasons:

- To provide sufficient bandwidth to conduct the number of necessary evaluations.
- To provide an alternate channel to avoid conflicts of interest.
- To provide for continued competition among service providers to ensure quality and value going forward.

All of the firms exhibit characteristics that are important to the integrity of this process. For example, KPMG and Ernst & Young both have large global footprints and can effectively scale to ensure timely and culturally sensitive processing of applications. Their strong and long history in providing audit, tax, and advisory services makes them well suited to serve as the panels for financial and technical/operational evaluations. JAS Global Advisors has a decade of experience in due diligence, internet security, and global IT operations as well as an intimate knowledge of ICANN. The Economist Intelligence Unit, the sister organization of The Economist,

incorporates a solid understanding of global corporate and government processes. InterConnect Communications, in conjunction with the University College London brings an internationally recognized and diverse linguistics resources offering an abundance of subject matter expertise. And finally, Intense Consulting Group has a very specific, excellent subject matter expertise in the DNS.

How are we ensuring an effective and efficient evaluation effort?

Ensuring that we have an effective and efficient evaluation effort is one of the most important aspects of building this program – and this starts with how we are preparing the evaluation panels.

The first step begins with simulation exercises. Currently, my team is **conducting simulation exercises** using mock applications. The simulation exercises have been instrumental in testing the evaluation process, understanding the level of effort to review an application, and equally as important, to calibrate the analysis across the firms.

The next step is **building and implementing a robust training program**. We are finalizing a training program that all evaluators are required to complete before performing an evaluation. Any individual serving on a panel will need to complete the training program prior to starting. The training program seeks to ensure consistency across all processes and scoring methods so that all applications are evaluated equally.

Finally, we are implementing a Quality Control program to ensure that applications have followed the same evaluation process and that our evaluators maintain consistency. I strongly believe that the Quality Control function is a paramount component of the Program. In addition to performing the **critical task of ensuring consistency**, Quality Control will enable us to identify areas for improvement. These will in turn create initiatives that will bring enhanced effectiveness to the overall program as well as improvements in costs as we consider future rounds.

How will ICANN address any conflicts of interest?

Conflict of interest is an area that ICANN takes very seriously as it impacts the integrity of the Program. In fact, our processes are built to avoid and adequately deal with potential conflicts of interest. For example, where feasible, we have multiple firms providing services making sure that no evaluators have a conflict with a particular application.

I helped craft applicable language in the Applicant Guidebook and have made the topic the subject of contract negotiations with each firm reinforcing the importance of avoiding conflict of interest (inherent or perceived). There is also a code of conduct that we have asked each firm to abide. Some of the guidelines under the code of conduct restrict the evaluators from speaking at meetings or conferences on the topic of New gTLDs and interacting with entities or individuals that have identified themselves as potential applicants of the New gTLD Program. See [Module 2 of the Applicant Guidebook \(http://new.tld.icann.org/applicantguidebook\)](#) (Section 2.4.3 Code of Conduct Guidelines for Panelists) for more information on the Code of Conduct and Conflict of Interest guidelines.

The New gTLD Application Program is a major undertaking for ICANN and the global Internet community. We are very excited to get this program underway. Stay tuned for additional announcements as we continue to prepare for launch on 12 January 2012.

If you have any questions about the gTLD Program, the evaluation process or the evaluator firms selected, please send your questions to:

icann@icann.org or evaluation@icann.org

RM 26

ICANN's Webpage on the Evaluation Panels Selection Process

Reference in the Request for IRP: Not quoted
 Reference in the Additional Submission: §§ 18, 32



ICANN **New Generic Top-Level Domains**

— Evaluation Panels Selection Process

The launch of the new gTLD application round requires independent evaluation panels to assess whether applicants meet the minimum criteria as specified in the Applicant Guidebook.

Here you'll find a repository of information and documents associated with the selection process of these evaluation panels.

日本語

EVALUATION PANELS SELECTION PROCESS

ICANN's review and selection process of independent evaluators had 3 phases:

1. General criteria scoring to identify a short list of candidates per panel
2. Oral presentations with short-listed candidates
3. Presentation of recommended candidates to Board

Date of Publication	Subject	Deadline	Details
26 October 2011	Evaluation Panel Firms announced	n/a	Preparing Evaluators for the New gTLD Application Process (/preparing-evaluators-22nov11-en)
23 March 2010	Update on Phase 2 of selection process	n/a	Phase 2 of the selection process has been completed. ICANN met the candidate's leadership and core team members to evaluate in detail the candidate's approach, experience, technical competency, commitment, and proposed costing model. The next and final phase will select the Evaluation Panelists providers and notify the Board of final selections. The retention of the Evaluation Panelist is expected to occur in 2011 and names of the selected evaluation panelists will be published at that time.
11 December 2009	Update on Phase 1 of selection process	n/a	ICANN Continues Reporting on the Selection Process of Independent Evaluators for the New gTLD Program (http://www.icann.org/en/announcements/announcement-11dec09-en.htm)
25 October 2009	Panel Selection Process	n/a	List of Respondents (http://www.icann.org/en/announcements/announcement-25oct09-en.htm)
8 August 2009	Respondents' Conference Call Original Transcript		<ul style="list-style-type: none"> • Respondents' Conference Call Q&A Transcript (http://www.icann.org/en/topics/new-gtlds/transcript-eol-11aug09-en.pdf) [72 KB] • The Question & Answer session (http://www.icann.org)

			/en/topics/new-gtlds/eoi-q-and-a-27aug09-en.pdf [152 KB]
31 July 2009	EOI Re-opened: New gTLD Program: Update on Independent Evaluator Search (http://www.icann.org/en/announcements/announcement-31jul09-en.htm).	15 September 2009 - 23:59 UTC	<p>(Please note: new Costs Template Exhibit A, is attached at the back of the original EOI)</p> <ul style="list-style-type: none"> • <i>Applicant Evaluation Teams (Technical and Financial Evaluation)</i> (http://www.icann.org/en/topics/new-gtlds/eoi-app-aval-31jul09-en.pdf) [172 KB] • <i>Geographic Name Evaluation</i> (http://www.icann.org/en/topics/new-gtlds/eoi-geo-names-31jul09-en.pdf) [184 KB] • <i>String Similarity Examiners</i> (http://www.icann.org/en/topics/new-gtlds/eoi-string-exm-31jul09-en.pdf) [176 KB] • <i>Community Priority Evaluation Panel — formerly the Comparative Evaluation Panel</i> (http://www.icann.org/en/topics/new-gtlds/eoi-community-prioriv-31jul09-en.pdf) [176 KB]
			<p>Q&A</p> <ul style="list-style-type: none"> • Previous call for expressions of interest open submissions period: http://www.icann.org/en/announcements/announcement-2-02apr09-en.htm (http://www.icann.org/en/announcements/announcement-2-02apr09-en.htm) and http://www.icann.org/en/announcements/announcement-25feb09-en.htm (http://www.icann.org/en/announcements/announcement-25feb09-en.htm)
22 April 2009	EOI Extended: Deadline for Independent Evaluator Applications Extended (http://www.icann.org/en/announcements/announcement-2-02apr09-en.htm)	11 June 2009 - 23:59 UTC	<ul style="list-style-type: none"> • <i>Applicant Evaluation Teams (Technical and Financial Evaluation)</i> • <i>Geographic Name Evaluation</i> • <i>String Similarity Examiners</i> • <i>Comparative Evaluation Panel</i>
25 February 2009	EOI: New gTLD: Call for Applicant Evaluation Panel Expressions of Interest (http://www.icann.org/en/announcements/announcement-25feb09-en.htm).	13 April 2009 - 23:59 UTC	<ul style="list-style-type: none"> • <i>Applicant Evaluation Panel – Financial or Technical</i> (http://www.icann.org/en/topics/new-gtlds/eoi-app-aval-25feb09-en.pdf) [72 KB] • <i>Geographic Names Panel</i> (http://www.icann.org/en/topics/new-gtlds/eoi-geonames-25feb09-en.pdf) [76 KB] • <i>String Similarity Examiners</i> (http://www.icann.org/en/topics/new-gtlds/eoi-string-exm-25feb09-en.pdf) [76 KB] • <i>Comparative Evaluation Panel</i> (http://www.icann.org/en/topics/new-gtlds/eoi-comparative-evaluation-25feb09-en.pdf) [80 KB]

RM 27

**New gTLD Program Update, 26 October 2011, Dakar, available at
<http://dakar42.icann.org/node/26953>**

<p>Reference in the Request for IRP: Not quoted Reference in the Additional Submission: §§ 33, 34 (footnotes 31-33)</p>

Pages 14 and 15:

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DAKAR New gTLD Program Update

And then underlying this all, JAS has been obtained to perform the quality assurance function. I'm going to tell you a little about that. So you see JAS is sort of a tertiary source for providing the financial and technical evaluation, not one of the primary ones, but is there in case both of those other firms are conflicted out. As far as a background screening provider, an RFP was issued in August. We've already heard from eleven global firms and vendor selection is underway.

So what about quality assurance? I think this is a very important aspect of this project. What are we after? We want the applications to be scored consistently. We want accountability of the panelists and of the firms managing those panelists, continual improvement and some transparency into how the project operates.

So we've developed this four-step or four-prong process to quality assurance and quality control. One is presently we're performing simulation exercises, so we have these firms scoring simulated applications and then comparing notes and doing normalization exercises so there's some consistency across the application. Then once the process launches, in our terms we talk about F'12, and we're not settled on this number but the first twelve applications. So we'll evaluate twelve applications and then stop, and then look for consistency across evaluators, across regions, across panelists to ensure there's a normalization across those; and then reset.

And then once we start evaluating in earnest we'll do blind evaluations. So our quality assurance provider will rescore 15% of the applications, and in cases where there's differences stop, go

back to the evaluators, do a check to see how a certain question is being scored – why there was a difference in score, and then reset the process across all the evaluators. So that 15% is a significant number. I'm an old QA guy and we used to have all these military standards in the United States that would help us pick samples and we'd measure the right size, and if you find something wrong you go back and examine the whole lot.

So those very basic QA principles are being applied right here by people much more competent than I because I've forgotten all that stuff to this process. We're also doing random procedural reviews to ensure that each evaluator is running the procedures in exactly the procedural way that we've specified. This is our approach to quality assurance.

And then overarching all of this there'll be a program governance program. So if you think about the different prongs to the New gTLD Evaluation Office, there'll be a program management oversight function to assure that all these functions are integrated and performing as they should. So I'm going to talk a little bit about that program management office now.

First, we've talked about this before and I'm boring you enough so I'm not going to give you a lot of numbers, but ICANN's gone through a process where we've identified the key functions necessary to support new gTLDs once they're in place – the IANA function, registrar and registry liaison, our Legal Team, our Finance Team. We've flowcharted our processes and we've put staffing plans in place to grow the organization with the intended

RM 28

Update to the Cost Considerations of the New gTLD Program

Reference in the Request for IRP: Not quoted
Reference in the Additional Submission: § 42 (footnote 39)

Pages 3, 6 and 12:

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eliminated based on the evolved implementation plans. The recent review of all costs indicate that, while some cost estimates have increased and some have decreased, there is no net increase of costs overall for the program.

- The original expense estimate of US\$185,000 remains valid, and therefore the fee remains the same.

1. Overview and Summary

The primary implications of this New gTLD Program relate to possible improvements in choice and competition as a result of new top-level domain names, but the cost implications, both to ICANN's operations and to gTLD applicants, will be significant. Thus a thorough review of the new gTLD evaluation fee is necessary.

A key implementation guideline of the new gTLD policy is that it should be fully self-funding (costs should not exceed fees).

See: http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#_Toc43798015.

The current fee and expense model which allows ICANN to provide technical coordination of unique identifiers must remain intact for the foreseeable future, and there should be no cross-subsidizing by existing gTLD registrants.

However, the New gTLD Program represents a new activity for ICANN and the costs are difficult to estimate without substantial implementation work. Implementing the breadth of the GNSO policy requirements is complex and requires many evaluation steps. For example, global community concerns must be considered, protection of rights holders must be held, and the likelihood that a new gTLD registry operator has the financial wherewithal and technical resources to stably and appropriately operate a new gTLD registry must be considered. The process requires a thorough implementation of a detailed plan.

There is historical precedence. Beginning in 2003, ten applications for new "sponsored" TLDs were processed, and estimates of costs at the time exceeded \$1,800,000 which included staff costs, direct consulting costs, and outside services including legal expenses. Thus, the costs per application were estimated to have been at least \$180,000 per application.

The new gTLD evaluation fee is estimated to be \$185,000 based on a detailed costing methodology that includes program development costs, fixed and variable application evaluation costs, and risks or low probability event costs.

The impacts of the New gTLD Program on both application fee revenue and expenses may be significant. ICANN's overall costs for evaluating applications could be as much as \$100 million if there are 500 or more applications. Since these expenses and associated fees could be large relative to ICANN's other sources of revenue, it is important to estimate the costs as closely as possible.

With the uncertainties involved, it is possible that ICANN will over-collect or under-collect for this first round; fees received may be greater or less than actual expenses. Noncontentious applications can be handled efficiently and less expensively, but

- Is quality control properly considered?
- What is the impact on the number of applications? If the number is significantly more than 500, what happens? If significantly less?

3. Cost Elements

The primary fee associated with the new gTLD program is the application evaluation fee, which is estimated to be \$185,000 per application. The fee is based on a detailed cost estimation process that includes the following components:

1. **Development costs.** Development costs are those associated with the project that is the implementation of the GNSO policy. The development costs consist of all the program costs incurred from the date of the GNSO recommendation in October 2007 until the launch of the New gTLD Program. The costs include ICANN internal staff time, travel and meeting for new gTLD efforts, professional services and overhead costs. These costs amount to approximately \$13,475,000 (or \$26,950 per application if amortized over 500 applications).
2. **Application processing costs.** Processing costs include all costs required to process applications from the day of application submittal until final delegation (or rejection) of the string into the root zone. Processing costs include fixed costs such as setup, integration, and one-time communication costs as well as variable costs required to pay staff and panelists to evaluate each application. These costs amount to approximately \$48,900,000 and consist of \$12,400,000 in fixed costs plus \$36,500,000 in variable costs (or \$97,800 per application).
3. **Risk costs.** Uncertain costs and costs that are harder to predict, or risks, include unanticipated costs such as variations between estimates and actual costs incurred. These costs expected value amount to \$30,000,000, or \$60,000 per application.

These cost elements are shown in the Exhibit 1 and are described in more detail in the sections that follow.

Cost Elements	Total Costs	Costs / application (assumed to be 500)
3.1 Development Costs	13,475,000	\$26,950
3.2 Application Processing Costs	\$48,900,000	\$97,800
<i>Application Processing Costs – Fixed</i>	<i>\$12,400,000</i>	<i>\$24,800</i>
<i>Application processing costs – Variable</i>	<i>36,500,000</i>	<i>\$73,000</i>
3.3 Risk Costs	\$30,000,000	\$60,000
Total	\$92,375,000	\$184,750

Exhibit 1: Cost Elements

this magnitude it is likely there may be significant, unanticipated costs that will be incurred such as hard to predict costs, or risks.

Examples of these risks/difficult-to-estimate costs include:

- What would happen if many more or many fewer applications were received than anticipated?
- How simple or complex will the average application be (dictating how many process steps must be executed for each application)?
- Have expected fees by outside consultants been estimated correctly?
- Are the time estimates for each task accurate?
- What happens if additional tasks are required?
- Have expenses for support functions such as information technology systems, **legal support**, contract support, and the like been fully identified?
- **Will additional external costs be required to shore up defense against unanticipated events?**

Although these costs must be included (to be true to the core principle of full funding of the New gTLD Program and no cross subsidizing), it is difficult to ascertain the categories or types of costs these might become and what amounts to include.

Nevertheless, to provide a reasonable estimate of these cost elements, ICANN engaged experts to assist. First, a request for proposal was sent to known experts in risk management, including risk assessment and risk measurement. After careful evaluation of the proposals, ICANN selected Willis Inc., the world's third largest insurance broker and risk consultant with offices in over 100 countries. In particular the Willis Enterprise & Risk Finance (WERF) practice, which is the center of excellence within Willis for risk quantification and risk modeling, performed a study to assess and measure the risk component, or uncertain/hard-to-predict cost components of the New gTLD Program.

Using a scenario modeling quantitative technique that incorporates Monte Carlo simulation modeling and regression analysis, the Willis team identified risk elements and calculated the probabilities and severity of impact for each risk element. The analysis generated a risk profile map for the overall New gTLD Program. The quantitative result of the analysis estimated a risk cost of \$30,000,000, which accounts for uncertainty at the 80% level of confidence. At 500 applications, the uncertain/harder-to-predict costs, or risk, per new gTLD application is \$60,000.

3.4 Sensitivity analyses

To further refine these estimates, sensitivity analyses and reasonableness tests were applied throughout the development efforts. A few of those analyses are summarized here.

Number of applications expected – To amortize fixed costs over all applications and to assist in building a scalable process, the number of applications per round must be estimated. We have assumed that there will be 500 applications in the first round. This volume assumption is based on several sources, including a report from a consulting economist, public estimates on the web, oral comments at public meetings, and off-the-

RM 29

Letter from Russ Weinstein to Andrew Merriam of 8 September 2014

Reference in the Request for IRP: Not quoted
Reference in the Additional Submission: § 28

While the evaluation panel is aware of these timelines, given the impact of a CPE result on all members of the contention set, final reports will not be rushed simply to meet the timeline. The CPE Panel is committed to providing an accurate evaluation and an evaluation report that clearly describes the rationale for the scoring of the applications.

RM 30

International Covenant on Civil and Political Rights (ICCPR)

Reference in the Request for IRP: Not quoted
Reference in the Additional Submission: § 12 (footnote 16)

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

RM 31

HRCt, *General Comment 29*, UN Doc CCPR/C/21/Rev.1/Add.11

Reference in the Request for IRP: Not quoted
Reference in the Additional Submission: § 12 (footnote 16)

11. The enumeration of non-derogable provisions in article 4 is related to, but not identical with, the question whether certain human rights obligations bear the nature of peremptory norms of international law. The proclamation of certain provisions of the Covenant as being of a non-derogable nature, in article 4, paragraph 2, is to be seen partly as recognition of the peremptory nature of some fundamental rights ensured in treaty form in the Covenant (e.g., articles 6 and 7). However, it is apparent that some other provisions of the Covenant were included in the list of non-derogable provisions because it can never become necessary to

derogate from these rights during a state of emergency (e.g., articles 11 and 18). Furthermore, the category of peremptory norms extends beyond the list of non-derogable provisions as given in article 4, paragraph 2. States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.

RM 32

**IAComHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116,
Chapter III.D**

Reference in the Request for IRP: Not quoted
Reference in the Additional Submission: § 12 (footnote 16)

245. Where an emergency situation is involved that threatens the independence or security of a state, the fundamental components of the right to due process and to a fair trial must nevertheless be respected. More particularly, certain aspects of these rights, namely the right under Article 9 of the American Convention concerning freedom from *ex post facto* laws that are not favorable to a defendant, as well as “judicial guarantees essential for the protection of [non-derogable] rights”, are among the protections enumerated in Article 27(2) of the Convention that may not be suspended. Further, although Article 8 of the Convention is not explicitly mentioned in Article 27(2), states are not free to derogate from the fundamental due process or fair trial protections referred to in Article 8 and comparable provisions of other international instruments. To the contrary, when considered in light of the strict standards governing derogation, the essential role that due process safeguards may play in the protection of non-derogable human rights, and the complementary nature of states’ international human rights obligations, international authority decidedly rejects the notion that states may properly suspend the rights to due process and to a fair trial.

RM 33

IAComHR, *Lindo et al. v. Peru*, Case 11.182, Report No. 49/00

Reference in the Request for IRP: Not quoted

Reference in the Additional Submission: § 26 (footnotes 26-27)

115. Such a system of secret justice constituted a flagrant violation *per se* of the right--that is an integral part of due process--to be tried by an independent and impartial judge or tribunal, enshrined in Article 8(1) of the American Convention, and of the guarantee providing for the public nature of criminal proceedings, enshrined in Article 8(2)(5). In connection with this, in its 1993 Report on the Situation of Human Rights in Peru, the Commission stated that: "If no one knows the identity of the presiding judges, then nothing can be said about their impartiality and independence. This in itself is questionable, given the measures adopted by the Executive Power in relation to the Judiciary since April 5 [1992]."^[35] Furthermore, Article 13(h) of Decree Law N° 25475 provided that in terrorism proceedings, challenges to judges or judicial auxiliaries were inadmissible. To some extent, this last provision was certainly redundant, since the secret identities of the aforesaid officials prevented defendants and their attorneys from learning of the existence of any grounds for challenges.

116. In connection with this, the UN's Human Rights Committee has criticized the fact that defendants did not know who was judging them and were denied the right to a public trial.^[36] Evidently, the right of the accused in any proceedings to know who is judging him and to be able to determine that judge's subjective competence--that is, whether there are any grounds for challenging or removing the judge--is a basic guarantee. The anonymity of judges deprives the accused of this basic guarantee and violates his right to be tried by an impartial court, since he is unable to object to a judge when there are grounds for a challenge.

117. The reason given for establishing the aforementioned system of secret justice seemingly has to do with the protection of judges, prosecutors, and other officials involved in the trial from possible reprisals by terrorist groups. In this regard, the UN's Special Rapporteur on the independence of judges and lawyers made the following remarks:

The main argument presented by the Government for providing "faceless" judges was to protect the physical integrity of the judges, given the terrorist threat. Based upon the testimony received from the judges themselves, the general impression of the Special Rapporteur was that the judges and prosecutors who are supposed to benefit from the fact that they operate anonymously do not feel protected by the system. In their opinion, it is quite easy to discover who the judges and prosecutors are, in particular in the provinces or small towns; therefore, they consider that the system does not serve the purpose for which it was established (i.e. the protection of the judges and prosecutors), and the majority of those interviewed acknowledged that under this system there is a lack of guarantees for due process. In this respect, international standards provide that derogatory measures shall be implemented only if they are strictly necessary. According to the information received by the Special Rapporteur, from 1992 to 1997, judges were not targets of the terrorist-related violence. Therefore, the use of "faceless" tribunals does not meet the principle of strict necessity. Moreover, even if a real need existed to implement measures to protect the physical integrity of the judges and of judicial auxiliaries, these measures should be consistent with other international obligations of the Government and they should not impair the

right of the accused to due process.[\[37\]](#)

118. In accordance with the above, the Commission reiterates that this system of secret justice constituted a flagrant violation *per se* of the guarantee--inherent to due process--of being judged by an independent and impartial tribunal, set forth in Article 8(1) of the American Convention, and of the guarantee of public criminal proceedings, enshrined in Article 8(2)(5) thereof.